jh

Heard at Field House

On 3 December 2002

HK (Risk on Return - Standard of Proof) Iran [2003] UKIAT 00027

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

11/07/2003

Before :

Professor D B Casson (Chairman)
Ms S S Ramsumair, JP
Mr R Hamilton

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation

For the appellant: Mr R Stanley of Darwen Law Chambers, Solicitor

For the respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by a citizen of Iran against the determination of an Adjudicator (Mrs S Brookfield) dismissing his appeal on asylum and human rights grounds against the decision by the respondent on 5 July 2001 to give directions for removal to Iran as an illegal entrant.

2. There is no record of the appellant's lawful entry to the United Kingdom. He claimed asylum at the local enforcement office

on 23 May 2001 and said he had arrived clandestinely having travelled from Iran in a number of lorries. It appears he was without documentation. A statement of evidence form, including a long statement dated 6 June 2001, was submitted, and an asylum interview was held on 29 June 2001 but the application was refused for reasons given in a letter dated 5 July 2001.

3. The basis of the asylum claim was that the appellant was a member of the Iranian army who worked in the post room. He said he had opened letters, copied them and passed the copies to another soldiers and claimed that the information was used by Mojahedin fighters to attack government installations. He said he had been detained on two occasions and ill treated. He said he decided to leave Iran when the soldier to whom he had passed the information was arrested, and he feared the soldier would implicate him. The respondent examined the story in detail in the refusal letter, and rejected the story as lacking credibility. In particular, the respondent noted the appellant's claim at his asylum interview that he had taken the letters he wished to copy into a tearoom, opened them, taken them to another room and photocopied them, resealed them and then folded the copies and put them in his clothing. He had said he was not supervised in the post room, but the respondent noted that four other people would have been present. Further the appellant had said he was searched at the end of every shift. The respondent did not find it credible that he would have been able to open, copy and smuggle out letters from the post room without being seen, or that the copies would not have been discovered when he was searched at the end of his shift. The respondent also noted that the appellant's mother, father and siblings remained in Iran.

4. The appellant was represented by Mr Stanley at the hearing before the Adjudicator on 23 April 2002, but the respondent chose not to instruct a representative. In his evidence the appellant said he began his military service on 25 August 1999 and was approached by one Mansoori to provide copies of letters sent through the post room. He knew that Mansoori worked against the intelligence and security forces (the Etelaat). He provided eight or nine copy letters to Mansoori. About a month later it was discovered that a letter had been improperly opened. All post room employees were detained for five days, interrogated and ill treated. He and his colleagues were released and he was redeployed to do guard duty in another part of the barracks. Mansoori told him not to betray him or his group; the appellant said nothing to the authorities. Five weeks later he said he was knocked out

while on duty. Arms were stolen from the warehouse he was guarding. He was treated medically and on discharge was taken to the Herasat Etelaat and interrogated. The authorities believed that he was in league with his attackers. He was detained for ten days, tortured and interrogated. His military service was extended for a further 12 months and he was reposted to a look-out tower. Two weeks later he said the Ararat Club and some military installations were attacked and blown up. He realised that he had supplied information to Mansoori about those places. A month later Mansoori was arrested. The appellant feared that Mansoori would believe that the appellant had betrayed him and that he would name him. His father sent him away to hide with relatives until arrangements were made for his escape. While he was in hiding, the Etelaat came to his home on a daily basis looking for him. His home phone was tapped by the Etelaat. He went to Turkey and then on to the United Kingdom by lorry.

5. The Adjudicator examined the appellant's evidence at paragraph 15 of her determination, and set out her detailed findings in the 12 sub-paragraphs of that paragraph. She did not accept that the appellant would suddenly be motivated by political opinion in 1999 to involve himself in the passing of military information, or that he copied documents or passed them to Mansoori, or that he was able to smuggle documents with the ease he had described, or that Mansoori would believe that the appellant had betrayed him, or that visits by Etelaat to his home were in connection with his desertion, but that it was more likely that any questioning of his father was to do with his absence from the military. At paragraphs 16 and 17 of the determination the Adjudicator did not accept any reasonable likelihood that the appellant would face persecution or breach of human rights on return to Iran.

6. The grounds of appeal to the Tribunal make no reference of any kind to the alleged facts of the case or to the Adjudicator's findings. The grounds contain generalised criticisms which appear to be intended to any asylum and human rights appeal, and give no indication that the draftsman has read the determination. The Vice President who considered the application for leave to appeal plainly agreed with that analysis, since he refers to "A complete lack of challenge to individual elements in the Adjudicator's reasoning". In granting leave to appeal, the Vice President said:

> "I assume what the draftsman intends to say, apart from the fact that the applicant disagrees with the Adjudicator's decision, is that her approach to the

> evidence is unsafe and that it is difficult to know what of the applicant's claims she accepts and what she does not. … The use of phrases [*sic*] like 'I find it more likely' at paragraph 15(ix) raise some concern as to the standard of proof applied. For those reasons only, so that the determination may be more carefully considered after argument, leave to appeal is granted."

7. In his submissions to us Mr Stanley told us he relied on the points made by the Vice President: we heard no further reference to the grounds of appeal. Mr Stanley submitted initially that the Adjudicator should have found the appellant credible and that it was unclear what standard of proof had been applied, and finally that the determination showed that the Adjudicator accepted the appellant's version of events. We say at once that there is no possible basis for the latter submission, since it is entirely apparent that the Adjudicator rejected the appellant's story in general and in detail.

8. In his submissions Mr Saunders referred to the correct self direction, to the detailed examination of the evidence, and to the Adjudicator's clearly expressed conclusion at paragraphs 16 and 17 of the determination. Mr Saunders submitted that there was nothing to indicate that the Adjudicator had not applied the proper standard of proof in assessing the evidence.

9.j We respectfully agree with the criticisms made by the Vice President when granting leave to appeal. The grounds of appeal to the Tribunal are devoid of any possible merit and should not be used in any other case. On the other hand, the Adjudicator has caused entirely unnecessary difficulties by her repeated use of the phrase "I do not find it likely" and similar phrases expressed positively and negatively, when expressing her findings on the detailed aspects of the evidence. We do not understand why the Adjudicator has chosen to use such unsatisfactory phrases, in view of the fact that she correctly directed herself by expressly referring to the decision of the Court of Appeal in Karanakaran [2000] Imm AR 271. Detailed findings should always be expressed by reference to the four categories set out in that case. It is nevertheless clear from the determination as a whole, that the Adjudicator rejected each essential element of the appellant's story, despite the unsatisfactory way in which she articulated her findings. Further, her conclusions at paragraphs 16 and 17 of the determination are clear. She rejected the appellant's claim to have a well-founded fear or persecution or of breach of protected human rights on return to Iran. Those conclusions were clearly open to her on the evidence and are fully and

carefully reasoned. We have heard nothing from her representative which gives us any reason to regard those conclusions as unsafe. We agree with the Adjudicator's findings.

10. The appeal is dismissed.

D B Casson
Acting Vice President