

ASYLUM AND IMMIGRATION TRIBUNAL

**AH (Returning students - Validation of UK qualifications -
Gozinesh) Iran [2005] UKAIT 00154**

THE IMMIGRATION ACTS

Heard at: Hatton Cross
On 14 and 28 September 2005

Determination Promulgated
7 November 2005
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Before:

Mr Andrew Jordan, Senior Immigration Judge
Mr A. R. F. Sharp, Immigration Judge

Between:

APPELLANT

and

The Secretary of State for the Home Department

RESPONDENT

For the Appellant: Ms C. Kilroy, counsel, instructed by
Paddington Law Centre

For the Respondent: Ms A. Gill, Home Office Presenting Officer

DETERMINATION AND REASONS

Students returning to Iran at the conclusion of their studies will require their United Kingdom qualifications to be recertified or validated by the Ministry of Science before they are allowed to practice making use of those qualifications. This will involve the authorities in Iran seeing the contents of some of their written work in the United Kingdom. Those admitted to universities or other institutions of higher learning and to other state/public sector employment as well as some others will be subject to the selection or evaluation process known as Gozinesh which will examine their moral suitability. The risks attendant upon these procedures is examined.

1. The appellant, a citizen of Iran, was born on 22 November 1971. He is 34 years old. He arrived in the United Kingdom on 2 September 1999, then aged 27, and was granted 6 months leave to enter as a student. Shortly thereafter, his leave was extended to 2 September 2000. Subsequently, permission was extended until 31 January 2005. On that day, an application for asylum was submitted.
2. The Secretary of State made a decision on 17 May 2005 to refuse his asylum application. A second decision was made on 23 May 2005 to refuse to vary his leave to remain in the United Kingdom. That decision gave rise to a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 which the appellant exercised on 9 June 2005.
3. The hearing before the panel is the first substantive hearing of the appellant's asylum and human rights appeal. It involved both the finding of facts and an evaluation of expert and background evidence based upon them.

The Screening Interview

4. At his screening interview, the appellant describes himself as an atheist and an only child. The appellant's father died in 2004 but his mother continues to live in Iran. Between 1993 and 1997, the appellant studied the History of Art at the School of Art and Architecture in Azad University, Teheran Central Unit. His first course of studies in the United Kingdom was a Diploma course at the Kent Institute of Art and Design, part of the University of Kent at Canterbury. In answer to question 9.5 in which he was asked the reason for coming to the United Kingdom, the appellant replied that he came here in 1999 to study but that, were he now to practice his qualification in Iran, he would be persecuted. (Although he uses the word "prosecuted", it seems clear that he intended to say he was at risk of persecution.) In addition, he says that, since the death of his father, his financial position had changed.

The Interview

5. At interview, he stated that he had not himself been politically active but many members of his family had been imprisoned and tortured both before and after the revolution. He said his father was a middle-ranking leader of the Communist Party in northern Iran for five years before the revolution. His father was also a deputy director of a tobacco company who had supported the rights of tobacco farmers before the revolution which resulted in his being sacked from his job as well as facing prosecution. Fortunately, he was acquitted. He also stated that he had two uncles, one of whom was imprisoned and the other sent into exile.

6. After the revolution, the appellant stated his father was appointed a director of a company but was forced to resign. The appellant said his father was always suspected of having an anti-religious point of view and lost his job as a result of pressure by the fundamentalist element in Iran. During his latter years, his father ceased to be politically active. He died on 29 April 2004, whilst the appellant was continuing his studies in the United Kingdom. In answer to question 15 in his interview, the appellant referred to the arrest and imprisonment of 3 cousins, one of whom now lives in America.

The basis of the claim

7. The basis of the appellant's claim for asylum is that when he came to the United Kingdom, he intended to study here and use his qualifications to advance his career prospects in Iran. His education in the United Kingdom has been in the field of humanities and especially cultural theories and philosophy. He describes his education as being research-based. It is apparent that, after his father's death, the money that had been used to finance his education in the United Kingdom became much scarcer. He realised he no longer had the resources to continue his studies and so decided to find work in Iran as an academic. He sent his research papers to his mother as well as some friends of his father but they advised him that his qualifications and research, rather than advancing his career prospects in Iran, would put his life at risk. In answer to question 23, he stated that the risk arose because his research has been "post-structuralist", and that as it is rooted in Jewish and homosexual philosophers, it would be regarded as blasphemous. In addition, his own atheist and broadly socialist views would be inimical to the authorities in Iran.
8. More specifically, he stated that on return, he would be questioned about the subjects he has studied in the United Kingdom and that his UK-based qualifications would require recertification. This process would result in examination of the contents of his education in the United Kingdom. Although his education included a postgraduate diploma in 3-dimensional design, this was research-based and its content was largely theoretical, concerned with philosophy and cultural theories. He claimed that he would be accused of blasphemy and corrupting the minds of young people by importing corrupt western ideas into Iran. This perception would be reinforced by the family background. He stated that his research work involved a political element because it would be perceived to be critical of Iran and its Islamic values or, at least, contrary to them.

The refusal letter

9. The Secretary of State, in refusing his application, accepted that

the government in Iran restricted academic freedom and that government informers were common on university campuses. Admission to universities was politicised and all students were screened to ensure none was critical of the government's broadly Islamic ideology. Accordingly, he considered the fact that the appellant had studied at Azad University indicated that the appellant had been deemed suitable, notwithstanding the claim that his family were politically active. During his time within the United Kingdom, the Secretary of State took into account that his passport showed his student visa had been validated by the Iranian Embassy in May 2002 for a further five years and this was an indication the Iranian authorities were neither monitoring his studies nor restricting the appellant in the course he followed.

The appellant's response

10. The appellant who, not surprisingly, is highly articulate, has written a detailed critique of the Home Office decision letter running into some 18 pages of closely-typed text and incorporated into his statement, consisting of 45 pages of text. It would be invidious to select any specific passage or indeed to do more than briefly summarise its contents. One of the complaints made by the appellant is that the interviewer was seeking to pigeon-hole the appellant's case into a conventional asylum claim and was, therefore, unable to grasp the nature of the appellant's claim which was quite different. This rather presupposes that there is such a thing as a run-of-the-mill asylum claim. Furthermore, it is apparent that the appellant enjoys demonstrating the extent of his knowledge of philosophical concepts, notwithstanding the inability of the listener to understand them. He suggests, therefore, that the interviewer did not understand the nature of his claim. Importantly, in paragraph 19 of his response, (adopting the same paragraphs as the refusal letter), the appellant emphasises that the risk does not arise on examination at the airport but as a result of the re-certification process which he would be required to undergo which would reveal the contents and details of his education in the United Kingdom and which would, in due course, reveal his liberal views. Secondly, (and independently of re-certification) there are the difficulties caused by the Gozinesh system. This is the selection process by which persons are selected for employment in Iran. Once those difficulties are revealed, he would be at risk of detention and torture.

11. The centrepiece of the appellant's case is the claim that, rather than advancing his prospects in Iran, his English education has gravely prejudiced them to the point that he is at risk of persecution. He accepted in evidence that, whilst it was his intention to return to Iran during the period 1999 to 2004, it was only after showing his writings to his mother and his late father's friends that he realised his studies in the United

Kingdom had not simply been a waste but a positively harmful experience that he claimed asylum.

The appellant's academic progress.

12. The appellant has provided a Curriculum Vitae in which he describes his academic progress. Between 1993 and 1997, he studied for his BA in Painting studying the history of art, including art criticism and technical skills in visual arts at Azad University. He told us that, in order to obtain his degree, he was required to submit a thesis or dissertation and he did not do this. He has not, he explained, obtained a bachelor's or first degree in Iran. The course required the submission of the written dissertation and practical works. The appellant only completed the practical works. He said that it was a requirement that you wait two years before formal graduation takes place but that the grades he received for the work completed were sufficient for him to commence his studies in Europe. On arrival in the United Kingdom, between 1999 and 2001 he describes his post graduate diploma in three-dimensional design (research based) in these terms :

"Theory and Philosophy of Space and Spatial Design - the Case of Quantum Theory, Psychoanalysis, Mysticism and Linguistics - by Research Thesis: Psychosynthesized Fluidity in Architecture, Cerebral and Phenomenal plus Interior Design Projects: Concept for Dulwich Picture Gallery by Sir John Soane and Concept for Human Dwelling."

13. Between September 2001 in January 2002 (a period of four months) the appellant studied for an MA in three-dimensional design. He told us that this was research-based. The Diploma was a principal first stage in his Master's degree. In September 2002, he commenced an MSc at UCL in Built Environment, Advanced Architectural Studies but he withdrew from this course as a result of events in 2003 including the death of his father and his inability to fund the continuation of his studies. As he has no means to continue their studies, it is not presently foreseeable that these can be resumed. Accordingly, there is no reasonable likelihood of the appellant achieving a PhD in the United Kingdom. We know that the appellant has not obtained a Degree in Iran. He told us that he could not resume his studies but would have to commence afresh. We also know that the appellant did not achieve his MSc at UCL. We are satisfied that he has obtained a Diploma in three-dimensional design at Kent University and that he commenced an MA at Kent which continued for a single term between September 2001 and January 2002. We are uncertain how he managed to complete an MA in such a short period, even if studying full-time and even if a Diploma course was treated as part of the qualifying work. This is all the more surprising since he accepts he has not

achieved a first degree. The appellant has not provided written material from the College establishing he graduated with his Master's Degree and such material was plainly available either in the form of a formal certificate from the Registry or a letter written by his course director. Nevertheless, we do not consider that, in the course of the hearing, there was any sufficient challenge made by the Secretary of State to his ever having obtained an MA to enable us to reject his claim to have successfully completed an MA in three-dimensional design at the University of Kent. Were this matter to go further, it is a simple matter for the appellant to establish this part of his case without any room for doubt by seeking confirmation from the University about this qualification. Were he not able to do this, the failure would cast a formidable shadow over the basis of his claim.

14. None of the material that the appellant has written has been published. The CV lists essays that the appellant says he would like to publish. One, for example, is entitled "The Aesthetics of Gothic Cathedrals, 'Complexity' and 'Reductionism' a Comparative Study of the Semantics and Syntax of Visual Representation, and Verbal and Literary Structure" (In one version of his CV the words - "The Defeat of the Christian Centrality" are added to the title of this piece. They do not appear in the version the Tribunal was first referred to on 14 September 2005 and we have no information as to when and why the title was changed, if it was.) He was asked whether this would be regarded as containing material that would be perceived as antithetical to the Iranian authorities. He positively asserted that it would be considered political in nature because it would be perceived as an attack on religion. At the first hearing he did not produce a copy of the essay, nor did he explain why it would be perceived as anti-religious. In particular, he did not provide any reasons why it should be considered anti-Islamic, given it was an essay on Gothic Cathedrals. It is, of course, for the appellant to establish his case and it is insufficient for him to make the unsupported assertion that others would perceive this material in the way he suggests. The appellant himself does not suggest that this material would be submitted by him to the Iranian authorities. We were unable to speculate whether it would be published and the appellant provided no evidence that it was reasonably likely to be published. Were it to be published in the United Kingdom, there is no material before us to establish it is likely to be translated or that its contents would otherwise fall into the hands of the Iranian authorities. Having heard the evidence of the appellant we were left unpersuaded that this document represents any risk to the appellant on return to Iran. Furthermore, we are sure that the appellant knew it represented no such risk and that the appellant's evidence was calculated to offer a misleading impression of the risk he faces.

Anna Enayat's reports

15. In support of this claim, the appellant relies upon three reports by Anna Enayat; one dated 6 September 2005 and an addendum report dated 12 September 2005. After the first day of the hearing she produced a further, supplementary, report dated 26 September 2005. The first report is in 7 sections:

1. A consideration of whether the appellant would have been admitted to university in 1993 given his family background: the Gozinesh ("selection") system and university entry.
2. The validation of academic qualifications issued by foreign universities-recertification.
3. Gozinesh and employment within the Institute of Higher Education and other Professional spheres.
4. The renewal of his visa.
5. The subject and content of the appellant's "thesis".
6. The effect of the appellant's family background.
7. Current conditions in Iran

Recertification or Validation

16. Recertification is a long-standing process where Iranians who have obtained academic qualifications abroad must have those qualifications validated by the Ministry of Science and Higher Education before those qualifications are accepted by Iranian institutions. This may have similarities to the process by which those with qualifications obtained abroad are scrutinised by the authorities in the United Kingdom before a non-national is allowed to practise here making use of his qualification. Ms Enayat had sight of the guide from the Ministry of Science taken from its website. One of the stipulations for the validation of MA/MSc qualifications is the deposit of a copy of the thesis and the completion of a questionnaire requiring details of field of study, the name of the applicant's supervisor, the contents of the thesis and a summary of it. Importantly, she says:

"One - legitimate - purpose of this process is to weed out those who have obtained degrees from poor quality universities. But another is to establish, through their work, whether a young scholar has ideas viewed by the powers that be as non-conformist and may render him or her "unsuitable" for academic employment.

The inspection of theses is always an anxious matter for those who have written in the social sciences, philosophy, history or literature."

17. The appellant submitted a substantial amount of information extracted from various websites about the process. See pages 41 to 49 of the second bundle. The information includes the forms that have to be completed and submitted to the Ministry of Science, Research and Technology. The process governs both grant-assisted students and those, like the

appellant, who were self-financed. The information provided includes the exact title of the thesis in the original language and one form requires a summary of the thesis to be provided in Persian by way of a separate page. The translation of this evidence was not provided by a professional translator but by the appellant himself, although attempts had been made to find professional assistance. In the event, we were content to admit the appellant's translations as Ms Enayat had seen them and stated that they were broadly accurate. We did, however, raise what appeared to be a difference in Ms Enayat's use of language when compared with the appellant. She appears to use the term "supervision" of students abroad, whereas the appellant preferred the phrase "monitoring" of students. In the absence of a professional translation, we were unable to resolve whether the difference, if any, was significant.

18. Most helpfully, the information submitted by the appellant refers to the Validation Committee and the Commissions of Re-certification of the Qualification obtained Abroad. This is clearly and properly a highly structured process and includes specialised committees who are required to study and analyse information relating to the educational systems of foreign countries.
19. The documentary evidence about recertification is consistent with Ms Enayat's view that the appellant will be required to submit a copy of his thesis and provide in Persian the main titles of the summary of contents.
20. The process of recertification must be seen in the context of the high degree of supervision or monitoring that foreign students are subject to in the United Kingdom. There is a specific section in the Ministry that deals with students who study abroad. Each country has a Guardian of Students whose function, amongst others, is to gather information as to the activities of Iranian students whilst studying abroad. Information obtained is channelled to the Undersecretary of Student Affairs whose function is to make decisions on the activities of students studying abroad. It is apparent that his jurisdiction involves "student's educational affairs, ethical affairs and faith." (See page 43.) It is in the nature of such functions within the Islamic Republic of Iran that student discipline is conducted centrally by the Central Disciplinary Committee of Students whose members include a representative of the Spiritual Leader taken from his representatives in each of the universities in Iran. Disciplinary matters include matters such as plagiarism and cheating but also, importantly, moral offences including sexual misconduct and failing to comply with Islamic codes of dress and conduct. We think that this information is a valuable tool in assessing how much wider the Iranian State sees its role in the supervision of student activity in comparison with western counterparts. Further, this activity is not limited to students studying within

Iran but encroaches upon the activities of students studying abroad.

21. In her third report, Ms Enayat makes it clear that, if the appellant seeks to make use of his United Kingdom qualification, he will need to have his qualification re-certified in Iran for the purposes of *any* kind of institutional employment, government or private, which will require a post-graduate qualification. Institutions in Iran are *pedantic* about the need for the Ministry of Higher Education to re-certify the qualification.

The effect of re-certification in the appellant's case

22. We now turn to consider whether the effect of the recertification process. In section 4 of her second report, Ms Enayat concludes that the appellant would *without doubt* be perceived as an actual or potential opponent of the Islamic Republic if the content of his thesis became known. He would then be perceived as an "apostate" or a "blasphemer". Whether prosecution would follow immediately is, she says, hard to tell but there is a chance that this would be so. In considering this aspect of the appeal, we bear in mind the complex situation in Iran described in the 2001 UNHCR/ACCORD report. The interpretation of the law and the application of the rules are not clear-cut and consistent. There is a level of arbitrariness and inconsistency that permeates society, doubtless caused by differing strictness with which individuals apply them. The problem is exacerbated by the extreme breadth of charges that may follow, such as, "insulting the sanctities of Islam" or "spreading lies".

23. It thus becomes necessary to consider the material that Ms Enayat had before her and upon which she based her conclusion. In her first and second reports, Ms Enayat does not list the "thesis" as one of the documents that she had received. Nevertheless, she refers to it in section 5 of her principal report in these terms:

"A thesis that draws heavily, and in a positive fashion, on the work of the Marxist cultural theorist Walter Benjamin would definitely mark its author as a "deviant". "

24. She goes on to consider that the appellant fears he would be viewed as an apostate. She cites a contemporary example of a professor at Cairo University who applied modern linguistic analysis to the study of Islamic texts, including the Koran, and who then applied for promotion at the university. A campaign ensued against him which resulted in a court ruling he was an apostate. She conceded, however, it is fairly rare for the Iranian authorities to bring formal charges of apostasy or blasphemy against individuals, although such cases do arise against

individuals who hold or propagate beliefs not in accordance with the official view of religious orthodoxy. Indeed, it is the practise of fundamentalist elements in the country to label individuals as "apostates". We readily accept that the process of academic biblical criticism that commenced in Europe in the 19th century and continues to the present would not be tolerated in Iran today if similar academic criticism were levelled at the Koran. Caution must, however, be applied to drawing analogies between a high-profile academic who wished to apply literary criticism to the Koran and an MA student studying three-dimensional art and design.¹

25. In his evidence to us, the appellant described the material he had submitted to gain his academic qualifications in the United Kingdom. None of these essays, however, were placed before Ms Enayat for the purposes of her first two reports. Instead, he submitted a 7000 word "pilot essay" that he had prepared more recently after he had stopped his course of studies. In addition, he spoke of sending her an introduction which he described as an explanation of some of the foundations of his philosophical ideas. The material he submitted to the expert was not a thesis that formed or forms the basis for an academic qualification. It will not, therefore, be submitted to the Iranian authorities for the purpose of recertification. The circumstances in which it was produced are unclear save that it was not prepared as part of either his MA or his MSC (from which he has withdrawn).
26. At the conclusion of the first day of the hearing, we were concerned that the expert's report was based upon material that did not form part of any academic qualification. Nor were the materials placed before us. We, therefore, directed that the relevant materials should be filed and Ms Enayat asked to confirm the material she used to reach her conclusions. It is now accepted that her first two reports were based on the pilot essay and the appellant's personal statement and that these were selected by the appellant to be placed before her.
27. We have read all of the material. It is accepted that the pilot essay and the document describing the appellant's underlying philosophical point of view will not be placed before the authorities in Iran. Taken together, they are in marked contrast to the other material that we have read and to which we will later refer. The pilot essay is described as a pilot for a six-month period of private research on the "Interrelation between Language Philosophy and Belief". It did not form part of either the MA in three-dimensional design or the MSC in Advanced Architectural Studies. Its contents are a far-cry from these matters. The pilot refers to Kant and Witttgentein and contains

¹ In this context the word "criticism" is, of course, used in the sense of literary criticism; not in the popular sense of criticising or attacking the literary work being examined.

passages, by way of example only, such as:

“On the one hand, it can be argued that the question, “do you believe in god? is *meaningless* (in Wittgenstein’s sense) as there is not any *universal* consensus on an explanation for god...What does god in here refer to, an entity, an object, a concept, a state of affair, a form of energy, or generally speaking a category? How is god described? ...The former question about the nature of god’s existence has been falsified, though not in Wittgenstein’s sense that it can be regarded as a completely irrelevant (meaningless) question, but in the sense that the metaphysical proposition (i.e. epistemic criterion) adapted to address the supposedly *innate* and psychological nature of man’s obsession with god is *inconvenient*.”

28. The other document, a personal *credo*, described by the appellant as a description of his underlying philosophical point of view begins in these terms:

“Generally speaking I hold that man is the centre of the man’s world, believes, knowledge and creations (though not as the centre of the universe). I regard man as prior to God rather than vice versa...As man is prior to language, man is prior to God, to the very linguistic propositions that ‘God exists’.”

“The questions of the existence of God is neither a problem nor a puzzle, but simply the by-product of language. There is no word of God, but only of man and the only way to know a religion is in man’s action. There is no lie without a liar, no fascism without a fascist and no Islam without a Muslim.”

29. Having read this material, it is inevitable that Ms Enayat would have concluded that, if the same material came to the attention of the Iranian authorities, he would be considered an apostate or a blasphemer. Importantly, we are sure that the appellant, who is articulate and intelligent, knew that this would be the effect. In essence, he created the conditions by which the conclusions in these reports became inevitable.

30. When the Tribunal reconvened, Ms Enayat had by then seen a great volume of additional material but it is clear that she was not asked to distinguish between the material that the appellant would be required to produce for the purposes of recertification and those that would not need to be produced. For the reasons we have give above, she viewed the documents as a whole and cumulatively, and this included the pilot essay and his “underlying philosophical point of view”. She says:

“I repeat that, on the basis of the material I have seen and

read, the client's positions would be viewed in Iran as those of a "materialist", an "atheist" and a "Marxist."

I am competent to understand the epistemology of the client's work, its philosophical bases and its sources and could supply a more detailed explanation if required. I am not competent to explain the application of these matters to the client's specific field of study, or to write a detailed explanation and assessment of the content of his thesis and its arguments. Nor was it part of my instructions that I should do so (such a task would in any event take many hours.) Should an assessment of this kind be required the court needs to approach a specialist in cultural theory and its application to the study of architecture and design."

31. We take the view that the expert's assessment on the material placed before her has been compromised by reason of the submission to her of the pilot essay and the appellant's underlying philosophical point of view. As long as these documents formed part of the corpus of material upon which she was required to make her assessment, she could not reasonably have reached the conclusion that the documentary evidence taken as a whole would not be prejudicial if it came into the hands of the authorities in Iran. She was not asked to comment specifically on the material required to recertify his MA in three-dimensional design.
32. It is necessary for us to consider this material. In his evidence to us, the appellant stated that items H and L in the bundle of additional written material, compiled after the first day of the hearing, were submitted for his Master's course September 2001 to July 2002. Item K was for the appellant's 'post-graduate' Diploma and items J and I were submitted after the first term: item I is a revised project proposal.
33. The essay entitled "Depthesized Complexity" is concerned "to explore the complexity of spatial events through the probability of conditional states of existence." (See page 3.) There is a reference to Andrew Benjamin (not Walter Benjamin) on pages 7 and 8. There is, however, nothing within the essay itself which could lead a non-specialist to the conclusion that this could be read as anti-Islamic. There are certainly references to individuals known to be Jews. We note, for example, a reference to Daniel Liebeskind, probably best known as the architect of the Jewish Museum in Berlin. Thus the essay considers the works of western architects and thinkers, some (or many) of whom may be Jewish. In addition, the essay refers to Russian writers some (or many) of whom may be Marxist or Communist.
34. We have also considered the appellant's essay "Fluidity to Depthesization, From Construction to Site." Much of this essay considers an extension to the Dulwich Picture Gallery, a building

designed by Sir John Soane. On page 35, we note, there is a passing reference in a footnote to Walter Benjamin but the substance of the essay, as the essay suggests, considers a design for the extension to an Art Gallery.

35. We have also considered the appellant's "Revised Project Proposal Brief" entitled "Psychosynthesized Fluidity in Architecture." This document is not, of course, part of the appellant's thesis. It barely touches upon the Islamic world but we note, for example, on page 3 that there is a reference to mosques. It speaks of the polished and symmetrical static body being covered with rigid geometrical patterns. This is both accurate and descriptive. There is a marked emphasis upon Buddhist thinkers but also reference to the concepts of Post-Modernism and Post-Structuralism, concepts we would associate with western thinkers. Another essay somewhat similarly entitled "Psychosynthesized Fluidity: The Third Method of Architecture" spends much time in a consideration of the Sir John Soane's Museum in Lincoln's Inn Fields as a key element of the appellant's research. Once again, however, the appellant's working *milieu* is wide-ranging and there are numerous references to other architects artists and writers, including, for example, Daniel Liebeskind Freud and Hadid. "The Unseen Path" a Research Paper prepared for his MA uses concepts familiar to the other material and refers to many of the people mentioned in the other texts. Once again, it is not apparently an essay on which the appellant's MA was based in the sense that it is not formally classified as part of the appellant's thesis.
36. It is for the appellant to establish his case. We are not experts in the academic field that the appellant has adopted. We are satisfied that, as laymen, the material he has produced that will be considered as his thesis for the purposes of recertification of his MA cannot be construed as demonstrating deviant principles that will result in his being questioned on return to Iran or will lead to the risk of prosecution or persecution. There will be cases where it does not need an expert to determine this issue. For example, it did not require an expert to determine that the contents of the pilot essay and the personal statement were likely to result in the appellant being accused of blasphemy or apostasy (as more widely defined on page 2 of Ms Enayat's first report). We emphasise that the matter does not rest with our inexpert view. In a case where the issue is not so clear-cut and cannot be determined by the inexpert, it is for the appellant to adduce expert evidence that the material that will come into the hands of the authorities is likely to be viewed in such terms.
37. We are satisfied that this was the purpose (amongst others) of instructing Ms Enayat. Her first two reports, however, were based upon material that the appellant knew would be viewed by the authorities as anti-Islamic and blasphemous. He also knew that the material he withheld was the material upon

which he was likely to be judged on return. By compromising the sample, the appellant himself was responsible for compromising the expert evidence that has been adduced on his behalf. This failure has not been properly addressed in Ms Enayat's third and final report because by continuing to place reliance on the pilot essay and the personal statement, the result remains a foregone conclusion. In our judgment, the expert evidence fails to establish that the material that the appellant will be required to submit in order to seek recertification of his MA in three-dimensional design will result in adverse consequences for him. In reaching this conclusion, we would wish to emphasise that we are not seeking to stand as experts, far less to 'out-expert' the expert. Our approach is clear: if the Tribunal is unable to make a judgment that the material will be treated as heretical, it is for the appellant to provide expert evidence to that effect and, for the reasons we have given, the expert evidence adduced by the appellant is compromised.

38. For these reasons we are not satisfied that the appellant is at risk in the process of recertification.

Does the appellant need to have his United Kingdom qualification recertified in order to avoid a violation of his Convention Rights?

39. Recertification means that the appellant is able to be treated as having obtained a Master's Degree in Iran. This may be particularly useful to him as he will not be recognised as having received a First Degree. We accept that an additional qualification will assist the appellant finding work in Iran. We are also satisfied that the appellant does not wish to continue his academic studies in Iran where the restrictions on academic freedom are greater than in the United Kingdom. Neither Convention, however, is designed to afford an appellant with an opportunity to work in the academic environment which he feels is more congenial to him. Nor is either Convention designed to permit an appellant to work in the field of his choice. The appellant would like to continue academic work but his chosen subject has, he now claims, proven useless in Iran. Although he states that he was not equipped to deal with the technical side of three-dimensional design, and therefore moved into the more academic or philosophical branch of the subject, this is no different from any other student choosing a field of activity which does not, in the event, equip him for his future work in the way he had hoped. If he cannot make use of his academic qualifications in Iran, that does not amount to persecution or a violation of his human rights.

40. We note that in his CV he has experience as a translator and that he has worked as a member of a design team. He is not unemployable with or without a United Kingdom qualification. He is both intelligent and resourceful.

41. Ms Enayat deals with this aspect of his claim in her second report and the section which seeks to answer the question: **If he applied for jobs based on his Iranian qualification can he do that and state that he does not want to rely on UK qualifications?** Ms Enayat clearly believed that the appellant had already obtained his BA degree but considered this meant very little in the Iranian context and that by itself it would open few professional doors. We now know, of course, that he did not graduate in Iran. Her response is that the process of Gozinesh would include an investigation of his period spent abroad as a student and this would include the question of why, if he obtained an MA in the United Kingdom, he did not submit it for re-certification. The appellant, of course, has an answer for his failure to pursue his MSc. This aspect of the appeal falls to be determined in the context of our assessment of Gozinesh.

Credibility

42. The consideration of the appellant's case so far has been largely independent of any findings of credibility. It is convenient at this stage to consider credibility before addressing the implications for the appellant of the process of Gozinesh.

43. It is a central part of his claim that he did not know the material he was producing would be perceived as anti-Islamic until he supplied copies of this material to his mother or to friends of his father who then told him the material was dangerous. To this extent, his claim to be at risk of persecution does not arise by reason of his own assessment of the material but rather from what others have told him. We have already given detailed consideration to the material itself and to the expert evidence that has commented upon it. For the reasons we have given, the material to be submitted to recertify his MA does not, on its face, contain anti-Islamic sentiment or is readily seen by an inexperienced eye to lead to a charge that it is blasphemous. Nor does the expert evidence establish this. It was the appellant's case that he, himself, did not know that it was likely to be so perceived. This only occurred when he sent the material to his mother and friends of his father in Iran. Yet, the appellant has not produced evidence from these persons in the form of a detailed statement as to why the material would be so perceived. The only evidence is contained in his mother's letter of 8 February 2005 and one letter from a family friend now working in Washington, Hassan Mojtabehi of the Vegetable Crop Research Centre in the Prosser area of that city. Mr Mojtabehi does not appear to have any philosophical qualifications and makes no more than general comments and hence can carry little weight. As to the three persons mentioned in the mother's letter we are told little of their identity apart from the fact that they are professors at recognised universities so we are unable to say whether they are able to speak from positions of

authority as to how these documents will be perceived and why. If they are neither philosophers nor experts in the philosophical concepts discussed in the material before them, it is not clear to us how they were able to speak authoritatively on the risk of harm they represent to the appellant. In this context we have already set out the reticence shown by Ms Enayat on the content of the thesis and its argument. In the absence of credible material establishing the weight that should be attached to their views, we cannot be satisfied that the appellant has made out his claim that it was their comments upon his work that caused him to experience the Damascene conversion from believing that his studies were promoting his return to Iran when, in truth, they were doing the reverse.

44. Further, in the absence of material from these persons, we are unable to accept the appellant's account that it was only as a result of the word of these unidentified persons that lead him to believe that he was at risk. We do not find that it is credible that the appellant genuinely believed he was advancing his career by studying in the United Kingdom in the mistaken belief that nothing he was doing was prejudicing his return to Iran and was rudely awakened by the opinion of those in Iran capable of understanding the finer meaning of his written work. Ms Enayat indicated that if a detailed assessment of his written work had to be performed, it would require the assessment provide by a specialist in cultural theory and its application to the study or architecture and design. We accept the proposition that a judgment of this kind could only be made by such a person. Had the appellant received such advice we have no doubt at all he would have revealed it to us as well as explaining its contents to us in detail. Knowing, as he does, the centrality of this part of his claim to his claim to be genuinely at risk, we are sure he would have pursued this element of the claim to the fullest extent, had it been true. We are satisfied that it is not and that this core element of his claim was made in an effort to explain his late application for asylum.

45. This finding does not dispose of his claim because, whether or not it is true, the Tribunal has to assess the impact of the appellant's return to Iran. It does, however, give rise to a subsidiary finding. Whilst we cannot rule out the possibility that it was the original intention of the appellant to study in the United Kingdom in order to advance his career prospects in Iran, the appellant decided will before his asylum claim that he would rather remain in the United Kingdom and follow his studies here. When he made that decision, he was not a genuine refugee. It also seems clear, and we so find, that his resolution to remain in the United Kingdom was part of a growing estrangement with Iran.

Current conditions in Iran

46. Further, our overall assessment must be made against the backdrop of current conditions in Iran. We are satisfied that there is a continuing decline in human rights in Iran. The June 2005 presidential elections have resulted in a new President who is a representative of the fundamentalist right and has close links to the Revolutionary Guard. This is part of the process, which began in 2003, that has resulted in the fundamentalist faction of the Iranian ruling establishment extending its control of key institutions, the security services, the judiciary as well as the Revolutionary Guard and now the legislature and the executive. The Cabinet is mainly composed of hardliners. The Ministries of Culture and Science Research and Technology (Higher Education) are both controlled by ultra-conservative religious hardliners. At the same time, there is growing anti-western feeling and this is focused upon the United States and the United Kingdom in particular.

Gozinesh (tr. “selection”, sometimes “evaluation”)

47. Ms Enayat, who was not called to give oral evidence, explains in her first report that Gozinesh is the process of selection instituted in Iran after the Islamic Revolution to ensure that those admitted to the universities and other institutions of higher learning and to state employment conform ideologically. The process has both ideological and security components. The process is to test the “moral competence” or “moral suitability” of the applicant. This involves a process of identifying that the aspirant is loyal to the regime and has no links with opposition movements or with western ideologies opposed to the Islamic Republic. Thus, the process has a political element within it.

48. The Secretary of State accepted that vetting took place in the appointment and promotion of academics in universities in Iran. Ms Enayat makes it clear that it is seen in every Institute of Higher Education, each of which maintains a Gozinesh unit whose function is to examine the political and moral suitability of all staff members. In one school, this was described as involving the examination and establishment of the ideological, political and moral qualifications of all those apply for admission to the university and throughout their engagement with the university. The unit preserves, as secret material, all information gathered in the course of the evaluation (gozinesh) of individuals. Amnesty International in a report on the ILO Conference of June 2003 set out the criteria that are applied and noted, importantly, that Gozinesh extends beyond academic or state institutions and affects the labour market more broadly. The Amnesty report states:

“Today, the Gozinesh is executed to differing degrees, depending on the job in question and the nature of the organisation or field in which the placed is found. There appears to be no standard accepted procedure for carrying

out the Gozinesh and differing public sector employers appear to use different approaches.”

Ms Enayat is in no doubt that Gozinesh criteria are strictly observed where universities and colleges of higher education are concerned. For those who are themselves non-political, or who work in scientific and technical fields, this may not be a large issue. She considers, however, that “the ideas and approach of candidates applying for positions in the social sciences, the arts or modern history would definitely be a sensitive issue.”

49. The law on the selection (Gozinesh) of teachers contains general guidelines for the moral, belief and political selection of applicants in accordance with the following criteria:
1. belief in Islam or one of the official religions set out in the Constitution;
 2. practical engagement in the course of Islam;
 3. belief and engagement in leadership by a religious jurispudent, the state order and the Constitution;
 4. absence of a reputation of moral corruption and tendency towards sin;
 5. absence of a record of membership or support of illegal organisations (in the absence of any expression of repentance);
 6. absence of a current criminal convictions;
 7. absence of addiction to narcotic substances.

The appellants past experience of Gozinesh

50. In order to study for his first-degree, the appellant underwent the process of Gozinesh. He would not have been admitted to Azad university unless he had successfully undergone the selection process and that he is background demonstrated moral and political suitability. This fact is commented upon in Ms Enayat’s first report:

“It is therefore plausible that the client was admitted to the as a university internal and in 1990 even though there were political prisoners and ex-political prisoners among his relatives and family friends. Like every many (sic) secular-minded students in Iran he would have bluffed his way through the ideological tests.”

51. The fact remains that the appellant was able satisfactorily to complete the selection process. This was either because his attitudes were suitably conformist or, as he suggests, he was able to bluff his way into appearing to be conformist. Either way, the process did not act as a bar to his going to university.
52. It would, however, be unrealistic to approach the appellant’s appeal on the basis that he can repeat now, aged 33, what he was able to do in 1993 when, aged 21, he entered the

University of Azad. Apart from being an older man, the time that he has spent in the United Kingdom has left him disaffected by his prospects of success in Iran. It seems to us that the process of Gozinesh, when applied to the appellant, is likely to reveal that the appellant does not have the positive qualities required in Iran in order to obtain employment in a university or an Institute of Higher Education. In making this finding, we are unable to make a specific finding about whether the appellant is an atheist because no evidence was directed towards this but we have no reason to doubt his claim that he lacks the particular commitment to Islam or the state order in Iran. We are satisfied that he would not be refused because of moral corruption or his support of any illegal organisations or his criminal or social behaviour. Furthermore, his genuine espousal of western life and, with it, the preference he shows to non-Islamic society satisfies us that it is not reasonably likely he would find work as an academic in Iran or that he would find it congenial to do so.

53. In this regard, the family background of this appellant will not assist him. As Ms Enayat notes, the family background would not give rise to the risk of persecution *per se* but, were he to come to the attention of the authorities for other reasons, it would count against him. (See first report, page 6.)

54. This finding is, of course, independent of an assessment of whether he is likely to find work in Iran pursuing the course of studies he has espoused in the United Kingdom. It may be that, on return, his failure to have obtained his BA will prevent him pursuing a course in Higher Education. It may be that his degree in research-based studies involving the philosophy of spatial design will not be readily transferable to an equivalent institution in Iran. We have no information about the competition for such places. Thus, the fact that the process of Gozinesh is likely to result in his being deprived of the opportunity of teaching in a place of Higher Education in Iran does not mean that he would have been offered such an opportunity without it; far less that he would have been guaranteed an academic placement. An MA in three-dimensional design may simply not be capable of offering the appellant the job he would like.

55. This then raises the issue of whether the process of Gozinesh is a selection process that the appellant is obliged to undergo, albeit in the knowledge that it is likely to be unsuccessful, (in the sense that he is not likely to be selected) or whether the appellant is capable of finding a home and the means to support himself without it. It is common ground that the process of selection operates in full vigour in the academic world. To all intents and purposes, academic life for the appellant in Iran is ruled out. It is plain that it is not confined to places in Higher Education but also covers public sector workers in general. It is, however, apparent from the Amnesty report to which we have earlier referred that its implementation is

executed in differing degrees depending on the job in question. This is, perhaps, little more than common sense. The need for conformity and upholding Islamic values is bound to be treated differently depending upon the post that is to be filled. The position of a senior hospital manager in an Iranian hospital, for example, is bound to be perceived in a different way compared with the position of a ward orderly. This is not speculation but a process of simple reasoning. Nevertheless, the background material falls short of revealing that all jobs in the public sector will be closed to the appellant.

56. There still remains the private sector. Here, there will be some jobs that require the appellant to obtain permission. A private school or college will require permission from the local authority before it is permitted to operate. As Ms Enayat reports, the process of assessing the suitability of an applicant will require the same Gozinesh evaluation. Thus, it cannot be said that all private institutions will be free of Gozinesh. It may be that some private organisations particularly linked with the State will also adopt a process of Gozinesh. We reject, however, the appellant's blanket assertion that all work of whatever nature, be it employed or self-employed, require each Iranian worker to undergo a Gozinesh selection procedure. Such a wide application of the process is not supported by the background material to which we have been referred.

57. For these reasons, we are satisfied that:

- (a) the appellant is unlikely to find work in the field of education;
- (b) the background material does not, however, establish that all public sector workers are subjected to such close examination as those in Higher Education or that the appellant will be excluded from all public sector work, although he will be from some jobs and perhaps many;
- (c) there are opportunities for private sector work which will not be subject to Gozinesh.

58. In reaching this conclusion, we make it clear that we are not condemning the appellant to perform only menial work or work performed by those at the very fringes of society. Nothing can take away from the appellant his obvious abilities. His education in the United Kingdom and in Iran will not be wasted because, in our judgment, education is rarely if ever wasted. There may well be an element of education for education's sake in the appellant's academic record and there is nothing wrong in that. The appellant will therefore be returning to Iran a better-educated person with which to deal with challenges of return. Those challenges will not, however, in our judgment, amount to a violation of his Convention Rights.

Does the failure to be selected in the course of the Gozinesh process give rise to the real likelihood of prosecution?

59. In section 4 of her second report, Ms Enayat gave her opinion that it was hard to tell if the appellant would be prosecuted if, as a result of the Gozinesh selection process, he was likely to be perceived as an “apostate” or a “blasphemer”. She concluded that there was a chance of this happening. We do not consider that this establishes that the event is reasonably likely to occur, even though it remains a possibility.

60. In any event, we are satisfied that the evidence reduces the likelihood well below that necessary to engage either Convention. First, for the reasons we have given, we do not consider the appellant has established that the material that the appellant is likely to produce will establish apostasy. Second, the process of Gozinesh involves examination of an individual’s commitment to Islam. We do not consider the appellant is committed to Islam in the way an interviewer would expect from a successful candidate. That is a long way from saying that the appellant is reasonably likely to reveal such an antipathy to Islam, to the State, to the President or to the Spiritual Leader as would result in his being charged with blasphemy or worse. It is, of course, essentially a matter for him to decide how he will express himself and he is, of course, capable of condemning himself to the most serious of consequences but we do not consider it is reasonably likely he will do so. In reaching this conclusion, we are not suggesting that the appellant will be required to do more than moderate his language and views so as to avoid adverse consequences. In the context of his being accepted for a University place in Iran, the expert evidence talks of a candidate bluffing his way through parts of the interview. Such a common-sense approach does not require him to violate his human rights or offend his conscience. He will, no doubt, be shown to be luke-warm in his commitment to the principles governing the Iranian state and this will lose him his job but it will not jeopardise his freedom.

On passports and visas

61. The Secretary of State has relied upon the fact that the appellant’s passport has been renewed as evidence as the Iranian authorities endorsement of the appellant as a student in the United Kingdom. It does not seem to us that this factor carries any evidential weight in the assessment of risk on return. The risk arises independently of the renewal of his passport.

Conclusions

62. We find

- i. The appellant left Iran to pursue post-graduate

studies in three-dimensional design after he failed to complete his studies for a Bachelor degree at Azad University. The implication of his being accepted on a degree course is that he satisfied the authorities of his good standing.

- ii. He left using his own passport and has maintained contact with the Consulate in order to renew his student visa until 2005. This is a neutral factor when assessing risk on return.
- iii. He completed his Diploma course and his MA course.
- iv. He was unable to complete his MSc because his father died and funding ceased.
- v. Investigation will reveal he has no political involvement.
- vi. We were not addressed by Ms Kilroy on the any specific risk faced by the appellant as a result of his family's political history in the pre-revolutionary period. The expert evidence suggests that the family background will only come in to play to aggravate risk if and when he is arrested for other reasons.
- vii. The re-certification of his United Kingdom qualification will not require him to reveal his pilot essay or his personal statement.
- viii. The appellant has failed to establish by expert evidence that those essays he has written that constitute his MA thesis will be viewed adversely by the Iranian authorities.
- ix. Even if they would be perceived as anti-Islam, apostasy or blasphemous, the appellant is not required to seek re-certification since it is not a requirement that he makes use of his United Kingdom qualification in Iran and it may, in any event, be useless to him.
- x. The inability of the appellant to make use of his United Kingdom qualification does not violate his Convention rights.
- xi. It is unlikely that his commitment to Iran is sufficiently great to enable him to complete successfully the Gozinesh selection process for a job in Higher Education.
- xii. His inability to find work in Education does not amount to persecution or a violation of his human rights.
- xiii. Whilst the Gozinesh selection process applies to all public sector jobs and some within the private sector, the evidence does not suggest that the system is applied as rigorously to all such jobs outside education. The appellant has failed to establish that there is no job open to him, (notwithstanding his lack of commitment), in the public sector.
- xiv. There are opportunities for him to avoid the Gozinesh selection process by finding work in the

private sector in either an employed or self-employed capacity. Accordingly, we are not satisfied that Gozinesh would prevent his finding employment anywhere in Iran or prevent his working for himself.

xv. These findings are made against a background of a deteriorating human rights situation in Iran.

63. On the basis of these findings, we do not consider that the appellant will suffer adverse treatment, notwithstanding the enquiries that are likely to be made of him on his return to Iran. The appellant has failed to establish that it is reasonably likely that he will be persecuted or suffer treatment sufficient serious to violate his Article 3 rights.

64. No separate submissions were made to us in relation to a violation of his Article 8 rights to a private life were he to be removed. Although the appellant has studied in the United Kingdom in the period 1999 to 2005 under the umbrella of a series of permissions, it is a proportionate response on the part of the Secretary of State to remove him now that his studies have ceased and he has no other substantive right to remain. His right to remain as a student was always predicated upon an obligation to return at the conclusion of his studies.

DECISION

- (1) The appeal is dismissed on asylum grounds.
- (2) The appeal is dismissed on human rights grounds.

ANDREW JORDAN
SENIOR IMMIGRATION JUDGE