Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00019/2019

THE IMMIGRATION ACTS

Heard at Manchester CJC (via Microsoft teams)	**Decision promulgated**
On 9 August 2021	**On 19 August 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MS
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn instructed by AJO Solicitors.
For the Respondent: Mr McVeety a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Henderson who, in a decision promulgated on 23 August 2019, dismissed the appellant's appeal against the decision of the Secretary of State to revoke his refugee status.

Background

2. The appellant was born on 29th June 1983 in Iran. He arrived in the United Kingdom on 4 October 2009 and was encountered working illegally on 28 October 2009. The appellant claimed asylum on 7 July 2010 and was granted refugee status and leave to remain. The appellant applied for settlement on 20 November 2013, 7 April 2014, 19 November 2014, which were refused. The appellant made a further application on 20 May 2015 which was granted.
3. An application for naturalisation on 12 August 2016 was refused but referred for review, although on 10 January 2019 the appellant was sent notification of intention to cease his refugee status in accordance with Article 1C of the Refugee Convention and the Immigration Rules.
4. On 29th January 2019 the appellant was notified of the respondent's intention to cease his refugee status. There is reference to UNHCR being informed and of their response of 18 February 2019. The decision to cease refugee status was made on 25 February 2019, against which the appellant appealed.
5. The Judge had the benefit of seeing and hearing oral evidence being given before setting out her findings of fact from [22] of the decision under challenge.
6. The Judge notes that it was not disputed that the appellant was granted asylum in August 2010 on the basis of his claim to have provided active support for the opposition, led by Mr Musavi [23].
7. The Judge also noted that it was not in dispute that the appellant had made several applications for settlement, but that he had also obtained a national passport of Iran issued in London valid from 20 January 2014. The Judge noted, the respondent claimed that the appellant had failed to complete the section on possession of a national passport when he completed his final application for settlement on 20 May 2015 [23].
8. The Judge noted however that at the time of the application for citizenship on 12 August 2016 the appellant gave details of his Iranian passport and three trips he had made to Iran on 9 August 2015 for 10 days, 10 November 2015 for 14 days and from 21 April 2016 for 27 days; although the Judge noted the appellant had claimed this was a trip that lasted for two months [23].
9. The Judge further noted the appellant's witness statement provided information about further trips to Iran in March 2017 for six weeks, then on unspecified dates but a further visit of five weeks at the beginning of 2018, in June 2018 for two weeks, in October 2018 for two weeks and a three week visit in November 2018. The Judge noted it was not disputed that the appellant had made eight trips to Iran since 2015 and that he travelled to and from the airport in Tabriz in Iran using an Iranian passport issued in his name by the Iranian authorities [23].
10. The appellant claimed that the primary reason for his trips to Iran was to visit his elderly parents, and particularly his mother who had health problems. The Judge clearly considered the evidence in relation to this claim, leading to a finding at [26] in the following terms:

> "26. I accept that the Appellant has been concerned about the health of his parents as they live so far away from him. I accept that the distance would be likely to increase concerns and the fact that he had not seen them for

> some time. It cannot be said however that they are both very elderly, or in extreme ill health or that every trip was necessitated by their illness and the condition of his parents. This is not borne out by the documents provided by the Appellant regarding their health or their age. The Appellant's mother is now aged in her early 60s, and there is no information on the age of his father."

11. At [28] the Judge finds there was no medical evidence to show that the appellant's parents suddenly became ill or that their health suddenly deteriorated in 2015 leading to it being found "*my assessment is that this is when the appellant felt able to travel, having obtained permanent settlement in this country.*" The Judge analyses the chronology, noting that the appellant first travelled to Iran on 10 August 2015 after he had been granted permanent settlement on 22 July 2015 and that he used the passport obtained from the Iranian authorities in January 2015 to travel to Iran. The Judge specifically finds in this paragraph that "*The trigger for the timing of the visit was not the sudden illness of his mother and father, but the grant of permanent settlement*".
12. The Judge also noted that the appellant had been married on two occasions in Iran since 2015, with the first marriage arranged by his mother proving unsuccessful. The Judge also noted the appellant's evidence that he travelled to Iran in March 2016 and married for the second time then. The Judge notes the appellant's first wife applied for a spouse visa which was refused and refers to divorce proceedings. The Judge noted that the second marriage is recorded as being entered in the Mianeh Family Court in Iran on 8 January 2018, with there being no evidence provided of any application by his second wife to come to the United Kingdom [29].
13. The appellant also claimed before the Judge that it was safer for him to travel to Iran as a result of an error in the information held by the authorities, who he claimed raided his home immediately after he left Iran [29] and that his father had contacted a friend who worked at Tabriz airport to confirm that it was not the correct date of birth or his father's name on the records held by the authorities in Iran. The Judge rejected this claim finding that the passport information, including the date of birth of the appellant, corresponded with his correct details and noted that if the alleged error existed there was no reason why his passport was issued with his correct date of birth rather than the incorrect details. The Judge also noted the appellant's applications for an Iranian passport were made in the United Kingdom which would raise issues about his circumstances in the UK and reasons for applying for a passport from here and not in Iran. The Judge records this matter was raised with the appellant, who stated in his oral evidence that he went to the Iranian embassy to apply but could not remember exactly what response the Iranians had given when he told them that he left Iran illegally [31]. The Judge clearly had doubts regarding this claim and refers to noting the expert evidence in several country guidance cases on the issue of leaving Iran illegally, including SHH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308(IAC), the head noted which reads in part:

An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.

This guidance indicates that if the appellant did advise the authorities that he left Iran illegally as he claims, for which there does not appear to be any adverse consequence, and that the appellant was granted the passports he applied for, there is no adverse interest manifested in him by the Iranian State.

14. The Judge noted the response from the UNHCR following notification by the Secretary of State of the intention to cease the appellant's refugee status at [32 – 35] before concluding at [36]:

> "36. There are factual difficulties with the assessment made by the UNHCR. The evidence before me does not suggest that the Appellant's mother's condition was life-threatening at the point that he first decided to travel to Iran. I have accepted that he was concerned about his parents, having not seen them for over five years and I do not dispute that his mother has been unwell, and he wanted to return to see her. The medical evidence provided however , does not present in the way that the Appellant's previous solicitors set out in terms of the urgency of the visits in 2015 and 2016. The Appellant has now made eight visits over three years and has renewed his passport with the Iranian authorities. It is not clear that the UNHCR appreciated the precise number of visits, were aware of the medical evidence about the Appellant's mother's condition or the fact that the Appellant renewed his Iranian passport."

15. Having assessed the evidence, the Judge writes in the concluding paragraphs, the following:

> "37. The Appellant has married twice on the trips he has made to Iran and it cannot be said that the visits he made were solely to care for elderly parents. It cannot be said that he was the only possible child who could care for them. His younger sister was living with his parents when he made the first visit. He has another four sisters all resident in Iran. They may be living some distance away but not the distance the Appellant has to travel to see his parents or to take the risks he is alleging he takes in returning to see his parents. Whilst I accept that he wanted to return to see his parents after an absence. I do not accept that this was something which could be classed as an in voluntary act or that he was constrained by circumstances beyond his control on each of the eight visits made over the period of over three years.
>
> 38. I am invited to consider that the Appellant is a risk taker. I accept that the Appellant has shown great bravery in this country and was commended for his actions by the Honorary Recorder of Carlisle His Honour Judge Batty QC. The commendation was made because the Appellant disarmed an armed man outside his takeaway shop. The armed man was found guilty of possessing a firearm with intent to cause fear or violence as well as a number of other offences including theft and racially aggravated assault.

This is consistent with the background of the Appellant in the risks he took as a political activist, facts which were accepted by the Respondent in granting him asylum.

39. The Appellant has made regular family visits to Iran using a passport issued by the Iranian authorities after he made an application through their embassy in London. For the reasons given by accept that he has voluntarily availed himself of the protection of the Iranian authorities.

40. I have not at this stage, made an assessment of the current human rights situation in Iran as I accept that this appeal is limited to the decision on whether or not to revoke the Appellant's refugee status and at present there is no decision to remove him to Iran."

16. The appellant sought permission to appeal, which was initially refused by another judge of the First-tier Tribunal, but granted by a judge of the Upper Tribunal on a renewed application, the operative part of the grant being in the following terms:

"2. The renewed grounds challenge the First-tier Tribunal's dismissal of the appeal against revocation of refugee status; which followed the appellant's obtaining of an Iranian passport after obtaining permanent residency in the UK and his return to Iran using his own identity on no less than eight occasions between 2015 and 2018, during which visits he had twice entered into marriage. The judge concluded that he had voluntarily availed himself of the protection of the Iranian authorities.

3. It is argued that the First-tier Tribunal Judge failed to take cognizance of the fact that the appellant returned to Iran to support his ill mother. However, that was fully considered by the judge.

4. It is just arguable that by his returns to Iran to support his mother the appellant had not voluntarily availed himself of the protection of the Iranian authorities but was running a risk in each return. I found the otherwise careful decision of the First-tier Tribunal Judge seems to have come to a rather abrupt conclusion with little in the way of supportive reasoning. It is arguable that the appellant had not re-established himself or been in contact with the authorities so as to justify the triggering of the cessation clause. The arguments may be weak, but given the seriousness of the risk, there is enough to demonstrate an arguable material error of law."

17. A skeleton argument submitted on behalf of the appellant by Ms Cleghorn, dated 5 June 2020 reads:

'**Skeleton Argument**

7. Although the Refugee Convention provides for the cessation of refugee status in a variety of circumstances, there is only one power under the Nationality, Immigration and Asylum Act 2002 to revoke indefinite leave to remain given to a person who has been recognised as a refugee if that person ceases to be a refugee. One of the four circumstances set out in Section 76 (3) of the 2002 Act. These are:

(a) voluntarily re-availing himself of the protection of his country of nationality,

(b) voluntary re-acquiring a lost nationality,

(c) acquiring the nationality of the country other than the United Kingdom and availing himself of its protection, or

(d) voluntarily, establishing himself in a country in respect of which he was a refugee.

8. In this case, the Respondent relies on section 76 (3) (a), i.e. that the Appellant has voluntarily availed himself of the protection of Iran; the main argument being that the Appellant's conduct in making trips back to Iran is sufficient for the Respondent to justify the decision to revoke the appellant's ILR in the UK. No challenge was made to the credibility of the core of the Appellant's asylum claim. Section 76 (3) of the 2002 act mirrors. Article 1 (3) (a) of the Refugee Convention.

9. Consistent with the approach taken by the Court of Appeal in *Arif v SSHD [1999] EWCA Civ 808,* the burden of proof is on the Respondent. That appeal concerned a person who applied for asylum in about July 1992. His application was refused in October 1994 as allowed by Special Adjudicator in a determination promulgated in March 1997. In December 1997 the Immigration Appeal Tribunal overturned the Special Adjudicator's decision. There were two grounds raised by the Secretary of State in his attack. The second was that the appellant was in fact safe because the government had changed at the end of June 1996, that is, after the appellant had claimed asylum, and before the Special Adjudicator heard and decided the appeal. The Tribunal was attracted to that argument but the Court of Appeal said that the Tribunal was wrong. The Special Adjudicator had quoted with approval the addition of Macdonald's Immigration Law and Practice that "*proof that the circumstances of the persecution have ceased to exist, will fall upon the receiving State*". As the Court of Appeal explained, on the facts of that case, there was an evidential burden on the Secretary of State to establish that the appellant could safely be returned home. Establishing a change of circumstances was not enough.

10. In applying *Arif,* the Tribunal in *RD (Cessation, burden of proof, procedure)* acknowledge that the fact that a person volunteers to avail himself of the protection does not necessarily mean that he considers himself to be safe in that country, although obviously his safety, or likely safety, may be a guide to his real intentions. The panel continued later to also acknowledge that [38]:

> "*It is quite right that even a short visit to a country does not necessarily mean that a person intends to avail himself of the protection of that country and some superficial contact with the authorities of that country does not necessarily amount to availing the protection of that country*"

11. The panel went on to conclude, in line with paragraph 121 of the UNHCR Handbook, whereas passport is obtained, it will be assumed that he or she intends to avail himself of the protection of the state that issued the passport and the Respondent takes a similar position in this case and that his actions have created a rebuttable presumption.

12. It is submitted that the UNHCR Handbook is merely the starting point which has subsequently been the focus of further analysis by academics if not sufficiently in case law. A paper on the issue, titled '*Current Issues in Cessation of Protection Under Article 1C of the 1951 Refugee Convention in Article 1.4 of the 1969 OAU Convention* clarifies the application of the relevant parts of the Refugee Convention and states, *inter-alia,*

With respect to Article 1 C (1)-(4) of the 1951 Refugee Convention (and the parallel Article. 1.4 (a) – (d) of the OAU Refugee Convention), the elements of voluntariness, intent, and effective protection are crucial, and require careful analysis of the individual's motivations and assessment of the bone fide's and capacities of State authorities. ***Procedural mechanisms requiring States to prove the elimination of persecutory risk prior to cessation will protect against unfounded termination of refugee status.***

...

Paragraph 119 of the Handbook sets out an appropriate analytical framework for the consideration of such cases, arising under Article 1C(1): voluntariness, intent, and actual re-availment. Other contact with State of origin diplomatic missions should be analysed under this framework. Since Article 1 C (1) anticipates that return to the State of origin may result, the stakes are high for a recognised refugee who has had contact with diplomatic representatives of the State of origin. Proof of the act can permissibly impose an obligation on the refugee to explain his or her conduct, because voluntariness and intent are largely unknowable without the testimony of the individual concerned. The refugee may also possess crucial evidence pertaining to the availability (or not) of effective national protection in the State of origin.

…

The refugees of voluntary acts, intent, and attitudes may be considered, but they cannot pre-dominate over political reality. The cessation clauses should not be transformed into a trap for the unwary or a penalty for risky or naïve conduct.

...

The State seeking to impose cessation of refugee status ***must prove that the refugee in question intended to avail himself or herself of national protection and that effective protection is in fact available from the State of origin.***

…

The element of voluntariness, intent, and effective protection are vital in re-establishment cases. ***Re-establishment denotes transfer of primary residence with a subjective re-affiliation to the State of origin, rather than brief visits.***

13. In line with the Panel in *RD* then, the writers of the UNHCR paper, acknowledge that a short visit to a country does not necessarily mean that a person intends to avail himself of the protection of that country. In this case, the Appellant has not demonstrated any intention, explicit or inferred, to resume a normal relationship with Iran. Return in itself does not justify the cessation of status and loss of protection in circumstances such as these. It is submitted that the Respondent was demonstrate that, while the return may have been voluntary, is re-establishment requires both a subjective reaffiliation as well as an objectively durable presence. In this case, the visits were short in nature, his primary residence remained in the UK, his business in the UK continued, his return to Iran was for legitimate and compelling reasons and in the face of a continued risk of persecution. Nothing in his behaviour indicated an intention to enjoy a normal relationship with Iran. In fact, it is submitted that a 'normal' relationship with Iran will be impossible given

the accepted background information i.e. that the situation which justify the granting of refugee status still exists with the Status persecutor.

14. The Appellant further relies on an Austrian Supreme Court case of VwGH No. 2001/01/0499, Austria: Supreme Administrative Court (Verwaltungsgerichtshof), 15 May 2003. It will be noted that, in this decision, reference is made to various other resources that will be helpful to obtain in advance of an oral hearing. It is submitted that, in line with the view of Grahl-Madsen, 'a Refugee filled in his opinion, lose refugee status and at the same time regain status as an alien possessing the effective nationality of the country of nationality only if, "*with full knowledge of the consequences, he submits his passport to the authorities of his new country of residence and requests a visa so that he may continue his stay in that country as a national of his country of origin.*" Reference in the Austrian Supreme Court decision is also made to Hathaways and 'three requirements'.

> *These three requirements are also adopted by Goodwin-Gill (The Refugee in International Law 2 (1996), p.80ff) and Hathaway (The Law of Refugee Status (1991), p.192ff). Goodwin-Gill also advocates a presumption of re-availment in passport cases makes however reference to an extensive number of aspects which have to be taken into consideration and accords particular importance to the question which documents have been issued by the state of residence. Hathaway speaks of actions which can "technically" be interpreted as re-availment of state protection and thus allow for a respective presumption.* ***But it was only a fiction to believe that more than a evanescent percentage of all those who addressed the consulates of their countries of nationality would thereby manifest their political loyalty or trust. This would normally take place out of mere practical necessity all routine "with no thought to the legal ramifications". A strict interpretation of this cessation clause was consequently required. It was necessary to examine the reasons for this particular action. Article 1C (1) of the Refugee Convention could only be applied where a refugee had indeed intended to again entrust's country of nationality with the protection of his interests.***

15. Again, it cannot be said, in the Appellant's case, that the Appellant while fearing the state, had intended to entrust his country of nationality with the protection of his interests. All of the background evidence demonstrates that the passage of time in itself does not lessen the interest of authorities and those that had previously come to the attention of the Regime.

16. Moreover, it is clear that "*the cessation clauses should not be transformed into a trap for the unwary or a penalty for risky or naïve conduct.*" The fact that the Appellant has managed to find a way to return to Iran, clandestinely, to visit his sick mother, demonstrates naivety rather than a decision to re-avail himself of the protection of Iran. The Austrian Supreme Court (ibid) concluded that:

> With reference to this stage of discussion - and insofar this in line with previous judicial practice - the Higher Administrative Court takes the legal opinion that the successful application for the issuance or extension of validity of a passport of the country of nationality can lead to a cessation of refugee status, even when the danger of persecution remains in the country of origin and a return there is not envisaged. That will be the case where a recognised refugee insists on using a passport issued by the authorities of the country of nationality for purposes for which the Convention travel document would suffice or where a refugee wants to gain advantages

bound by nationality by applying for the issuance of a passport. However, contrary to judicial practice taken up under the former Asylum Laws. In addition to voluntariness and re-availment the additional requirement of intent, as argued by all scholars is decisive. **An intent to normalise relations to the country of origin as mentioned by Grahl-Madsen and to again entrust that country, with the representation of one's interests will normally be missing as long as (in particular: state), persecution prevails.**

17. It is therefore submitted that, as a matter of common sense, and given the prevailing country conditions, if the core facts of the original asylum claim are not disputed and there has been no change in regime, then the persecution remains. It is accepted that the same could not necessarily be said for many other countries in the world but the Iran is unique in terms of state-sponsored persecution and intelligent system that dominates its surveillance of its nationals thus leading, it is submitted, to the incontrovertible conclusion that the persecution was still remain until there is a change in the regime.

18. This point was discussed by the Court of Appeal in *MS (Somalia)* [2019] EWCA Civ 1345, accepted the points. The House of Laws made clear in [70] of *Hoxha,* that it must be shown that the change in circumstances are fundamental and durable (in the equivalent wording of the Qualification Directive, "significant" and "non-temporary") for cessation to apply. It is submitted that demonstrate the change in circumstances is both 'fundamental' and 'durable' evidence will be required that the changes are **substantial**, in the sense that the power structure under which persecution was deemed a real possibility no longer exists; **effective,** in the sense that they exist in fact, rather than simply promise, and reflected genuine ability and willingness on the part of the home countries, authorities to protect the refugee; and **durable,** rather than transitory shifts which last only a few weeks or months.

19. The cessation clauses based on 'ceased circumstances' mean a careful assessment of the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure that in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist. It follows then that cessation based on "ceased circumstances" only comes into play when changes have taken place which address the causes of displacement which led to the recognition of refugee status. This is clearly not the case in this Appellant's case.'

18. The Secretary of State opposes the appeal in her Rule 24 response dated to 19 May 2020 where it is written:

'**Submissions**

1. The relevant legislative framework to cease Refugee Status is as follows:

   Para 339A, of the Rules is clear that the SoS has to be satisfied that one or more of the following are applicable.

   (i) Voluntary re-availing themselves of the protection of the country of nationality;

   (ii) Having lost their nationality, they have voluntarily reacquired it;

   (iii) They have acquired a new nationality (n/a here);

(iv) They have voluntarily re-established themselves in the country which they left (etc. n/a here);

(v) They can no longer, because the circumstances in which they have been recognised as a refugee, have ceased to exist (etc. n/a here);

(vi) Being a stateless person etc. (n/a here);

(v) and (vi) significant and non-temporary

2. It is clear that when analysed the Immigration Rules make clear that it is one or more of the above sub paragraphs that have to be satisfied. It is submitted that the appellant satisfies (i) and (ii) of Para 338A, of the Rules set out above.

3. The Appellant's skeleton argument firstly claims that the Respondent had failed to discharge the burden of proof that the appellant had voluntarily re-availed himself of the country of his nationality. This proposition is not made out, FTT, Judge Henderson made clear findings that the appellant had made 8 trips to Iran on 2 separately issued Iranian passports, between 2015 and 2018, and that these visits took place by him using his validly issued passports travelling through the airport in Tabriz. The FTT Judge did not accept a belated explanation made by the appellant that his name and date of birth were recorded differently by the authorities in Iran. [Para 30 of the decision]. The Respondent submits that the Respondent has discharge the burden of proof, as set out by the FTT Judge Henderson.

4. Contrary to paragraph 7 (a) and (b) of the skeleton argument the acquisition of the Iranian passports and his travels there, show that the FTT did apply the correct standard of proof to the case.

5. Paragraph 7 (c) of the appellant's skeleton argument suggests that FTT Judge Henderson failed to fully take into account the views of the UNHCR in coming to her conclusion. It is submitted that in Paragraphs 32-36 the FTT did fully consider the views of UNHCR, but noted that the appellant's mother's medical condition had been described to UNHCR as life threatening (which had not been made out in the medical evidence before her) and that it was not clear whether the amount of visits made by the appellant to Iran had been made clear to UNHCR. It is submitted that FTT Judge Henderson was entitled to conclude that UNHCR had made recommendations on the basis of limited or flawed information.

6. Paragraph 13 of the appellant's skeleton argument sets out the case of MA (Somalia) [2018] EWCA Civ 994 and points to the following passage:-

> 'a cessation decision is the mirror image of a decision determining refugee status. By that I mean that the grounds for cessation do not go beyond verifying whether the grounds for recognising refugee status exist. Thus, the relevant question is whether there has been a significant and non-temporary change in circumstances so that the circumstances which caused the person to be a refugee, have ceased, and there is no other basis on which he would be held to be a refugee'.

7. The other case law quoted speaks in similar terms to changes in circumstances; such as those which were examined at length in MA Somalia as to whether there has been a durable change in the circumstances of the home country such that the circumstances that led to the grant of refugee status no longer apply. It is submitted that in this case, the Respondent has never argued that this case was

Cessation as a result of durable change in the country of origin; it has been entirely based on the appellant's individual actions.

8. The skeleton argument also refers to the UNHCR Cessation clause Guidelines which are set out at pages 16 – 25 of the appellant's bundle. The respondent would point to the Tribunal to the section entitled Voluntary Re-availing of the Protection of the Country of Nationality, and in particular Paragraph 6 – 11 of the Guidelines [pages 17 and 18 of appellant's bundle] -there is no evidence the appellant has been required to approach the Iranian authorities or compelled in circumstances outside his control. It is also clear when looking at Paragraph 10 of the guidelines that the key issue is the purpose or reason for which the passport was obtained or renewed - it is clear in this case the appellant intended to use the passport to travel to Iran and did so.

9. The respondent also invites the Tribunal to consider Para 13 of the UNHCR guidelines – [page 18 of appellant's bundle] in that the voluntary re-acquisition of nationality is a 'clear indication that there is a normalisation of the bond between the refugee and the government in relation to which he or she has a well-founded fear of persecution.'

10. Paragraph 19 of the appellant's skeleton argument submits that the mere possession of a passport, does not constitute that the appellant has re-availed himself. The respondent submits the FTT Judge Henderson was entitled to conclude that the appellant had done so, such that his remaining family in Iran were unable to look after them. She therefore found the acquisition of the passports and the 8 stays in Iran with therefore voluntary acts by the appellant.

11. The respondent submits that the FTT made no material errors in concluding that the appellant had voluntarily re-availed himself of his nationality. In the circumstances she did not have to decide the 'durable change' point, contrary to the appellant's skeleton argument.

12. In Paragraph 4 of the grant of permission to appeal by Upper Tribunal Judge Macleman (sic) there is comment about the question of the risks attached to the appellant's return to Iran. It is submitted that FTT Judge Henderson did not accept the appellant's claim that these are used a different name to the one recorded by the Iranian authorities, or that he had a friend at the airport who was able to assist him in entering and leaving Iran. The respondent would also point out that the appellant has, since 2015 marriage twice in Iran and got divorced, which would indicate that he also had interactions with the civil/religious authorities in Iran as well as the claimed visits to his parents.

Conclusion

13. The respondent submits that no material errors of law are made out in the grounds of appeal such that the determination should be set aside.

19. A further document, described as a supplementary skeleton argument filed by Ms Cleghorn reads:

SUPPLEMENTARY SKELETON FOR THE APPELLANT

Introduction

1. This skeleton argument should be read in conjunction with the submissions previously made.

Developments in Law

2. Since the document, on behalf of the Appellant during the 'lockdown' last year, the case of *Secretary of State for the Home Department v. OA, European Union: Court of Justice of the European Union, 20 January 2021* has been promulgated.[1] While OA deals with *Article 11(1)(e) of Council Directive 2004/83/EC* as opposed to what would be, in this case *Article 11(1)(d) of Council Directive 2004/83/EC* it is submitted that it supports the general arguments made in favour of this Appellant and creates principles of general application. This is particularly in the relative availability of jurisprudence on this issue. In *OA*, the Court observed that in any examination of an application for refugee status, one must address whether an applicant had established a well-founded fear of persecution, which requires an objective examination of whether or not there is protection available in the applicant's country of nationality, and whether the individual has access to said protection. The continued need for international protection is determined by the ability of the relevant actor to take steps to prevent persecution of the applicant at the hand of non-state actors. To ascertain this fear of persecution, the availability of protection by actors, as described in Article 7(2) QD, must be considered and the same analysis applied for the cessation of refugee status in accordance with Article 11(1)(e) QD. At §36, it is stated:

> *36. Thus, the circumstances which demonstrate the country of origin's inability or, conversely, its ability to provide protection from acts of persecution constitute a crucial element in the assessment which leads to the grant of refugee status, or, correspondingly, when appropriate, to the cessation of that status. Such cessation thus implies that the change in circumstances has remedied the reasons which led to the recognition of refugee status (judgment of 2 March 2010, Salahadin Abdulla and Others, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 68 and 69).*
>
> *37. Given the parallelism established by Directive 2004/83 between the granting and the cessation of refugee status, the requirements to be met by the protection which may preclude that status, in the context of Article 2(c) of that directive, or bring about its cessation, pursuant to Article 11(1)(e) thereof, must be the same as those which arise from, in particular, Article 7(1) and (2) of that directive.*
>
> *38. In order to arrive at the conclusion that the fear of persecution of the refugee concerned is no longer well founded, the competent authorities, in the light of Article 7(2) of Directive 2004/83, must verify, having regard to that refugee's individual situation, that the actor or actors in question who are providing protection, within the meaning of Article 7(1), have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the third country national concerned will, if he or she ceases to have refugee status, have access to that protection (see, to that effect, judgment of 2 March 2010, Salahadin Abdulla and Others, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraphs 70 and 74).*
>
> *39. In the light of the foregoing, the answer to the fourth question is that Article 11(1)(e) of Directive 2004/83 must be interpreted as meaning that the requirements to be met by the 'protection' to which that provision refers in relation to the cessation of refugee status must be the same as those which arise, in relation to the granting of that status, from Article 2(c) of that directive, read together with Article 7(1) and (2) thereof.*

[1] https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=607456e04

> ……
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> *52. Moreover, in so far as the doubts expressed by the referring court were to be understood as being concerned with establishing whether, to the extent that the clans in Mogadishu may, in addition to their providing social and financial support, also provide protection in terms of security, such protection may be taken into account in order to ascertain whether the protection provided by the State meets the requirements that arise, in particular, from Article 7(2) of Directive 2004/83, it must be recalled that, for the purposes of determining whether a refugee's fear of persecution is no longer well founded, the actor or actors of protection with respect to which the reality of a change of circumstances in the country of origin is to be assessed are, in accordance with Article 7(1)(a) and (b) of that directive, either the State itself, or the parties or organisations, including international organisations, controlling the State or a substantial part of the territory of that State (judgment of 2 March 2010, Salahadin Abdulla and Others, C-175/08, C-176/08, C-178/08 and C-179/08, EU:C:2010:105, paragraph 74).*
>
> ……..
>
> *56. In that regard, it should be observed that the conditions specified in Article 2(c) of Directive 2004/83, in relation to the fear of persecution and to protection, are intrinsically linked. Indeed, the protection to which that provision refers is, as is stated in paragraph 47 of the present judgment, protection from acts of persecution.*

3. So, while it can be said, that using one's own passport of is indicative of an individual availing the protection of the authorities it is, but one, factor. It is not determinative. It can be one factor that may result in a conclusion that circumstances have changed but it requires more. In making any assessment, the question must be, whether obtaining a passport actually indicates change. In this case it does not as the fear of persecution and to protection are intrinsically linked. The Iranian regime remain repressive and are continue responsible for gross human rights violations. If anything, the human rights record of Iran has declined in recent years.

4. It is submitted then, that there is a sliding scale. In some cases, obtaining a passport and visiting a person's country of origin may, in certain circumstances, be enough to infer that a person has voluntarily availed himself of the protection of his/her country. So, to take a recent example, when Abiy Ahmed came to power in Ethiopia and invited many of the diaspora to return, it could be argued that those applying for a Ethiopian passport, and choosing to go to Ethiopia, and who were previously considered to be refugees could conceivably, be considered to have availed themselves of the protection of the Ethiopian authorities. But, this is quite obviously, not the case here where the repression of the regime has only increased in recent years.

5. In applying the above then, during the Appellant's occasional visits to Iran, he has been fine. However, one cannot assume that he would be fine all the time without disputing the reasons the Appellant left Iran. The visits show nothing other than he has a well-practised method of avoiding detection and is willing to take significant risk for particular reasons. It does not show he can safely live there and integrate for any period. In fact, all the objective evidence would suggest that he could not. In the case of *K.I. v France* (application no. 5560/19), which was a case dealing with deportation, it is clear that there needs to be a judgment call looking to the future as to whether a person would be at risk of harm upon removal to their country of origin.[2]

6. It is submitted that a distinction must be drawn between choosing to take a risk and whether the risk actually exists. Cessation cannot be based simply on the basis that a

[2] I have only been able to find the case in French but with English summaries.

person is prepared to take extra-ordinary risks. The very basis on which asylum is granted is the risk, and not, the fool hardiness of those people who are refugees.

7. It is therefore submitted that the assessment must be based on fact and not what risk, an appellant, in any set of circumstances, may be prepared to take. The Appellant has decided, rightly or wrongly to return to Iran, but it does not change the fact he is taking a tremendous risk in doing it or that he would only have himself to blame if something went wrong.

8. Moreover, the case of *OA* refers back to the much earlier case of *Salahadin Abdulla and Others, C-175/08*. This clearly envisages, what is in effect, a two stage test. The Grand Chamber ruled that Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:

> *38. The referring court takes the view that there is a cessation of refugee status when, first, the situation in a refugee's country of origin has changed in a significant and non-temporary manner and the circumstances justifying his fear of persecution, on the basis of which he was recognised as a refugee, have ceased to exist and when, secondly, he has no other reason to fear being 'persecuted' within the meaning of Article 2 (c) of Directive 2004/83.*
>
> *39. For the purposes of assessing a change of circumstances, the competent authorities of the Member State must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in Article 7(1) of Directive 2004/83 have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status;*

9. In the present case, there has been no change in the refugee's country of origin. The circumstances justifying his fear of persecution on the basis on which he was recognised as refugee, continue to exist. Secondly, the competent authorities have clearly not verified, that the actors of protection have taken reasonable steps to prevent the persecution or that they operate an 'effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status'. It is submitted that this is for the obvious reasons, this cannot and will not, be done. The Grand Chamber then note:

> *68. In that way, the circumstances which demonstrate the country of origin's inability or, conversely, its ability to ensure protection against acts of persecution constitute a crucial element in the assessment which leads to the granting of, or, as the case may be, by means of the opposite conclusion, to the cessation of refugee status.*
>
> *.....*
>
> *70 In order to arrive at the conclusion that the refugee's fear of being persecuted is no longer well founded, the competent authorities, by reference to Article 7(2) of the Directive, must verify, having regard to the refugee's individual situation, that the actor or actors of protection of the third country in question have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status.*
>
> *71 That verification means that the competent authorities must assess, in particular, the conditions of operation of, on the one hand, the institutions, authorities and*

> *security forces and, on the other, all groups or bodies of the third country which may, by their action or inaction, be responsible for acts of persecution against the recipient of refugee status if he returns to that country. In accordance with Article 4(3) of the Directive, relating to the assessment of facts and circumstances, those authorities may take into account, inter alia, the laws and regulations of the country of origin and the manner in which they are applied, and the extent to which basic human rights are guaranteed in that country.*
>
> *72 Furthermore, Article 11(2) of the Directive provides that the change of circumstances recorded by the competent authorities must be 'of such a significant and non-temporary nature' that the refugee's fear of persecution can no longer be regarded as well founded.*

10. In this case, it is submitted that the Respondent has fallen far short of her obligations/ what would be necessary when considering cessation of Refugee Status.

Marian Cleghorn

Trinity Chambers

Newcastle

5th August 2021

Error of law

20. Although the approach of the Secretary of State is criticised in the appellant's pleadings it is important to remember that the decision under challenge is that of the First-tier Tribunal.
21. The appellant was granted refugee status as it was accepted at the time, in 2010, he faced a real risk as a result of his support for the opposition politician known as Musavi and the Green Movement in Iran. He was never detained by the authorities but claimed that he had escaped before he was arrested.
22. The appellant's claim to face such a risk in 2009 was accepted as being credible to the lower standard applicable to a protection appeal. Information available in the public domain shows that Mousavi held very prominent positions within the Iranian government, including providing advice to previous presidents, before retiring from politics. He returned to the political sphere to run for president in the election of 2009 and during his campaign was vocally critical of President Mahmoud Ahmadinejad and his policies.
23. Voter turnout at the election in mid-June was estimated to be a record high and Mousavi, who claimed he had been contacted by the interior ministry to inform him of his victory, announced that he had won the election outright by a large margin. Shortly thereafter, however, officials made a similar announcement in favour of President Ahmadinejad.
24. Mousavi urged his supporters to protest the results, and, in the days following the election, demonstrations unfolded in the capital and elsewhere. Ayatollah Khamenei called for an official inquiry by the Council of Guardians into the allegations of electoral irregularities which resulted in a partial recount, a motion that fell short of the annulment the opposition had sought.
25. On June 19, following nearly a week of opposition demonstrations against the election results, Khamenei issued his first public response to the unrest: before a

crowd of supporters at Friday prayers, he again backed Ahmadinejad's victory and warned the opposition against further demonstrations. Subsequent protests were greeted with increasing brutality as well as threats of further confrontation, and at a protest in Tehrān Mousavi announced that he himself was prepared for martyrdom.

26. On June 22 the Council of Guardians confirmed that 50 constituencies had returned more votes than there were registered voters (the opposition alleged that as many as some three times that number of constituencies had a turnout greater than 100 percent of eligible voters). Although the irregularities bore the potential to affect some three million votes, the Council of Guardians indicated that this would not change the outcome of the election itself. Following the completion of its partial recount, the council confirmed Ahmadinejad's victory and in early August Ahmadinejad was sworn in for his second term as president.

27. It is not disputed the attitude of the Iranian authorities towards those they consider a threat to their power can result in brutal reprisals and the arrest of those who openly demonstrate against them as the appellant feared, but there is not in the appellants evidence any country information indicating that those who did protest in 2009/10 are still of interest to the authorities some 10 years later.

28. It is also the case that even if a person's existing refugee status ceases as a result of the application of Article 1C, they can always reapply for such status if they have evidence that supports such an application and a finding they will face a real risk of persecution at that time.

29. Article 11 of the Qualification Directive, which replicates Article 1C of the Refugee Convention, reads:

'*Article 11*

Cessation

1. A third country national or a stateless person shall cease to be a refugee, if he or she:

(a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or

(b) having lost his or her nationality, has voluntarily re-acquired it; or

(c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;

(f) being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

> 2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.'

30. The first point to note, therefore, is that subparagraphs (a) to (f) are alternatives. For example, a person can cease to be a refugee if they have voluntary re-availed themselves of the protection of the country of nationality, even if the requirements of Article 11 (1) (e) have not been shown to exist. This is an Article 11(1)(a) QD appeal.
31. It is also important to bear in mind that Article 1C of the Refugee Convention and Article 11 of the Qualification Directive set out the circumstances in which the Refugee Convention will cease to apply because an individual no longer needs protection.
32. Although the appellant relies upon the decision of the Court of Appeal in MS (Somalia) it is important to record that in that case it was found that refugee status can be taken away even if threat of persecution still looms. It is also material to the findings relied upon by the appellant to note that in MS (Somalia) the issue was the application of Article 11(e) and not Article 11(a), the provision applicable in this appeal.
33. It is not made out the Judge was required to read the provisions of Article 1C of the Refugee Convention and Article 11 of the Qualification Directive as being that the Secretary of State could only lawfully cease the appellant's refugee status if the requirements of both Article 11 (a) and (e) were met cumulatively. This will be contrary to the specific wording of the provision making them alternatives.
34. The argument advanced by the appellant that he will always be at risk of persecution until there is a change of the regime in Iran is too generalised a statement. If the reference to regime change is to the structure of government in Iran this arguably prevents reconsideration if the attitudes of the existing regime change. This is, however, more applicable to Article 11(e).
35. There is reference in the appellant's skeleton argument that he returned to Iran "naïvely" but such a claim is not made out on the facts. The history, as found by the Judge, was that the appellant embarked upon a deliberate course of conduct, starting with an application to the Iranian authorities in the United Kingdom for the issue/reissue of a valid Iranian passport. The Judge's finding that the details on that passport are those of the appellant and not incorrect or false details is a finding within the range of those available to the Judge on the evidence and no arguable legal error arises. The appellant then uses that passport to travel to Iran, the country that he claims he is outside of due to a real risk persecution for a Convention Reason. Not only did the appellant apply for the first passport he also applied for a second passport and use those valid passports to travel to Iran on a number of occasions; eight over a period of three years as found by the Judge. It appears the appellant travelled openly through an international airport, within Iran using his identity document on which he returned without difficulty. The appellant had claimed international protection and been granted the same on the basis of the real risk he claimed to face at that time and would have been fully aware more recently of information in the public domain, such

as on the BBC, of developments in Iran and a risk to those who are perceived to pose a threat to the authorities. It was not made out that he was naïve as to any risk that a person who had an adverse profile would face in returning to Iran or even engaging with the Consular staff to whom he would have been required to provide the information required on the passport application forms.

36. Although it was suggested before the Upper Tribunal that greater attention may be given to returnees from the UK rather than those via third country airport, as was the position for the appellant, it was not made out the authorities would not have been able aware the passport had been issued in the United Kingdom. Despite this, there is no indication in the evidence or claim by the appellant that he faced any difficulties in entering Iran, remaining in Iran, or exiting using his validly issued identity documents. By applying for and obtaining the passports in the United Kingdom the appellant would have had to have dealings with the diplomatic representatives of Iran.

37. The appellant cannot argue that despite being a genuine refugee he did not possess the same fear of the consular of authorities in the UK as he may have had towards officials in Iran, as he clearly use the documents he had obtained to facilitate entry to and return from Iran. It is clear that the appellant's conduct was deliberate and aimed at enabling him to engage with the Iranian Consular authorities, to enter Iran, remain in Iran at the family home for some time, and engage with the authorities including religious and civil in marrying on two occasions and divorcing on one. It was not made out before the Judge that the appellant believed he faced a credible real risk in engaging with the authorities.

38. The Judge's finding that the appellant's claim he had to return for involuntary reasons as a result of the serious illness of his parents, particularly his mother, was found to lack merit, is properly reasoned. It was not made out before the Judge that this was a necessary or involuntary return. The Appellant returned voluntarily with the intention of engaging with the authorities as he did.

39. Similarly, the appellant's claim he did this as a result of being a "risktakers" was rejected by the Judge for which adequate reasons have been given.

40. The Judge found that the Secretary of State established objectively that the appellant intends to avail himself of the protection of Iran on the facts. That created a rebuttable presumption enabling the appellant to adduce other evidence to try and persuade the Judge in the alternative.

41. After numerous visits, lengthy stays, coming into contact with the authorities in obtaining the passport, getting married and registering the marriage officially, the rejection of the claim to have travelled out of necessity as a result of his mothers illness and/ or the appellants reckless conduct, the Judge did not accept the appellant's arguments. It has not been made out the Judge erred in law in drawing the line in relation to the question of voluntary re-availment where she did.

42. The Judge examined the evidence and found that the appellant had effectively, genuinely and voluntarily re-availed him of the protection of his country of origin. The Judge does not find that merely renewing the passport, without more, established that the appellant intended to re-avail him of the protection of his country of origin as to do so would have given rise to legal error. This is also

not a case in which the appellant as a refugee only undertook a short trip to Iran. It is the Judges holistic assessment based upon the evidence that the appellant voluntary re-engaged with the Iranian Consular authorities in the UK to obtain his passport, undertook frequent and lengthy visits without evidence of experiencing difficulties with the authorities in Iran, facilitating the numerous trips to the appellant made, engaged with the authorities through marriage and divorce, and failed to establish he was unable to do other than live a normal open life with his family whilst in Iran.

43. I find the appellant has failed to establish that the finding of the Judge that he had re-availed himself of the protection of Iran on the facts is a finding outside the range of those reasonably available to the Judge on the evidence. Accordingly, the Judge's finding dismissing the appeal against the Secretary of State's decision to cease the appellant's refugee status has not been shown to be infected by material legal error on the facts of this appeal. It is not, therefore, appropriate for the Upper Tribunal to interfere any further in this matter.

Decision

44. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

45. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson
Dated 18 August 2021