

LSH
Heard at Field House
On 19 November 2002

APPEAL NO HX35088-2002
FM (Risk-Homosexual-Illegal
Departure) Iran CG [2002]
UKIAT 05660

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....5 December 2002.....

Before:

Mr Justice Collins (President)
Mr R Baines, JP
Mrs J Harris

Between

FARHAD MOHAMMADZADEH

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant in this case is from Iran. He is a young man who claims to be a homosexual. He left Iran because he was afraid that his homosexual activities would have become known to the authorities. That was because two of his companions were themselves arrested. This all happened in February 2002 when he went to his friend's house and was told that his friend and the other man had been arrested because they were gay. He was afraid that they would reveal his identity. He left for Tehran by coach, persuaded his father to send him money and found an agent, paid him sufficient monies to get him into a lorry in which he came to the United Kingdom and entered unlawfully. He claimed asylum.
2. The Adjudicator decided that this account was not true. He gives various reasons for those findings. We do not need to go into them in any detail because leave to appeal has not been granted to

enable an attack to be made upon them. However the Adjudicator does not in terms reject the appellant's assertion that he is a homosexual. Indeed, it may be that there is no reason why he should reject that account. Accordingly, what is in issue is whether if he were to be returned he would suffer persecution or ill-treatment contrary to his human rights.

3. The Adjudicator deals with this in paragraph 27 of the determination as follows:

" I have considered what might happen to the appellant if returned. The mere fact someone has left Iran to claim asylum is not itself regarded as a political act by the authorities and is not punishable as such. That is the conclusion to be found in paragraph 7.24 of the October 2002 CIPU Report. He will face the possibility of prosecution for having left unlawfully and that is not something that can be regarded as persecution. Sentences can range from 1 month to 3 years imprisonment. In the April 2002 CIPU Report this is further relaxed. This is set out in paragraph 5.889. Those penalties are not in any way disproportionate to the offence which has been committed. There is ample evidence in both CIPU Reports that active but non-public homosexual acts done discreetly are in effect ignored. The US Department of State Report on the subject is silent."

4. He then goes on to conclude that the appellant would be of no interest to the authorities and the consequences that might be visited on him upon return would not amount to persecution.
5. The point is made that the conclusion to be found in paragraph 7.24 of the October 2001 CIPU Report upon which the Adjudicator relied, is itself unreliable. That is because the report from the Dutch Authorities which form the basis of that conclusion has since been shown to be erroneous. There has been put before us a letter or rather an internal memorandum in the IAS which refers to enquiries which established that the Dutch indeed had accepted that what was said in that report was not correct. And It is to be noted that the April 2002 CIPU Report which the Adjudicator also had before him does not contain a paragraph equivalent to 7.24 in the 2001 Report. What it does contain, is paragraph 5.88 which reads as follows:-

"Citizens returning from abroad are sometimes searched and interviewed by the authorities upon return. This happened particularly at times when the authorities note increased activities of dissident groups outside the country as in late 1998. On the basis of the information Amnesty International receives, usually a person who gets back will be asked why he or she was abroad. If the answer is along the lines I just tried to find a job,

they will most likely be allowed to go home to their families. Generally speaking, it does depend on what kind of documentary documentation exists on the returnee and what the actual practice of the country is in which the concerned individual applied for asylum."

6. On the Adjudicator's findings there is no reason whatever why the authorities should have had any interest in this appellant before he left Iran. There is no reason equally why they should have been aware (if indeed it is the case) that he was a homosexual since the Adjudicator rejected the account of the arrest of his friends leading to his leaving the country. Accordingly, he will face if he is returned the possibility of action being taken because he left the country illegally, that being a criminal offence in Iran.
7. Miss Brown on his behalf has relied upon a report from a Professor Afshar which was before the Adjudicator and which indicated that there was a real possibility that the appellant on return might be regarded as having acted contrary to the state and might therefore be accused of defection and of spying. There is, as we say, nothing to suggest that he has in fact been involved in any disaffection since he has been out of the country. He has not done anything, and has not drawn himself to the attention of any of the authorities as having done anything wrong. So we have someone who left unlawfully in order to better himself in this country rather than remain in Iran.
8. In our view, to suggest in those circumstances that there is a real risk that he would be regarded as a security risk, is pure speculation. We do not doubt as Professor Afshar indicates that there have been individual cases where people have been ill-treated on return and have been accused of anti-state activities. That will of course depend upon the individual facts of those cases. We have had placed before us by Mr Sheikh a document from the British Embassy In Tehran. That was not served in time, indeed it was not served until this afternoon. Accordingly, we decline to take it into account directly. We put it that way, because we are not going to hold it as it were against this appellant, but it is material to the point that led Mr Freeman to grant leave to appeal. He did so on the basis that the Tribunal ought to have the opportunity of considering the point that the Netherlands Government report had been discredited. As we say, we do not accept that there is a real risk that a person who has left Iran albeit unlawfully in order to seek to better himself in another country and has done so by making a false claim for asylum which leaves him to be returned is going to run a real risk of persecution. Indeed, we need no more than the CIPU Report as it now exists and the evidence that was before the Adjudicator to reach that conclusion. We do not regard Professor Afshar's report as sufficient to raise a real risk that he may be regarded as a security risk.

9. So far as Mr Freeman's point is concerned, the existence of the report from the British Embassy in Tehran makes it clear that the conclusion that we have reached without it is a correct conclusion and that the situation is that there is no evidence of any general persecution or ill-treatment of failed asylum seekers merely because they are failed asylum seekers. Otherwise it would not be safe to return anyone to Iran; indeed that really is the conclusion that Professor Afshar would have us reach. As we say, we do not accept that is the reality of the situation. There is also reliance sought to be placed on the prison conditions in Iran. They are said to be awful and accordingly it would be wrong to send someone back on the basis that he might be prosecuted. As the Tribunal has said in other determinations, it is not for us to apply the European Convention world wide. We have to regard to what are the expected conditions in the individual country. We do not doubt the prison conditions are unpleasant. We put it no higher, but that in itself is not a good reason for saying that no one should be returned merely because he is likely to be prosecuted and possibly imprisoned. Of course, if there is likely to be torture, that is a different matter. But for reasons that we have already given we do not regard that in the circumstances of this case as a real risk.
10. Accordingly, for those reasons, we take the view that the Adjudicator reached a correct conclusion on the material before him and the supposed unreliability of the Dutch Report is not a proper basis for saying that the Adjudicator's determination was erroneous.
11. This appeal is therefore dismissed.

MR JUSTICE COLLINS
PRESIDENT