

Heard at Field House
On 12 February 2003

Appeal No HX/20621/2002
FT (Fair Trail-Adultery) Iran CG [2002] UKIAT 07576

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

03/04/2003

Before

Mr S L Batiste (Chairman)
Mr C A N Edinboro
Mr R Hamilton

FATEMA TORABI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of Iran, appeals, with leave, against the determination of an Adjudicator, Mr R G Handley, dismissing her appeal against the decision of the Respondent on 23 September 2001 to issue removal directions and refuse asylum
2. Before us, Mr K McDonald, instructed by the Castlemilk Law & Money Advice Centre, represented the Appellant and Mr A Mullin, a Home Office Presenting Officer, represented the Respondent.
3. The Appellant claims she was a low level supporter of Nehzat-e-Azadi, and in 1999 had been detained and lost her job as a consequence. The Adjudicator concluded, on the evidence, that the authorities would have no continuing adverse interest in her now and Mr McDonald acknowledged at the outset of the hearing that this was not the reason she left Iran some two years later, and he did not base his submissions to us as to current risk upon this.
4. The factual basis of the appeal is that the Appellant had an unsuccessful marriage, which ended in divorce in April 2001. There was a dispute between the Appellant and her husband over the custody of their child, which was awarded to the Appellant. She was later summonsed to court and on arrival learned from the court that she had been accused of adultery. This accusation is entirely untrue and the Appellant believes it was made by her husband in order to re-open the question of custody of their child.

However, instead of remaining in Teheran, where she lived, and fighting the accusation in the court, the Appellant decided to flee to the United Kingdom. The Adjudicator dismissed her appeal because he concluded that she should have remained and defended herself in court against the false charge.

5. Mr McDonald submits on her behalf that the Adjudicator was in error because the penalty for conviction for adultery is so severe, being death by stoning or lashes, that even the risk of conviction is sufficient to engage the protection of Article 3. Accordingly the Adjudicator was in error in finding that the Appellant should have waited in Tehran and defended the accusation.
6. The task before the Tribunal, as argued by both representatives, is to assess whether there is a real risk on the objective evidence that the Appellant would on return face a trial and a perverse conviction for adultery, and consequently suffer a sentence of such severity as to be in breach of Article 3.
7. Mr McDonald referred to the decision of the European Court of Justice in Jabari, Appeal No 40035-98, which concluded that the return of a woman who had admittedly committed adultery would be contrary to Article 3, because of the severity of the sentence she would face. Be this as it may, this present appeal is quite different in that the Appellant has never committed adultery. She maintains that the charge against her is false and malicious.
8. Mr McDonald relied upon a passage in the US State Department report to the effect that:

"It is difficult for a woman to obtain legal redress. A woman's testimony in court is worth only half that of a man's, making it difficult for a woman to prove a case against a male defendant."

However this passage is of limited value in this appeal as the Appellant is not seeking to bring an action against her husband, but would be defending herself against a criminal charge of adultery. There is some force in Mr McDonald's submission that it shows that a woman's testimony is only worth half that of a man, but it is not clear from this passage whether the reference is to proceedings against a man by a woman only or if it relates also to criminal proceedings against a woman.

9. He also referred to the CIPU report of October 2001 which stated that:

"Since May 1994, judges have been responsible for prosecution in public and revolutionary courts. Amnesty International has reported that trial hearings are often heard in camera."

However the value of this passage is also somewhat undermined by the fact that it has not been repeated in the more recent October 2002 CIPU report.

10. Mr Mullin referred us to the recent CIPU report and in particular to passages dealing with the high evidential requirement in trials for adultery. They showed that:

"Under the Islamic Penal Code adopted in November 1995, those found guilty of adultery, witnessed by at least three others, are subject to execution by stoning There have been several reports of execution for adultery in recent years. One IRB report has qualified understanding of the law regarding adultery, stating that the standard of proof and punishment concerning adultery

reflects the contradictory practices and decisions of the Iranian Islamic courts. In essence, rural, small town courts are more likely to inflict harsher sentences and perverse judgments than courts in Tehran.”

There is also an Amnesty International Report, confirmed in the CIPU report that a death by stoning did take place in Teheran in June 2001.

11. We also had regard to the decision in Fazilat [2002] UKIAT 00973 where a Tribunal chaired by Collins J. restated the now well-established principle that the purpose of the 1950 Convention is not to impose western European standards of court procedure and indeed prison conditions upon the rest of the world, whilst recognising that there are nevertheless minimum acceptable standards. In this context that Tribunal considered, after careful analysis of the objective material, that the court procedures in Iran in criminal trials would not be in breach of Article 6, and on the evidence before us we come to a similar conclusion. That is not to say that perverse decisions cannot happen. Of course they can in any country. But that however is not the correct test. We have to assess whether there is a real risk of to the Appellant of a perverse decision on the facts of this appeal with the heavy consequence that might follow and consequently whether the need for international protection is engaged under Article 3
12. We note in assessing the evidence as described by the Adjudicator a number of relevant material factors. Most important, the Appellant has never committed adultery and there would therefore be no genuine evidence against her. Also it would appear that the Appellant and her husband are already divorced and that the Appellant has already persuaded a court to award her custody of their child. There is no evidence that any accusation of adultery was made by her husband in any divorce or custody proceedings, or otherwise the Appellant would have been aware of it and would not have been taken by surprise by the accusation when she went court in response to the summons. We also note that although she was summoned to court on charges that could potentially carry the death penalty, she was allowed to leave court without any hindrance.
13. This evidence shows that the courts have responded fairly to the Appellant in the past in the contested custody proceedings. They do not operate in a vacuum and would be aware that her husband has a strong motive for making his malicious accusation, in that he is seeking to challenge the award of custody. The marriage is now over and so an allegation of adultery would have to relate to past conduct. In those circumstances the husband would have difficulty explaining why if he had three witnesses to adultery, they had not come forward earlier in the custody proceedings as the Appellant's conduct would have been a relevant matter to the court in deciding whether she was a suitable person to be granted custody. We also note that the Appellant lived in Teheran, which is a place to which she will be returned. The courts in Teheran, as the objective material shows, are much less likely to reach perverse decisions or impose harsher penalties
14. For all these reasons we conclude, as did the Adjudicator, that the Appellant should have remained in Teheran to defend the proceedings against her and could now be returned and do so, without any real risk of a perverse decision being reached by the court. There is no error in the Adjudicator's determination.
15. For the reasons given above this appeal is dismissed.

Spencer Batiste
Vice-President