AI V3

Upper Tribunal
(Immigration and Asylum Chamber)

R (on the application of Neisi) v Secretary of State for the Home Department (FCJR)
[2012] UKUT 00367 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 27 September 2012	.....

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE QUEEN (ON THE APPLICATION OF NEISI)

Claimant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

Representation :

For the Claimant: Mr S Muquit, instructed by Fadiga & Co

For the Defendant: Mr C Thomann, instructed by the Treasury Solicitor

JUDGMENT

1. This is an application for judicial review, for which permission was granted by Upper Tribunal Judge Gleeson. The claimant challenges the decision of the Secretary of State for the Home Department of 4 November 2011 refusing to treat his additional submissions as giving rise to a fresh claim under paragraph 353 of the Immigration Rules.

2. It is common ground that the issue is whether the defendant's view that the further submissions, taken together with the previously considered material, did not create a realistic prospect of the claimant succeeding before a First-tier Judge, was irrational or Wednesbury unreasonable, bearing in mind the needs of anxious scrutiny (i.e. the need to give proper weight to the issues and to consider the evidence in the round MN (Tanzania) [2011] EWCA Civ 193).

3. The claimant, who is Iranian, came, it seems, to the United Kingdom on 10 July 2010. He sought asylum but his application was refused. He appealed to an Immigration Judge, who dismissed his appeal on 17 December 2010. An application to the First-tier Tribunal for permission to appeal was refused on 24 January 2011, and a renewed application to the Upper Tribunal was also unsuccessful, on 15 February 2011.

4. Subsequently, the Claimant put in further submissions which were said to amount to a fresh claim, on 12 September 2011. This resulted in a decision letter of the Secretary of State which is dated 4 November 2011, and, subsequent to a letter before claim being sent, the Secretary of State sent a letter in response to that on 24 November. The application for permission to apply for judicial review was made on 25 November 2011. An acknowledgement of service and summary grounds of defence were filed on 20 January 2012 and there was a reply to the defence put in on 28 January 2012. Judge Gleeson granted permission to apply for judicial review on 1 February.

5. It is necessary to consider in some detail the decision of the First-tier Judge. It is right to say that he found the claimant to lack credibility. He summed up his conclusions in this regard at paragraph 60 of his determination where he said that he did not accept that the claimant was a credible witness with regard to events in his own country, not accepting that he was accused of murder along with seven other persons as alleged and not accepting that he was ever detained, imprisoned and tortured, or released as a consequence on payment of a bribe and/or bail. In effect, the entire account was disbelieved.

6. The claimant had said that he supported the Tadamon Ahwazi Democratic Party (DSPA), although he was not a member, saying that he began to support them around May or June 2007, although he did not attend any of their meetings or demonstrations. He said that he, along with seven friends, was accused of murdering a man called Hisham Al Samari. The seven friends were tortured in prison. One of them, called Waleed, told the claimant in prison that he had given the authorities the claimant's name while he was being tortured. The claimant said that he was taken from home on 20 December 2007 and held at an unknown place for 50 days and then taken to prison. He said that after three days he appeared before a court and was blindfolded during his court appearance. He denied working for the seven other people. He said that was the only thing that happened in court. He said that when he was put in prison he was detained for a further three months. He was released on 29 April 2008 because his brother paid a bribe to get him released. He had to go back to court at a future date as part of his release but did not do so. He then went to live in Shiraz where he remained for a year and seven months. He had no problems there and worked as a shepherd.

7. The judge disbelieved the claimant's claim for a number of reasons. First of all, he did not accept that it was credible that Waleed, who was a close neighbour, would divulge his name to the authorities as a person involved in a murder. Nor did he accept that if the claimant was told that Waleed had given his name and that people were interrogated individually, revealing one name per interrogation, that the claimant would then say in his evidence that he was told there were detainees who had confessed that he worked with them. Nor was it suggested that he was asked to reveal any person's name in this manner. Waleed was unable to give him any explanation as to why he had given the authorities his name and that was also found to lack credibility.

8. At interview the claimant said he was charged with an offence, but subsequently in the interview he said he was released without charge. There was a contrast in his evidence as to whether he was taken before a judge or in front of a court official and whether he was taken to the Revolutionary Court office as opposed to some ordinary court. There was also a contrast in his evidence as to whether he

was released on the basis of bail and released on payment of a bribe being the same thing or on the basis that the bribery was antecedent to the bail and not a substitute for it. The judge also did not find it credible that if the claimant was effectively released on payment of a bribe he would have been granted bail on condition of his brother depositing his property deeds especially given that it was his case that he was never charged. Nor did the judge find it credible that he would not have been told what the amount paid by way of bribe was.

9. At interview the claimant had said that his brother was informed by a contact of his in the intelligence services during the immediate two days after his release, that the claimant would be arrested at any time and should leave as soon as possible. At the hearing, the claimant, when asked whether his brother had contacts in the intelligence services, said there was no direct connection but that Iran was a corrupt place. When it was put to him that he had said that his brother was told by a contact of his in the intelligence services that the claimant would be rearrested, he explained that the information came from a person who was a contact between an intelligence agent and his brother. This again was found to lack credibility.

10. The judge was also concerned at the absence of credible corroborative documentary evidence of the claimant's arrest, imprisonment and torture. Background evidence was provided of the arrest of seven Ahwazi Arabs facing execution, including his alleged co-accused, but he was not referred to in that evidence. The judge was also concerned at the claimant's failure to produce any documentary evidence corroborating his involvement with the state process. He said that his brother was too scared to talk to him on the telephone when asked why he had not been able to obtain such documentation for him. The claimant said he had evidence that his brother had put up his house as surety for bail and thought he had that evidence somewhere but did not have it at the hearing. This was again found to detract from his credibility. The judge further did not find it credible that if he had been truly advised to flee because he was to be rearrested that he would not have left the country immediately rather than hiding in Shiraz. He also considered if the Iranian authorities were truly intent upon apprehending him then they would have discovered his whereabouts.

11. The judge went on to consider the evidence of three witnesses who all said they had learned of his arrest and detention from the claimant's family. The witness, Mr Efravi, said that he thought that the claimant called him four or five times between June and November in 2007 from Iran giving him information about particular problems with the authorities in the neighbourhood and especially information about arrests. The judge noted that there was no explanation as to how or in what circumstances Mr Efravi might be interested in information from the claimant who on his own evidence was never a supporter of the DSPA and never attended any meetings or demonstrations. In his statement Mr Efravi said that on the last occasion the claimant telephoned him, in November 2007, he gave him the names of seven men who had been arrested and who they learned later were implicated in the assassination. In oral evidence, Mr Efravi said, on one occasion, he had not been provided with the names of seven men and when the contrast between that evidence and the evidence in his statement was put to him he said that the previous occasions when he spoke to the claimant were to say what was happening. The judge found this to detract from his credibility.

12. As regards the evidence of Mr Fazlipoor, he said that he owned a piece of land jointly with the claimant and when he heard of the claimant's imprisonment he sold it through an agent and gave the whole amount to the claimant's brother to help to raise funds to free the claimant and the claimant's brother gradually repaid Mr Fazlipoor's share. There was, however, no corroborative documentary evidence before the Tribunal or any credible explanation in the judge's view as to how or in what circumstances Mr Fazlipoor was able to dispose of the claimant's share in a property without his

involvement. The other witness, Mr Habib Mahawy, said he learned of the claimant's arrest from a cousin who said in turn that he had learned about the arrest from the claimant's family. Mr Efravi learned of the arrest from Mr Mahawy. The judge commented that none of the witnesses learned of the claimant's arrest and detention from any credible independent source, all saying that the information came either from his family or from each other.

13. The judge went on to consider a report from a Dr Moulson of the Medical Foundation. The judge set out the evidence of Dr Moulson in some detail, noting that he said that the claimant was held in detention for almost five months, 50 days of which were in solitary confinement and was subjected to severe beatings and burning. Dr Moulson said that physical examination revealed three marks that he considered highly consistent with the deliberate application of heat to the skin of the claimant's arms and one leg and a further mark was considered to be highly consistent with the result of a blow to the back. He diagnosed the claimant as suffering from PTSD. He had assessed the claimant during four hours of interview and examination.

14. At paragraph 53 of his determination, the judge noted the remarks of the President of the IAT in IE & FE [2002] UKIAT 05237 * to the effect that doctors generally accept an account given by a patient unless there are good reasons for rejecting it or any material part of it. The judge reminded himself that issues regarding the truth of the claimant's account were a matter for him to assess and he did not find the claimant credible. He considered that if the claimant carried scars and was suffering from PTSD he did not accept that it was as a result of the events claimed.

15. The judge had noted some discrepancies between the claimant's account and his statement and what he told the doctor. The judge bore in mind what the doctor said: that solitary confinement was a cause of memory impairment and confused thought processes with disorientation; and that memory impairment was a feature of PTSD and the late disclosure of additional information might also be attributed to the more therapeutic milieu of a medical interview. The judge found significant differences in aspects of the claimant's evidence at interview and what he told Dr Moulson, as set out at paragraph 54 of the determination. He concluded that the claimant had developed and embellished his original account by degrees, and though he accepted what the doctor said as to the possible reasons for discrepancies, for all the reasons he had set out he did not accept that to be the case with regard to this particular claimant.

16. The judge went on to consider sur place activities, reminding himself that he had found Mr Efravi not to be a credible witness with regard to his claim to have received information from the claimant prior to the claimant fleeing Iran. There was no evidence before the judge of any involvement of the claimant with the DSPA in the United Kingdom. Perhaps unnecessarily in the circumstances therefore, the judge did not accept that any involvement with Mr Efravi or DSPA in the United Kingdom if any put the claimant at any risk on return, given his adverse credibility findings.

17. Both judges who refused permission to appeal found the reasoning of the judge to be, in their words, clear and adequate and careful and structured.

18. Various matters were raised in the claimant's letter of 12 September 2011. These comprise first a copy page of the Bassij Resistant Forces internal monthly newsletter of the Ahwaz Revolutionary Guard of November/December 2008, secondly, a further report from the Medical Foundation, this time by Ms Jude Boyles, thirdly a letter from Dr Juliet Cohen the head of medical services at the Medical Foundation, fourthly a letter from Yasser Assadi of the DSPA, fifthly a CD consisting of photographs of attendance at a demonstration in front of the UK Parliament on 5 May 2011, sixthly a print of KSA2 News broadcast of the demonstration recorded on YouTube and seventhly various articles from the

Ahwazi Arab Solidarity Network with regard to ill-treatment and executions of Ahwazi Arabs and problems in that region of Iran.

19. The Bassij newsletter refers to a Zamel Bavi as being one of those anti-revolution people who waged war against God and was sentenced to death for wicked involvement in Khuzestan. It then refers to another person, Hadi, also known as Sadegh Neisi, who was sentenced to jail, but later released on bail. Dr Cohen's letter purports to respond to paragraph 53 of the judge's determination, making the point that it is very much not the case that doctors generally accept an account given by a patient but that it is an integral part of clinical training for doctors to assess and analyse what patients tell them, how they tell it, and what they do not tell, in the light of their findings on examination and their clinical training and experience. She refers to Dr Moulson noting and discussing discrepancies between the accounts given to him and elsewhere as indicating that he has indeed critically considered the history provided in the light of all other evidence available. She also comments that although the judge did not accept the findings of the doctor in saying that if the claimant carries scars and is suffering from PTSD he did not accept it was a result of the events he claims, it was the case that no alternative events of similarly traumatic and violent nature were known or proposed as potential causes. She also goes on to remark that Dr Moulson had considered the attribution of the scars and lesions according to his training experience and the precepts of the Istanbul Protocol. She makes the point that Dr Moulson, having discussed in detail in his report his reasons for diagnosing PTSD should not have his clinical opinion discarded by someone without appropriate clinical qualifications.

20. In her report of 18 August 2011, Ms Boyles confirms the diagnosis of PTSD. She says that the claimant has a diagnosis of chronic and severe PTSD and depression and that he has been in the treatment of the Medical Foundation for four months. He says that he has chronic health problems as a result of torture. She says that on 11 May 2011 his eldest brother had been detained in Iran and a friend of the family had told him about this and he felt to blame for his brother's detention. She considers him to be at medium risk of serious self-harm. It was her clinical opinion that the discrepancies referred to by Dr Moulson had an explanation given the diagnosis of PTSD and the memory impairment associated with PTSD. She noted that he had become homeless during the assessment and the conditions he was living in dominated his thoughts and severely impacted on his mental state.

21. The letter from Mr Assadi of the DSPA is dated 26 May 2011. He says that the claimant is a committed Ahwadi activist who was a supporter of the party since 2007 when he was in Alahwaz and had now become a party member. It is said that the organisation is aware that he was in close contact with a senior DSPA member, Mr Efravi and through his contact with him the claimant used to send them very important information concerning human rights violations in Alahwaz, especially details of people unlawfully arrested and detained by the Iranian regime. He refers to the recent participation by the claimant in a recent demonstration in front of the UK Parliament on 15 May 2011, the sixth anniversary of the Ahwazi Arab Intifada. He says that this demonstration was widely broadcast on the Arabic media, both on TV and on the internet. There was a photograph from that demonstration which purported to show the claimant as one of the people in the picture. It is said in the claimant's letter of 12 September 2011 that the CD contains photographs of the claimant's attendance at the demonstration and it is understood that photographs and videos/film footage of the demonstration are widely available in the Arabic media on both TV stations and the internet. Reference is made to the above link and a photograph from YouTube showing coverage of the demonstration on KSA2 News, a Saudi news channel (the photograph to which I have referred above) and the claimant is said to be

there waving the Ahwazi flag, wearing the distinctive Arabic kuffiyeh (headscarf), a symbol of the Ahwazi struggle.

22. There are various news items concerning problems being experienced by the Ahwazis to which I have referred above. The letter goes on also to refer to the country guidance in BA (Iran) CG [2011] UKUT 36 (IAC), and to the country guidance in SA (Iran) CG [2011] UKUT 41 (IAC). It was argued that the conclusions in both of these decisions were relevant to risk on return to the claimant and formed part of the fresh claim.

23. In the decision letter the Secretary of State commented as follows on the points raised. As regards risk on return due to recent violence in Ahwaz, the claimant had not shown how he specifically would be at risk on return and he could go and live elsewhere anyway, having done so before. There was no evidence to support his assertion that his brother had been arrested. He had not provided the original of the Bassij newsletter, nor the full copy of the newsletter or any evidence to show he received it from Iran and when and nor was there any explanation given as to why a newsletter from December 2008 was reporting on an event that was said to have occurred some seven to eight months previously. Taken together with the evidence in the round and in accordance with the principles in Tanveer Ahmed [2002] UKIAT 00439, the document was considered to be one on which reliance could not be placed. As regards the Medical Foundation letter, comment is made that just because one cause had been put forward for the claimant's injuries, it did not necessarily mean that that was true. It was noted that the judge's determination had been found, when permission was sought to appeal against it, to be satisfactorily reasoned and the evidence to have been approached in a careful and structured manner.

24. As regards the further medico-legal report, the finding in that report that the claimant was tortured in Ahwaz is criticised on the basis that this was not part of the function of the writer of the report. In addition the point is made that the medical report may consider his condition as being consistent with his story but it could not be considered in isolation. The judge's finding was that if the claimant carried scars and was suffering from PTSD he did not accept it was as a result of the events he claimed and these remained valid findings. The evidence had to be assessed in the round.

25. The letter from the DSPA is criticised on the basis that the author has not provided any explanation as to how they were in a position to assert that the claimant was a supporter of the party in Iran from 2007 especially since he did not attend any of their meetings or demonstrations. His claim to have attended a demonstration in the United Kingdom was considered in the light of the country guidance decision in BA . It is noted that he had submitted photographs of himself at one demonstration which did not show him to be a leader or organiser and there was no evidence that the photographs had appeared on the internet or in any publications. The printout provided was for a Saudi news channel and there was no evidence that this had been broadcast anywhere in Iran. He had not shown that he was a committed opponent of the regime or someone with a significant political profile and therefore it was not expected that he was someone who would be of interest to the Iranian authorities.

26. Thereafter the defendant went on to consider the Article 3 claim in relation to the claimant's health, but Mr Muquit confirmed at the hearing that that was not a matter that was pursued.

27. In the grounds for judicial review, as amplified in the reply to defence of 28 January 2012 and Mr Muquit's submissions, it is argued firstly that the further letter and report from the Medical Foundation were not properly considered. They materially challenged and addressed the premises upon which the judge discounted the probative value of Dr Moulson's report to the assessment of the

claimant's credibility, i.e. that his assessment was constrained by limited contact with the claimant and Ms Boyle's and had assessed the claimant over a significantly longer period, and was naïve to the possibility that the claimant was being mendacious. That allegation directly rebutted by Dr Cohen, and provided further confirmation that inconsistencies in the claimant's evidence were symptomatic of his claim to be a victim of torture rather than contrary to it. It is said that the defendant's decision fails to appreciate the guidance in Devaseelan , under which the judge's determination would be a starting point rather than determinative. In refusing permission to appeal the Upper Tribunal had done so only on the basis that the conclusions and reasons for them given by the judge were within the range reasonably open to the judge rather than being the only ones open to him. It is argued that it was irrational for the defendant to consider that faced with the additional medical evidence and the absence of any alternative explanation for the claimant's medical and physical condition an Immigration Judge would not be legitimately and rationally entitled to depart from the approach taken by the judge before. It was the case that no alternative expert account could be offered as to the cause of the claimant's mental and physical injuries other than the account that he gave. Anxious scrutiny should have led to a different decision on the part of the defendant.

28. It is also argued that the defendant did not address the decision in SA despite its clear relevance to the fresh claim. It was clear from that decision that being an Iranian citizen who was also an Arab returning from the United Kingdom would enhance other risk factors. Low level support in the United Kingdom for separatist activities was a feature increasing the risk of persecution. The relocation point was by the way: the claimant would be at risk at the airport.

29. It is further argued that the reasons for rejecting the weight to be attached to the Bassij newsletter were wholly subjective and ignored the claimant's representations that he received the document via email from a friend in Iran whose credibility hitherto was untainted and whose value as a source of evidence would be a matter for any new judge to evaluate in the round for himself. The point taken as to the timing of the information contained in the report ignored the clear context of the report. As regards the DSPA letter, it was clear that the letter said that its writer's knowledge of the claimant's support for that organisation arose through Mr Efravi and, contrary to what was thought by the defendant, did not purport to corroborate a claim that the claimant was a member of the DSPA in Iran. As regards the photograph, this showed him waving the Ahwazi flag and wearing the distinctive Arab kuffiyeh, a symbol of the Ahwazi struggle and his photograph was complemented by a CD containing further photographs of the claimant at the demonstration and it was said that the photographs and video/film footage of the demonstration were widely available in the Arabic media on both TV stations and the internet. It was further argued that the defendant had failed to provide anxious scrutiny of the substantive terms of the guidance in BA and that the decision in R (on the application of AM) v Secretary of State for the Home Department [2012] EWCA Civ 521 in particular at paragraphs 29-32 identified the proper approach to medical evidence in such a case.

30. In response to this in Mr Thomann's detailed grounds of defence as amplified in his oral submissions, it is argued that the judge did not in fact dismiss Dr Moulson's report on the basis that he accepted the claimant's evidence uncritically. The judge noted the doctor's objective assessment of the claimant's condition but reminded himself that the credibility assessment was for him. Neither the new medical report nor the letter reached a significantly different conclusion from that of Dr Moulson and nor did either engage with the actual reasons for the judge's credibility assessment. The inconsistencies in the claimant's story were assessed entirely properly as very significant. The newsletter referred to a sentence being passed for anti-revolutionary opposition, which bore no relation to either the alleged reason for the claimant's arrest or the alleged circumstances of his

release. The point is also made that his ability to adduce such evidence from Iran further contrasts with the lack of already available supporting documentation of his bail or detention arrangements. His evidence of sur place activities fell significantly short of the standard set out in BA . In December 2010 he had never attended a single demonstration, he had never been a member of any political organisation in Iran, and provided an account of support activities for the DSPA which unravelled upon questioning of his supporting witness. SA did not take matters significantly further than BA . The point is also made that the grounds do not specifically challenge the defendant's rejection of hearsay evidence that the claimant's brother had, since the dismissal of his appeal, been arrested.

31. It is further argued that the later medical reports do not differ significantly from Dr Moulson's except with regard to a deterioration in the claimant's mental and social position whilst in the United Kingdom. Dr Cohen's letter of 19 August 2011 was said to be flawed in misunderstanding the respective roles of the medical expert and the judge and in suggesting that the judge had discarded Dr Moulson's report, which was not the case. Ms Boyles attributed the deterioration in the claimant's condition to his social situation and homelessness exacerbating his lack of hope. This did not appear to have even noticed let alone engaged critically with the fact that the claimant's differing accounts were not capable of being described as holding only minor discrepancies. AM was fact-specific and was a detention case. The challenge on the part of the defendant is characterised as essentially an attempt to have an out of time first instance appeal against the judge's decision. There was no obligation on the judge to identify alternative causes for the claimant's psychiatric and physical conditions: rather a failure by the claimant to make out a claim of persecution. It is further argued that neither SA nor BA shows the claimant to face a real risk on return on any reasonable view. The criticisms of the Bassij newsletter and the DSPA letter set out in the decision letter are maintained.

Discussion and Conclusions

32. If there were to be a new appeal, the starting point would be the decision of the judge, and I have set out in some detail the nature of his adverse credibility findings, which were upheld by both judges who refused permission to appeal. Clearly this decision is important and relevant background to any assessment that a future judge would make. As regards the judge's assessment of the medical evidence, he noted the expertise of the doctor and his findings. He properly noted the comments of Collins J in AE & FE that doctors generally accept an account given by a patient unless there are good reasons for rejecting it or any material part of it. He properly noted that the assessment of credibility was a matter for him. He noted the discrepancies which had been identified by Dr Moulson, and the possible reasons for those discrepancies by Dr Moulson. However, for all the reasons he had set out, as he noted at paragraph 55 of the determination, he did not accept that they explained the discrepancies in this case. He assessed the evidence in the round, paying proper respect to the findings of the medical expert. As Mr Thomann has pointed out, it was not for the judge to set forward alternative causes for the scars and PTSD, but rather it was for the claimant to make out his case, and on the judge's proper findings assessing the evidence in the round he had not done so.

33. I also agree with Mr Thomann that the further medico-legal report does not take matters significantly further. The diagnosis of PTSD, indeed severe PTSD, is maintained, and Ms Boyles notes the deterioration in the claimant's living circumstances, having become homeless and living in very difficult social circumstances which severely impacted on his medical state. Insofar as it is said that, for example at paragraph 113 of her report, the claimant was tortured in Ahwaz and that his severe and chronic PTSD has arisen following his torture, that is a matter for the judge. It is not a matter of significance in assessing whether the fresh claim criteria are met in this case. I should say that I do not read the judge as having, as is suggested, discounted the probative value of Dr Moulson's report

on the basis that his assessment was constrained by limited contact with the claimant. He gave the report proper consideration, and I do not consider that anything is materially added by the more lengthy period of time over which Ms Boyles has assessed the claimant. They have both come to the same essential conclusion as to his mental state and the judge accepted that he suffered from PTSD but did not accept the claimed cause of this, and in my view nothing can properly be said to be added to this by the further medical report. I do not consider that it is other than fanciful to suggest that another judge, considering the further evidence in this regard, would come to a different conclusion and I do not consider that Dr Cohen's comments take matters any further.

34. As regards AM , there is a clear point of distinction between the circumstances in that case and this, in that the judge in the instant case had Dr Moulson's report and assessed it, together with the other evidence, whereas in AM , though the expert was unaware of the adverse credibility findings, the litigation was conducted without the benefit of her reports, whereas clearly the judge had full regard to Dr Moulson's report. It is also relevant to note the context of AM 's appeal: the requirement of very exceptional circumstances to justify detention and the relevance of the existence of independent evidence of torture.

35. As regards the Bassij newsletter, I think the criticisms of this in the decision letter are well founded. It is clearly relevant that the original was not provided, nor the full copy of the newsletter, nor any evidence as to show the claimant received the document from Iran and why it would be reporting on an event that occurred several months earlier, if indeed it did occur. Perhaps more significantly, it undermines the claimant's claim on the facts rather than supporting it. It says that the claimant was sentenced to jail but later released on bail, and that was not his case. The reference to him is in the context of anti-revolution people waging war against God rather than referring, as was his account, to a charge of homicide. Again, I consider it is a matter of minimal substance in the context of the claim.

36. Insofar as reliance is placed on what the claimant said to Ms Boyles about the arrest of his brother, there was no evidence provided to substantiate this claim, and it appears to be recognised by the absence of any submission in that regard on the claimant's behalf as again a matter of minimal significance at best.

37. As regards the sur place activities, it is clearly relevant to bear in mind that Mr Efravi was found not to be a credible witness, and there was no evidence before the judge of any involvement of the claimant with the DSPA in the United Kingdom. The judge therefore disbelieved Mr Efravi's claim to have received information from the claimant prior to him fleeing Iran, and Mr Assadi's letter has to be seen bearing that in mind. There is no substantiation for Mr Assadi's claim that the demonstration was widely broadcast on the Arabian media, both on TV and on the internet, and the fact of it being broadcast on the Saudi news channel does not show any real risk of it coming to the attention of the authorities in Iran.

38. The sur place activities have to be considered in the context of the relevant country guidance cases. In BA the Tribunal concluded that regard required to be had to the level of involvement the individual had in the United Kingdom as well as any political activity which they might have been involved in in Iran before seeking asylum in the United Kingdom. A returnee who met the profile of an activist might be detained whilst searches of documentation were made. The Tribunal went on to note that it is important to consider the level of political involvement before considering the likelihood of the individual coming to the attention of the authorities. Relevant factors include such matters as the nature of the sur place activity, including the person's role in demonstrations and political profile,

whether they have attended one or two demonstrations or are a regular participant, identification risk factors triggering enquiries/action on return, such as their profile and immigration history, and identification risk on return. The claimant in that case had participated in five demonstrations outside the Iranian Embassy in London at a time when there were worldwide protests against perceived malpractices in the recent Presidential elections. His participation in the demonstrations was recorded in a YouTube film and a photograph in UFIN's publication. For at least part of the time, although he was not a leader or organiser, he was not on the periphery and a short video on Facebook showed him shouting particularly inflammatory slogans and his face was clearly recognisable in the photograph in the publication.

39. In SA it was found that the Iranian state is suspicious of Iranian citizens who are also Arabs and regards London as a centre of separatist activity. Being an Iranian Arab returned from the United Kingdom enhances other risk factors, but an Iranian Arab does not risk persecution or other ill-treatment solely by reason of ethnicity.

40. In this regard it is important to recollect the evidence concerning the claimant. He did not on his own case join or engage in political activities in Iran and has attended one demonstration in front of the UK Parliament on May 15 2011. There is no indication that the demonstration attracted any publicity in Iran or the United Kingdom or that he has been or would be identified as having attended it. I consider that the matter has been properly considered by the defendant who has come to the conclusion that it is again not a matter which either separately or taken with the other factors meets the paragraph 353 threshold.

41. Bringing all these matters together, I consider that the Secretary of State was entitled to conclude that neither individually nor collectively can it be said that the new pieces of evidence set out above, when taken with the previously considered material, create a realistic prospect of success before a First-tier Judge. The Secretary of State properly assessed all the relevant matters and came to an appropriate conclusion, having asked herself the right question and satisfied the test of anxious scrutiny. I therefore dismiss this application for judicial review.

42. As regards costs, Mr Muquit indicated that the claimant has no funds. I assume that he is legally aided. I order the claimant to pay the defendant's costs, to be assessed if not agreed, the order not to be enforced without leave of the court.

Signed Date

Upper Tribunal Judge Allen

Immigration and Asylum Chamber