

JH
Heard at Field House
On 18 May 2004

AH (Gashgai nomads-no
persecution) Iran CG [2004]
UKIAT 00169

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

22 June 2004

Before:

Mr P R Lane (Vice President)
Mrs A J F Cross De Chavannes
Mr T A Jones

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Appearances:

For the appellant: Miss W Lau, of Counsel, instructed by
Global Immigration Services

For the respondent: Mr B O'Leary, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a citizen of Iran, appeals with permission against the Determination of an Adjudicator, Mrs D E Taylor, sitting in Manchester, in which she dismissed on asylum and human rights grounds the Appellant's Appeal against the decision of the Respondent on 24 June 2002 to give directions for the Appellant's removal from the United Kingdom.
2. The Appellant claimed to be a member of a persecuted tribe in Iran, the Gashgai, and that the authorities in Iran wanted him

because he had been involved in June 2000 in a confrontation concerning the confiscation of the family farm. After firing started, the Appellant became very frightened and ran towards the mountains, whence he escaped to the United Kingdom.

3. The Appellant told the Adjudicator that there was an outstanding arrest warrant against him, issued in January 2002. This is to be found (with translation) at pages 42A-B of the Appellant's Adjudicator bundle.
4. The Adjudicator decided to place no weight upon this document because, although the Appellant said that there were two earlier arrest warrants, these had not been produced before the Adjudicator. Given the effluxion of time between the alleged incident in 2000 and the "warrant" which was dated January 2003, the Adjudicator did not consider that the "warrant" could be regarded as reliable (paragraphs 17, 18 and 22 of the determination).
5. The Adjudicator, at paragraphs 19 and 20, noted the fact that there was nothing in the objective evidence on Iran to show that the Gashgai were persecuted by the authorities. Furthermore, it is apparent from those paragraphs that the Adjudicator considered it as frankly strange that what little was said about the Gashgai was to the effect that they were nomadic, whereas the Appellant had attended University and supposedly was in fear of the Authorities because they had tried to seize the family farm.
6. At paragraph 22, the Adjudicator noted that there were no documents submitted relating to the confiscation of the land which, according to paragraph 21, was not after all confiscated by anyone in June 2000 but had only been taken over "about a year ago". The Appellant's large family remained in Iran except for Ibrahim who had left the country three or four months ago. The Adjudicator noted that there did not appear to be a link between Ibrahim's departure and the loss of the family's land.
7. The Adjudicator was not impressed by a letter from Homa Gashghai who had written "to the Honourable Government of the United Kingdom" to certify that the Appellant "is one of the Gashgai's fighters" who was "arrested and tortured by the Islamic government of Iran" and that "his family members are one of the most fighters (sic) families in the tribe, who were fighting to regain their tribal and religious rights back". Reference is made to battles during 1980 to 1982 when the tribe, was supposedly "tormented, arrested and prosecuted by the Iranian government".
8. Permission to appeal to the Tribunal was granted on two bases. First, it was asserted that the earlier arrest warrants, whose

absence the Adjudicator noted, had now been obtained by the Appellant "through a fax machine". Secondly, the Vice President who granted permission was concerned that the Adjudicator had arguably said too little about the human rights aspects of the appeal.

9. In order for the subsequent production of evidence to be relied upon so as to overturn a determination which discloses no error of law, it must be shown that there is a reasonable explanation for the failure of the Appellant to place that evidence before the Adjudicator. No such explanation has been given in the present case. Ms Lal, on instructions, said that her client had told her that the friend who had sent the later "arrest warrant" from Iran to him did not think that the earlier warning letters (as they are now described) would be important and that it was only necessary to submit the latest document. Given, however, that the Appellant was by definition aware of the earlier documents, he plainly could and should have done what he subsequently is supposed to have undertaken, namely, to procure from Iran the earlier letters, so that all relevant evidence could be before the Adjudicator.
10. In any event, the warning letters could not, in the Tribunal's view have had any material effect upon any reasonable Adjudicator, considering the evidence overall in the present case. These two warning letters appear in substance to be of the same kind as the document described as "an arrest warrant", contained in the Adjudicator bundle. The translation of that document contains no reference to anyone being authorised to arrest the Appellant. The two new warning letters are respectively dated 9 February 2001 and 9 August 2001. They describe the Appellant as a "retired teacher" (the Appellant being born in 1973). They supposedly require his attendance at Court on, respectively, 9 February and 9 August 2001. If the Authorities were genuinely interested in pursuing the Appellant, it frankly beggars belief that they would issue a sporadic series of "warning letters", only beginning some 7 months after the alleged incident in June 2000 and containing no follow up at all during the year 2002.
11. Ms Lal acknowledged that the absence of objective evidence to show that the Gashgai are persecuted or even discriminated against by the Iranian State was a difficulty for the Appellant. All that she herself had been able to find was a short piece from "Iran Today" which she had faxed to the Tribunal. This describes the "Spring Migration of the Gashgai", which involved over 100 groups of Gashgai migrating with their animals, following the coming of springtime. Ms Lal submitted that evidence to support the Appellant's assertion of persecution on the grounds of ethnicity could be said to be supported by the comment in the article that the Gashgai regarded the correspondent's guide as

not to be trusted “since he spoke the language of the Gashgai (a variation of Turkish), Farsee and the language of the foreigners – English!” The Tribunal does not consider that this passage can bear any such interpretation.

11. Indeed, in a country as closely scrutinised by human rights organisations and foreign observers as Iran, the absence of anything to show that the Gashgai are suffering at the hands of the Iranian authorities is, we consider, an indicator of the strongest kind that the Gashgai are not suffering any such difficulties. The letter from “Homa Gashgai”, with its assertion that the Gashgai are tortured by the authorities and are fighting to regain lands and religious rights (see paragraph 7 above), is unsupported by any source and is plainly an inept concoction.
12. The Appellant’s account, as well as being inherently weak and implausible, for the reasons identified by the Adjudicator, suffers accordingly from the additional problem that it is entirely unsupported by any objective evidence.
13. The Adjudicator should, we consider, have made it plain that her findings on the credibility of the Appellant’s account meant that there was no real risk to him, upon return to Iran, either of persecution for a refugee Convention reason or of treatment contrary to Article 3 of the ECHR. Having said this, it is manifest that the Adjudicator’s findings of fact point inexorably to such a conclusion.
14. This Appeal is dismissed.

P R Lane
Vice President