

Heard at Field House
AD (Risk- Illegal Departure) Iran CG
[2003] UKIAT 00107

On 13th June 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination

notified:

29/10/2003

Before:

**Mr Richard Chalkley - Chairman
Mr C A N Edinboro**

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Miss L Elliot, a clerk with Halliday Reeves, Solicitors appeared on behalf of the Appellant and Mrs R Aslam, a Home Office Presenting Officer appeared on behalf of the Respondent.

DETERMINATION AND REASONS

1. The Appellant is a citizen of Iran, who appeals with leave of the Tribunal against the Determination of an Adjudicator, Mr Michael D Oakley, sitting at Durham Magistrates' Court who, in a Determination promulgated on 5th September 2002, following a hearing on 28th August 2002, dismissed the Appellant's appeal against the decision of the Respondent on 15th January 2002, to direct his removal from the United Kingdom as an illegal entrant.

2. Leave was granted on the basis that it may be arguable that the Appellant would be at risk of persecutory harm on his return to Iran having left the country illegally.
3. It is the Appellant's claim that he was brought up by a family of Monarchists and following military service, while he was at university, he joined a pro-Monarchist political group and undertook responsibilities including the distribution of leaflets and slogans about political leaders, which led to him being identified by the security forces and being warned that he could face expulsion from university. In March 1995 he was arrested and interrogated about his activities and taken to court and sentenced to one year imprisonment. He was poorly treated in prison and on his release in March 1996, he signed an undertaking not to become involved again in further political activity. On his release he was required to report monthly and to sign the undertaking monthly thereafter. He had no further problems with the authorities until 1999 when, he with a number of students were arrested. The Appellant escaped, but he believed that he would come to the attention of the authorities, because the demonstration had been filmed. He moved to Bander Anzaly and stayed with a cousin in hiding.
4. In early January 2000, it came to the Appellant's attention that the authorities were looking for him and he moved to Bandr Turkaman where the Monarchists have a secret house. He wished to continue with his activities, but when the house was raided on 11th January 2001, he escaped by swimming through a water canal and then went to a friend who took him to Makou where arrangements were made for him to cross the border and to travel to the United Kingdom where he claimed asylum on 25th September 2001.
5. For the Appellant, Miss Elliott told us that she relied on her bundle of documents and on the Tribunal decisions in **Foladzadeh [2002] UKIAT 0043063** and **Kiani [2002] UKIAT 01328**. Miss Elliott said that the Appellant in **Foladzadeh** had signed an undertaking not to leave the country but had then left. The Appellant in the case of **Kiani** had a history of political activity, as did this Appellant. Having left the country illegally, when he returns, his past will be examined and the undertaking he signed will come to light. She conceded that there was no evidence that the authorities had become aware of his 1999 activities. Miss Elliot submitted that on his return he would be detained and questioned and that at that stage, the authorities will undertake research into his background. That would place him at severe risk.
6. For the Respondent, Mrs Aslam drew our attention to the fact that the Appellant in the case of **Foladzadeh** was found to be credible and had a history of contact with the authorities. He had actually signed an undertaking not to leave Iran. This Appellant did not. The case of **Kiani** did not assist either; she submitted that the Adjudicator's findings were supported by the authorities and drew our attention to paragraph 5.105 of the Country Information and

Policy Unit Report. She also drew our attention to a letter dated 5th September 2002 from the visa section of the British Embassy in Tehran. Based on this evidence, Mrs Aslam submitted that it was clear that the Appellant would be questioned on his return, but there was no real risk that he would be prosecuted. Even if he were to be prosecuted and sentenced to the maximum term of imprisonment, it could not be said that this would cause a breach of his protected Article 3 rights. As it was, the Adjudicator found that he was of no interest to the authorities. She invited us to dismiss the appeal.

7. Miss Elliott declined to address us further. We reserved our Determination.
8. The Adjudicator accepted that the Appellant had been amongst a number of students who had come to the attention of the authorities. He accepted that the Appellant had been interrogated and sentenced as he had described. The Adjudicator also accepted that the Appellant may have been asked to sign an undertaking not to become involved in future political activities.
9. The Adjudicator found that the Appellant had embellished his account where it concerned having had to report every month to the authorities. This was new evidence that he had introduced in giving oral testimony and was something he had not mentioned either in his first statement or his interview. The Adjudicator found that the Appellant had no problems with the authorities whatsoever until 1999. He did not believe that the Appellant had been involved in any major way with the demonstration he claims to have taken part in. He found that there was no evidence to suggest that the Appellant's involvement would have been anything other than at a low level and found that he would have been of very little interest to the authorities, otherwise he would have been sought out by the authorities very quickly. According to the Appellant, the raid on his house took place some seven months after the demonstration. As a result the Adjudicator did not accept that such a raid took place. The Adjudicator did not accept that a warrant for the Appellant's arrest had been issued. No such document had been produced. The Appellant explained that he had only recently received his identity card through friends who had travelled to Turkey and who had posted it from there. He explained that they had not taken the summons with them because if they had been stopped with such a sensitive document it would have caused difficulties for them. The Adjudicator found that explanation implausible since, if the Appellant's friends had been stopped with the Appellant's identity card on them that would have been a very much more serious matter than merely being in possession of a copy of an arrest warrant.
10. The Country Information and Policy Unit Report makes it clear that the penalties for violating or attempting to violate exit regulations, such as leaving on illegal or falsified documents, range from one

month to three years' imprisonment and/or a fine, that actual penalty depending on the individual circumstances (paragraph 5.101). The report goes on to explain that citizens returning from abroad are sometimes searched and interviewed by the authorities on their return. On the basis of information Amnesty International receives, usually a person who gets back will be asked why he or she has been abroad and if the answer is along the lines of, "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 documentation exists on the returnee and what the actual practice of the country is in which the concerned individual applied for asylum.

11. Paragraph 5.103 said that on return, in recent years the practice had become more liberal with regard to possession and confiscation of items brought abroad, such as CDs from Dubai and other western products. It mostly depends on what the authorities are looking for. If they assume that a person has returned from a country like the USA, then this person certainly will be questioned and undergo stringent checks, but will not normally be detained for a longer period of time. In September 2002 the Deputy Foreign Minister announced that Iranians who obtained the citizenship of foreign countries with Iran's prior agreement can, once again, become Iranian citizens.
12. The letter from the British Embassy in Tehran had dealt specifically with the case of an Applicant who was seeking to join a spouse in the United Kingdom who was a failed asylum seeker. Apparently he had entered the United Kingdom illegally, lodged an asylum application and when this was turned down and after "going through the various hoops" he made a voluntary departure on his own passport back to Iran. His passport had been sent back to his family in Iran by the agent who smuggled him into the United Kingdom. He had no problems on entering Iran. He was not questioned but his passport was merely stamped. The author of the letter referred to having consulted various colleagues in other embassies in Tehran. Australia had returned approximately 100 failed asylum seekers within a two year period and have no confirmed reports of mistreatment of any of them. Some were questioned about their illegal departure and about non payment of departure taxes or evasion of military service. The former resulted in a spot fine, but the Australians were unaware of any case where a returned Applicant had not been allowed to enter Iran and re-enter the community. One returnee from Australia had complained to the Australian press of mistreatment in Iran (he claimed he had been detained by security authorities on return). The Australian Embassy were unable to establish the true nature of his complaints, however, and had not heard anything more about the incident in recent months. The Dutch Embassy said that in their 2001 Report they had stated that, as far as they knew, failed asylum seekers did not face significant problems beyond those described by the Australians. They had received one report of a failed asylum seeker

being detained in prison and were investigating. The Dutch were aware that failed asylum seekers do not face serious problems as many returnees come in and out of the Dutch Embassy to plead their case. They cited one case of a deportee who now runs a baby clothes shop in Tehran by way of example of a returnee to everyday life. Similarly, the Canadian Embassy were aware of “multiple” cases where failed asylum seekers have returned and been returned to Iran and were unaware of any experiencing difficulties simply as a result of having claimed asylum in Canada. They pointed out that many asylum Applicants returned to Iran once they have been granted permanent residence or Canadian citizenship.

13. We are of the opinion that, given the Adjudicator’s findings, there is no real risk, or serious possibility, of this Appellant being detained on his return to Iran. Undoubtedly he will be questioned about his departure, but the reaction of the authorities is likely to depend on the responses he gives to their questions. On the basis of the information before us, we do not believe there to be a real, or serious risk that he would face prosecution as a result of having left the country illegally but, were he to do so, we do not believe that any sentence he may be required to serve would cause his protected rights under Article 3 to be breached following the Tribunal’s decision in **Fazilat [2002] UK 00973**. We do not believe that merely by having signed an undertaking not to have become involved in political activities, he will be at any higher risk.
14. For all these reasons this appeal is dismissed.

Richard Chalkley
Vice President