[2013–14 Gib LR 613]

KM (IRAN) v. HEAD OF THE CIVIL STATUS AND REGISTRATION OFFICE

SUPREME COURT (Prescott, J.): July 9th, 2014

Immigration—asylum—appeal—appeal under Asylum (Procedures) Regulations 2012, Part VI by way of full rehearing—court to show respect for respondent's decision, tempered by its nature and decision-making process

Immigration—asylum—eligibility—court to use common-sense approach when determining whether applicant sought asylum at "earliest possible opportunity" or had "good reason" for failing to do so—uncertainty of protection available in country may be good reason for failing to apply—short-term stopover en route to final destination not "earliest possible opportunity"—element of choice over final destination open to applicant

Immigration—asylum—standard of proof—unreasonable to expect applicant to prove case to civil standard of proof—not necessary to prove every aspect of case if main centrepiece believable

The appellant, an Iranian national, applied for asylum for herself and her children, NA and AHA, in Gibraltar.

In 1979, the appellant became involved with the Komale Party (a Kurdish socialist party) and attended several rallies. MA, a member of the Revolutionary Guard, threatened to release a photograph of her at a rally to the authorities unless she had a relationship with him. She refused and MA harassed her for the following 30 years, often using his position in the Revolutionary Guard to do so. During this period, he, *inter alia*, made abusive phone calls; had her car vandalized, her windows smashed and her

homes broken into; orchestrated her divorce from her first husband; had her imprisoned and lashed; had her second husband removed from his job and threatened with a knife; attempted to kidnap her son; stole large sums of money from both her and her second husband; and threatened her and her family into dropping any legal complaints against him. The appellant moved 16 times to different parts of Sanandaj and Tehran, but MA found her and resumed his harassment each time.

In 2009, the appellant became involved with the Green Party, which supported a reformist candidate in the 2009 elections. After he lost the election, a series of demonstrations ("the Green Movement") took place. The appellant and her daughter attended these, but she was beaten twice during demonstrations at MA's instruction. In 2010, the appellant travelled to Canada on a travel visa. Shortly after she returned, MA told her that he had photographs of her and her daughter, NA, at a Green rally; that he was no longer interested in the appellant; and that he would kill the whole family unless NA married him.

The appellant decided that it was too dangerous for her and NA to remain in Iran. She therefore paid an agent to take her to London, via Madrid, so that she could seek asylum. Her husband remained in Tehran as he had recently suffered a stroke and to minimize suspicions. After leaving Iran, she did not claim asylum in any of the European countries through which she passed, allegedly because she had paid the agent to get her to London, travelled in the back of a van, did not know the route and was instructed not to ask questions. In Madrid, she was given a false passport but was prevented from boarding her intended flight. On the advice of her agent, she decided to try flying from Gibraltar. She did not claim asylum in Spain because she became afraid that she would be arrested for having a false passport and she did not know what protection she would be afforded there. She further alleged that she had not realized that Gibraltar was a different country from Spain when she arrived, but thought that she was asked to show her passport because it was the beginning of the airport. Once in Gibraltar, she saw another woman who had travelled with her being apprehended by the authorities. She therefore returned to Spain, before returning to Gibraltar and instructing lawyers to assist her in her claim for asylum.

The appellant had very little documentary evidence in support of her account—only birth certificates belonging to her and NA, and some family photographs. At her asylum screening interview, she did not state that she was a member of a political party, allegedly because her involvement with the Komale Party had ended many years before and she did not consider the Green Movement to be a political party. Further, at the interview, the translator and the interviewer frequently switched between the first and third person when referring to the appellant. The respondent rejected the appellant's application and she appealed to the Supreme Court in the present proceedings.

During this appeal, two expert witnesses gave evidence. The first, an expert in the socio-political situation in Iran over the relevant period,

stated that the appellant's account was consistent with what was known of the historical context. In particular (a) the appellant gave a realistic account of the activity of the Komale Party and it was unsurprising that she would not have kept any evidence of her membership; (b) the lashes and beatings she had received were consistent with the regime at the time; (c) her claim that she was scared of being reported if she went to the hospital was consistent with the practices of the security police; (d) there were multiple press reports confirming the thefts from her husband and his removal from his job; (e) moving within Tehran would have been the only viable method of evading MA as she would not have been able to leave her husband; (f) the transfer of attention to NA fitted with the social background in Iran; (g) the fact that the appellant had been granted a tourist visa was not inconsistent with her being on a watch list; and (h) if she were returned to Iran on an emergency travel document, she would be likely to attract lengthy interrogation and torture. She conceded, however, that (a) she had not been able to trace MA, but pointed out that there had always been lack of transparency in Iran; and (b) that she had based her report on the assumption that MA did exist, but that determining the appellant's credibility was not within her remit.

The second expert witness, an expert on stalking and harassment, stated that the description of MA's behaviour was consistent with what was known about sadistic stalkers; that there was not much information about sadistic stalkers online; and that the appellant's account was too realistic and consistent to be fabricated. It was believable that MA would have allowed her to leave for Canada, knowing her children remained in Tehran, and may have enjoyed giving her a false sense of freedom. Further, sadistic stalkers typically sought new ways to hurt their victims and often grew bored of their victim and sought a replacement; the transfer of attention to NA would have served both purposes.

The respondent, however, raised several issues concerning the appellant's account of the events, including that (a) her knowledge of the Komale Party was insufficient to show that she had been a member; (b) it was unlikely that she could have avoided notice for her political involvement; (c) it was possible that she had not received any beatings as she had never sought treatment for them; (d) although she had frequently moved house, she had not left Tehran, which suggested the threat from MA was not significant; (e) she failed to claim asylum when visiting Canada; (f) the fact that she had been granted a tourist visa suggested that MA had no interest in her and she would have been able to exit Iran legitimately; (g) there were no records of MA; (h) the expert evidence was flawed because assumed that MA was real; and (i) her account was too perfect. The appellant had studied psychology and her account was clearly the result of internet research.

The respondent also pointed to several inconsistencies in the appellant's interviews, including that (a) she had been unclear about why she had been unable to board the flight from Madrid; (b) it was not credible that she had not realized that she was crossing a border when she entered

Gibraltar; (c) she had stated that she was not a member of a political party, but it was surprising she had not referred to her membership of the Komale Party; and (d) she had not mentioned in the first interview that her husband had remained in Tehran because he had had a stroke.

The appellant submitted that (a) the appeal should proceed by way of a full re-hearing, rather than merely a review of the respondent's decision; (b) the correct standard of proof in asylum cases was whether there was a reasonable degree of likelihood that she had a well-founded fear of persecution if she returned to Iran. As the claim was not head-to-head litigation where only one of two competing accounts could be accepted, there should be no cut-off based on probability. Everything relevant should therefore be taken into account and given weight, even if it was merely possible (but not probable) that an event had taken place; (c) she fell within the definition of a refugee because the acts complained of amounted to persecution as defined in the Asylum Regulations 2008, reg. 29 (*i.e.* that her civil rights had been seriously violated). MA was a member of the Revolutionary Guard with the full power and authority his position afforded him and had harassed her for over 30 years, and she had been beaten, lashed and imprisoned because of his actions; and (d) as required by the Asylum Regulations 2008, reg. 27, her fear of persecution was well-founded, and stemmed from her membership of a particular social group, and she had not sought the protection of her country as it was likely to be ineffective or expose her to greater harm.

The respondent submitted that the Asylum (Procedures) Regulations 2012 envisaged no more than a review of the original decision, not a full rehearing. The appellant had been heard by the relevant authority and her evidence and the expert evidence had been duly considered, and there was therefore no ground for the appeal. Further, even if the appeal were by way of rehearing, the court should afford a degree of respect to the respondent's decision.

Held, quashing the decision:

(1) An appeal under the Asylum (Procedures) Regulations 2012, Part VI would proceed by way of full rehearing rather than a review of the respondent's decision. Although the 2012 Regulations, reg. 31(5) limited the court's power to either dismissing the appeal or quashing the decision and directing the respondent to rehear the case, the Civil Procedure Rules, r.52.11(1)(b) allowed for a full rehearing if the court considered that it would be in the interests of justice. The court should therefore hear asylum cases as a full rehearing as: (a) the credibility of the appellant and the plausibility of her account were central in determining such cases, and these were difficult to determine without full consideration of the evidence and the examination and cross-examination of the appellant and witnesses; (b) live and current evidence—particularly as to the state of the country from which the appellant had fled—was of key importance and it was undesirable to ignore any changes that had occurred after the initial decision had been made; (c) under the 2012 Regulations, reg. 31(6),

decisions of the Supreme Court were final as to fact and appeals to the Court of Appeal lay only as to matters of law. It was therefore imperative that the Supreme Court's decision as to fact be as accurate as possible; (d) as the interviewer was not ordinarily the same person as the decision-maker, it would be wrong for the final view on credibility to be formed by someone who had not spoken directly to the appellant; and (e) an appeal from an asylum decision in the United Kingdom was heard by the First Tier Tribunal (Asylum & Immigration Chamber) by way of rehearing and it was right that the Supreme Court (which performed the equivalent role) act in the same way. Although the court would show a degree of respect to the decision-maker's decision, this must be tempered by its nature and decision-making process (paras. 3–16).

(2) Under the Asylum Regulations 2008, reg. 27, the appellant was required to show that she had a fear of persecution for one of the reasons listed in reg. 31; that the fear was well-founded; and that she was unable, or unwilling, to avail herself of protection in her home country because of that fear. It was not necessary, however, for the appellant to prove every aspect of her case. Further, given the difficulties which most asylum seekers would experience when leaving their country of origin—and the difficulties of evaluating the evidence of a person who has suffered emotional trauma and who may not understand the language or application process—it would be unreasonable to require her to prove her case to the civil standard of proof. The court was therefore merely required to consider whether the centrepiece of the appellant's story was believable. By evaluating all the evidence, including matters which were certain, less certain, believed and not believed, the court should form a composite view of the story as a whole (paras. 51–55; para. 141).

(3) The plausibility of the appellant's account was conclusively established. Her claims were coherent, believable and consistent with the relevant general and specific information available. It was clear that the appellant and her family were who she said they were and, as there was no legitimate reason to reject the expert witnesses' testimony, the appellant's account must be accepted as being plausible. Additionally, her claims that she had been involved with the Komale or Green movements would not be rejected merely because of a lack of evidence. It was unsurprising that she did not have any evidence as it would have been foolish to retain any such documents, even if they had existed in the first place, and it would be unlikely that, when fleeing the country, she would have been able to take such documents with her. Further, given the lack of transparency in the Iranian Revolutionary Guard, it would be unrealistic to expect her to prove conclusively that MA actually existed. She had, however, made a genuine effort to substantiate her claim. The credibility of the claim could not be reduced because of the lack of documents (although documentation would have fortified it). As the 2008 Regulations, reg. 26(4) stated that statements did not require confirmation if they were coherent, plausible and did not run counter to the relevant general and specific information

available, the claim could not therefore be rejected for lack of documentation (para. 77; paras. 135–138).

(4) The inconsistencies in the appellant's interviews did not necessarily weaken her credibility. It was not surprising that she had not mentioned her involvement with the Komale Party at her initial interview and, as her explanation for not doing so was not devoid of merit and she did refer to it at her second interview, her failure to do so did not dent her credibility. Further, the inconsistencies between the accounts given by the appellant as to why she did not board the flight in Madrid appeared to be attributable, at least in part, to the confusing use of the third person by an interviewer and translator. In future, every effort ought therefore to be made by interviewers and translators to avoid the use of the third person. In any event, that discrepancy did not appear to be due to an intention to mislead. The appellant had not, however, adequately explained why her husband had remained in Iran and why she had been inconsistent on this subject during her interviews. The court also rejected her explanation that she did not realize that Gibraltar was a different country from Spain; an educated woman with experience of border crossings would have recognized that she was being required to show her passport because she was moving from one country to another. These failures did not, however, mean that the centrepiece of her submissions was unbelievable and would not prevent the court from ruling in her favour (paras. 114–115; para. 122; para. 129; para. 132).

(5) The appellant had shown that she qualified for refugee status under the 2008 Regulations, reg. 27(a) as there was a reasonable degree of likelihood that her fear of persecution was well-founded, that it arose because of her membership of a particular social group and that she would be exposed to persecution if she were returned to Iran. The abuse to which she had been subjected by an agent of the State, and the lashings which she had suffered, were sufficient acts of physical and mental violence, and disproportionate or discriminatory punishment, to qualify as persecution under the 2008 Regulations, reg. 29. Further, her gender was an innate characteristic sufficient to mean that she was a member of a particular social group under reg. 31(2)(e). Although women were nominally provided with equal protection under Iranian law, it was clear that they were actually treated as second-class citizens and were deprived of several rights and protections by the State. The appellant was therefore unable to seek protection in Iran because of her gender, particularly as she would have been unable to leave Tehran without the protection of her family and it had not been possible to move her entire family to another area of Iran. Moreover, there was a real and significant risk of harm should she and her children be returned. It was highly likely that, upon her return, MA would resume his harassment. Additionally, as she had left on a false passport, she would be required to enter Iran with an emergency travel document. This would probably attract a lengthy interrogation on re-entry to determine why she had left and whether she had any connections to any

political or terrorist groups, and there was a real risk that this interrogation would include torture, particularly as MA would have the power and ability to elevate her political profile to any level he chose (para. 83; paras. 141–151; paras. 156–158).

(6) The appellant had sought asylum at the earliest possible opportunity, or, alternatively, had had a good reason for not doing so. Although she had visited Canada in 2010, it would have been unrealistic to expect her to seek asylum without her family, particularly as her daughter had not yet been threatened and it was this threat which motivated her to leave Iran. Moreover, whilst the appellant's overland route to Gibraltar passed through many European countries, an element of choice as to where to seek asylum was open to the appellant and her failure to claim asylum during any of the short-term stopovers did not damage her claim. Although it would have been open to her to seek asylum in Madrid, there was no good authority as to what constituted "a good reason" or the "earliest possible opportunity" and a common-sense approach would be taken. The appellant had researched the United Kingdom, but knew nothing of the rights she would be afforded in Spain and it was not inconceivable that she remained determined to reach London. It was therefore plausible that she remained en route to London until she saw the other woman apprehended in Gibraltar. Either Gibraltar was the first possible opportunity to claim asylum after her original plan of reaching London was disrupted, or, in the alternative, her focus on reaching London was a good reason why a claim was not made at the earliest possible time. Further, whilst the appellant had entered Gibraltar on a false passport, this was not a sufficient basis to reject her application. Entry on a false passport was not in itself grounds for refusing asylum where that entry was attributable to a *bona fide* desire to seek asylum (para. 88; paras. 104–110).

Cases cited:

(1) *E.I. Dupont de Nemours & Co.* v. *S.T. Dupont*, [2006] 1 W.L.R. 2793; [2006] C.P. Rep. 25; [2003] EWCA Civ 1368, considered.

(2) *Islam* v. *Home Secy.*, [1999] 2 A.C. 629; [1999] 2 W.L.R. 1015; [1999] 2 All E.R. 545; [1999] Imm. A.R. 283, applied.

(3) *K* v. *Home Secy.*, [2006] EWCA Civ 1037, applied.

(4) *Karanakaran* v. *Home Secy.*, [2000] 3 All E.R. 449; [2000] Imm. A.R. 271; [2000] EWCA Civ 11, applied.

(5) *Minister for Immigration & Multicultural Affairs* v. *Rajalingam*, [1999] FCA 719, referred to.

(6) *R.* v. *Home Secy.*, *ex p. Kaja*, [1995] Imm. A.R. 1, referred to.

(7) *R.* v. *Home Secy.*, *ex p. Ravichandran (No. 1)*, [1996] Imm. A.R. 97; [1995] EWCA Civ 16, considered.

(8) *R.* v. *Home Secy.*, *ex p. Sivakumaran*, [1988] A.C. 958; [1988] 2 W.L.R. 92; [1988] 1 All E.R. 193, considered.

(9) *R. (Q)* v. *Home Secy.*, [2004] Q.B. 36; [2003] 3 W.L.R. 365; [2003] 2 All E.R. 905; [2003] EWCA Civ 364, considered.

(10) *R.* v. *Uxbridge Mags. Ct.*, *ex p. Adimi*, [2001] Q.B. 667; [2000] 3 W.L.R. 434; [1999] 4 All E.R. 520; [1999] Imm. A.R. 560; [1999] EWHC Admin 765, applied.
(11) *SB* v. *Home Secy.*, [2009] UKAIT 00053, considered.

Legislation construed:
Asylum Regulations 2008, reg. 26(2): The relevant terms of this paragraph are set out at para. 47.
reg. 26(4): The relevant terms of this paragraph are set out at para. 46.
reg. 27(a): The relevant terms of this paragraph are set out at para. 42.
reg. 31(2)(e): The relevant terms of this paragraph are set out at para. 43.

Asylum (Procedures) Regulations 2012, reg. 31(5):
"The Supreme Court, in determining an appeal . . . may—
(a) dismiss the appeal; or
(b) quash the decision referred to . . . and remit it to the Authority with a direction to reconsider the decision."

J. Restano for the appellant;
R.R. Rhoda, *Q.C.*, *Attorney-General*, and *K. Drago* for the respondent.

1 **PRESCOTT, J.:** On October 25th, 2010, the appellant claimed asylum in Gibraltar on her own behalf and on behalf of her two dependent children, NA (born on December 11th, 1994) and AHA (born on August 31st, 1998). The respondent is the designated authority under the Asylum Regulations 2008 who considers requests for asylum. On October 27th, 2010, the appellant participated in a screening interview conducted by the Royal Gibraltar Police. On June 21st, 2011, Victoria Andrews from the UK Borders Agency, on behalf of the respondent, conducted an asylum interview. On October 12th, 2011, the respondent refused by letter the appellant's application for asylum and/or subsidiary protection. That decision was renewed on May 11th, 2012. This is an appeal against those decisions pursuant to the Asylum (Procedures) Regulations 2012. This appeal supersedes a claim for judicial review, which was subsumed into the appeal procedure under the Regulations once these were enacted.

2 This is the first appeal to arise under the 2012 Regulations. Before turning to the substantive matter, there was a preliminary point regarding the procedure to be followed, essentially whether the appeal should take the form of a rehearing or a review of the decision of the Head of the Civil Status and Registration Office ("HCSRO"). Despite this court having ordered at a preliminary hearing that the appeal proceed by way of rehearing, concerns arose closer to the hearing date as to whether, in fact, this was the correct procedural approach and so submissions were invited from counsel. Following submissions, I gave a brief *ex tempore* ruling. I set out my reasons in more detail hereunder.

3 Part VI of the 2012 Regulations confers the right of appeal against the refusal of the HCSRO to grant asylum. Regulation 31(5) limits the power of the Supreme Court in determining an appeal to dismissing the appeal or quashing the decision of the HCSRO with a direction that he reconsider the decision. The Regulations offer no assistance on the procedure to be followed at this hearing.

4 For the respondent, it is said that, by its terms, reg. 31(5) envisages no more than a review of the decision of the HCSRO and this is consistent with CPR Part 52. Rule 52.11 provides:

> "(1) Every appeal will be limited to a review of the decision of the lower court unless—
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> (a) a practice direction makes different provision for a particular category of appeal; or
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> (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing."

5 Turning first to CPR, r.52.11(1)(a), the relevant practice direction provides that a rehearing will be required if the appeal is from a Minister, person, or other body who did not hold a hearing to come to that decision, or did hold a hearing but the procedure adopted did not provide for the consideration of evidence. For the respondent, it is said that in the present case the appellant was heard by the relevant authority, the HCSRO, and the appellant's evidence, as well as the expert evidence, was duly considered. Whilst it is true that the appellant's request was afforded due consideration, it was not by judicial process in the sense that witnesses were not examined and the evidence was not tested under cross-examination. To my mind, therefore, there has not been a hearing in the full sense of the word.

6 Turning to r.52.11(1)(b), it is apparent that this provision bestows a significant degree of discretion upon the court, allowing it to consider the individual circumstances of each individual appeal. I agree with counsel for the appellant that asylum appeals are to be distinguished from run-of-the-mill appeals, where the function of the Court of Appeal is essentially one of review, not least because asylum appeals raise human rights issues. In addition to that there are, in my view, two main issues which distinguish asylum appeals from other appeals and which militate in favour of a full rehearing.

7 The first is that in asylum cases, credibility, particularly in relation to the plausibility of the appellant's story, is a central issue. To my mind, this can only be tested and determined upon full consideration of the evidence by means of a trial process of examination and cross-examination of appellant and witnesses.

8 The second is that in asylum cases, live and current evidence can be of crucial importance—particularly in relation to current country information. Brown, L.J. had this to say in *R.* v. *Home Secy., ex p. Ravichandran (No. 1)* (7) ([1995] EWCA Civ 16):

> "When it comes to the policy considerations, moreover, there are clearly good reasons for adopting a different approach in asylum cases. Whereas all ordinary immigration cases are entirely specific to the individual applicant and ask simply whether he or she qualifies under the rules, in asylum cases are necessarily concerned at least in part with the situation prevailing in a particular foreign country. Not only the Secretary of State but also the special adjudicators build up a body of knowledge about that situation and it would be unfortunate indeed if they are bound to ignore all that they know to have happened after a given historical date, the date of the Secretary of State's refusal of asylum. The situation might have changed for the better or it might have changed for the worse. In either event, if the appellate authorities were bound to ignore such changes, it would render their decisions substantially less valuable."

9 He also supported the view that in asylum appeals the court is essentially an extension of the decision-making process and thus not constrained by the nature and extent of the evidence it can hear. He said:

> "With regard to immigration appeals generally . . . there is no doubt whatever that appeals have to be dealt with on the basis of the factual situation existing at the time of the original decision against which the appeal is brought . . . Although I confess to finding this a difficult issue, I have concluded that the position is indeed different in asylum appeals . . . I have reached the conclusion that in asylum cases the appellate structure as applied by the 1993 Act is to be regarded rather as an extension of the decision-making process."

10 It is also of relevance that the decision-making process in asylum cases differs from civil cases somewhat in that what is required is an evaluation of the evidence as opposed to an assessment on the balance of probabilities—I shall deal with the standard of proof in more detail anon—but for present purposes, it would be asking too much of this court to expect it to make an accurate evaluation of the evidence generally, and of the current evidence *vis-à-vis* country information, as well as an assessment of credibility of the appellant and her story, in the absence of a trial process.

11 I am fortified in this view by consideration of the provisions of reg. 31(6) of the 2012 Regulations, which refer to a decision of the Supreme Court being final as to any questions of fact and allowing recourse to the Court of Appeal only on questions of law. If there is to be no appeal on questions of fact, then it is imperative that this court make accurate and

final findings of fact. To do that properly, in my view, it must conduct a rehearing.

12 A further issue which mitigates in favour of proceeding by way of rehearing is the fact that at first instance the person who conducted the interview of the appellant was not the same person as the decision-maker. It is true to say that even if it had been, I would still favour proceeding by way of a rehearing for the reasons aforesaid, but the fact that it was not reinforces my view, particularly in light of *R. (Q)* v. *Home Secy.* (9), where Lord Phillips made the point that it was undesirable and a defect in the system that at first instance the decision-maker was not the same person as the interviewer. He said ([2004] Q.B. 36, at para. 98):

> "This has highlighted what, in our opinion, are two further serious defects in the system adopted by the Secretary of State, at any rate until now. The first is that the decision-maker is not in the ordinary course of events the same person as the interviewer. This means that a view has to be formed as to the credibility of the claimant's account by a person who has not seen the claimant but only read the answers noted on the screening form by someone else. We understand from the Attorney General that that aspect of the system is to be changed and that the interviewer and the decision-maker will be the same person. In our view that will be a most welcome change for the future."

It is hoped that hereafter in similar cases the interviewer and the decision-maker will in the first instance be the same person, thus taking account of the view expressed by Lord Phillips.

13 A brief comparison with the position in the United Kingdom strengthens my view that it is preferable to proceed by way of rehearing. As I understand it, in the United Kingdom the Home Office makes the decision at first instance. From there, an appeal lies to the First Tier Tribunal (Asylum & Immigration Chamber), from there an appeal lies to the Upper Tribunal, and thereafter to the Court of Appeal and the Supreme Court. It is of relevance, in so far as providing guidance to the present circumstances, that the appeal from the decision of the Home Secretary to the First Tier Tribunal is conducted by way of full rehearing. Thereafter, subsequent appeals up the ladder lie only in respect of matters of law. Whilst we do not have as many tiers of appeal in our system, by analogy, the appeal to the Supreme Court in Gibraltar is the equivalent of an appeal to the First Tier Tribunal because it is the first appeal after the first instance decision. I am of the view that the first appeal should, as in the United Kingdom, be by way of rehearing so that facts can be properly tested and clearly identified before the appeal is confined to matters of law alone. I do not ignore the fact that the First Tier Tribunal has the power to dismiss or allow the appeal, whereas my powers are more restricted, but

that of itself does not persuade me that it is right to proceed by way of review.

14 That said, I am cognizant of the fact that, in practical terms, there is little difference between review and rehearing. *E.I. Dupont de Nemours & Co.* v. *S. T. Dupont* (1) highlighted the wide scope of a review. May, L.J. made the point that ([2006] C.P. Rep. 25, at para. 96):

> "Submissions to the effect that an appeal hearing should be a rehearing are often motivated by the belief that only thus can sufficient reconsideration be given to elements of the decision of the lower court. In my judgment this is largely unnecessary given the scope of a hearing by way of review . . . Further the power to admit fresh evidence in r.52.11(2) applies equally to review or rehearing. The scope of an appeal by way of review, such as I have described, in my view means that the scope of a re-hearing under r.52.11(1)(b) will normally approximate to that of a re-hearing 'in the fullest sense of the word' . . . On such a rehearing the court will hear the case again. It will if necessary hear evidence again and may well admit fresh evidence. It will reach a fresh decision unconstrained by the decision of the lower court, although it will give to the decision of the lower court the weight it deserves."

15 For the respondent it is said that even if this appeal were to proceed by way of rehearing, this court should nonetheless afford a degree of respect to the decision of the respondent. The appellant disagrees. For present purposes, the difference between a rehearing and a review "in the fullest sense of the word" is largely academic and whilst, on the one hand, it is tempting to say that upon a rehearing the decision of the lower court has little relevance, the approach of both parties belies this. Both, and in particular the appellant, have dealt with and considered the decision of the HCSRO at some length and relied upon it as part of their submissions. To determine this appeal "pretending" the decision of the HCSRO is not an integral part of this process would, in my view, be erroneous. A degree of respect should therefore be accorded, but to use the words of May L.J. in the *Dupont* case ([2006] C.P. Rep. 25, at para. 94), "appropriate respect will be tempered by the nature of the lower court and its decision making process."

16 For all the above reasons the appeal will proceed by way of full rehearing.

The factual background

17 The appellant is an Iranian of Kurdish ethnicity and is a Sunni Muslim. She was born in 1957 in Nahavand, Iran. When she was two years old, she moved with her parents to Sanandaj, the Kurdish area of Iran.

18 The full facts as relied upon by the appellant are comprehensively set out in her witness statement of December 21st, 2011, which was adopted by the appellant as her evidence-in-chief and from which I draw liberally.

19 The appellant left school in 1975 at the age of 18 to marry MM. In 1976, their first daughter, KaM, was born. In 1979, the appellant first started to become politically active. This was the time of the Iranian Islamic Revolution. The reason she became involved in politics at this time was because she felt vulnerable, given that the religious authorities were Shia Muslims who had little regard for Sunni Kurds. She joined the Komale Party and attended rallies and demonstrations expressing opposition to the ruling regime. She also helped the party at a practical level, shopping for top Komale activists who had been told that any shop they frequented would be burnt down.

20 The Revolutionary Guards, or Pasdarans, are a paramilitary organization which supported the Islamic regime which came to power after the revolution in 1979. They are extremist, male, and bearded Shia Muslims who wear military uniforms and exercise a regime of terror. A common practice of theirs was to take photographs of activists demonstrating and then use those photographs to threaten and intimidate activists into ceasing participation in any acts opposing the regime.

21 Two months or so after the revolution, a Pasdaran called MA called at the appellant's residence and, when she answered the door, showed her a photograph of herself with raised fist participating in a demonstration. MA told the appellant that unless she had a relationship with him, he would release the photo to the authorities and serious consequences would follow.

22 After that incident, MA harassed the appellant by telephone on an almost daily basis. The appellant confided in her husband and about six months after MA had called at the appellant's residence, they moved to a house in Hassanabad Street which was further away from the centre of Sanandaj. A short time later, in 1980, the appellant's second daughter, NM, was born. The evidence of the appellant is that MA tracked them down and the harassment worsened. The windows of her house would be pelted with stones and smashed and there would be banging on the front door. There were army boot prints in the garden and the family car was vandalized. Shortly after each of these incidences, MA would telephone, claim responsibility and advise that the harassment would continue until the appellant gave in to his demands.

23 In 1983, the appellant's third daughter, KiM, was born. The appellant explains that during all this time she was keen to become pregnant as she hoped this would act as a deterrent to the actions of MA. The harassment continued, however, even though they moved away from Hassanabad Street and even though they changed their telephone number. Despite this,

or perhaps because of it, the appellant continued with her political activities as she felt that it was only if the regime was brought down that the Pasdaran's power would fall away. The appellant never reported the harassment to the police because she believed that the Pasdarans were above the law and, in any event, the court system had collapsed. There was no respect for the rule of law and she felt that if she reported the matter things would in all probability get worse. As the years passed, the power of the regime, and by extension the Pasdarans, increased.

24 In 1986, the appellant was detained for 22 days and subjected to 30 lashings—she believes as a punishment for her political activity, although she was told by the authorities that it was because she and her children had been spotted travelling in the car in a jubilant mood. After this punishment, MA rang up the appellant and claimed responsibility. At this point the family decided to move in with the appellant's mother in the hope that this would make them less visible to MA.

25 Six months later, the appellant's husband left his job and they left Sanandaj for Tehran, believing that in Iran's largest city they would be more likely to find anonymity. They rented a house in Khodaparast Street, located between the centre and the north of Tehran. Three months later, they moved to Khormshahr Street. For the first five or six months after arriving in Tehran there was no harassment, but thereafter the appellant's car was rammed from behind whilst she was driving it and at her home she received a bunch of roses with no petals, just "nettles." There was a card accompanying them, which said that if the appellant were to carry on what she was doing she would end up like the flowers. The appellant then received a call from MA informing her that he had been behind the traffic incident and the flowers. Realizing that MA had found her, the appellant and her family moved a further three times to try and get away from him. First to Andisheh Street, where they stayed for a year, then to Tavanir Street, where they stayed for another year, and then to Shariati Street, where they lived for five months.

26 In 1991, MM told the appellant that he wished to take a second wife, MH. The appellant did not agree, and so MM divorced her and married MH. The three children went to live with their father as required by Iranian law, although, after a year or so, KiM returned to live with her mother. During this time the harassment from MA continued; he told the appellant that he had been responsible for her divorce by introducing MH to the her husband. After the divorce, the appellant left the house at Shariati Street and moved in with her mother, who had moved to Tehran; she lived there from 1991–1993. During this time, the appellant rarely left the flat as her mother took care of all household duties.

27 In 1993, when the appellant was collecting KiM from volleyball practice at a club, she met AA, a divorced man with four children of his

own. He was the manager of the club. In 1994, they married and moved in to a house at Naw Bakat Street in Tehran. MA began harassing the appellant again around this time and she confided in her husband. As a consequence, some four months later they moved to Niloofar Street in another district of Tehran to try and get away from MA. It was here that their daughter, NA, was born in 1994.

28 Approximately four months into the marriage, AA lost his job, which he had had for the preceding three years, and no explanation was given. The appellant and her husband suspected MA was responsible. A couple of days later these suspicions were confirmed when MA telephoned the appellant and claimed responsibility, threatening her that one day she and her family would be living in the street. Although AA managed to get another job, the harassment continued, with their house being broken into several times and windows being smashed. As a result, they felt compelled to move once again. They went to Shahrzad Street in the Ghelhak area, but 3–4 months later, the harassment began again, with MA demanding that the appellant become his lover. The appellant and her family lived there for approximately a year and then moved to another house in the same area. It was in this second house that their son, ABA, was born in 1998. The harassment continued and windows were pelted with stones, so that the family moved once again, this time to Jahan-e-Koodak Street where they stayed for four months. From here they moved to Taban Street, in another district called the Vanak district and here they lived for about two years. This property was located in what was arguably a more protected location, being in a gated community, notwithstanding that any time the car was parked outside on the street it would be vandalized. MA continued to ring the appellant on her mobile and insult and threaten her.

29 In 2000, AA resumed employment with the club. Around this time, he accepted a lift to the club from people in a car whom he assumed to be fans, however they put a knife to his head and AA, in an effort to escape, hurled himself out of the car. The matter was reported to the police. That evening, MA telephoned and told the appellant that if she and her husband pursued the matter with the police he would make matters worse for them. The couple decided not to progress the matter further. Some two to three months later, AA again lost his job. Two further incidents occurred around this time which caused the family to move again this time to Nobonyad Street in east Tehran. The first of these concerned AHA. The appellant was called by his nursery to say that there was a driver there to pick him up. The appellant instructed the nursery not to allow AHA to leave, as they had not made any arrangements with a driver. She contacted her husband and together they immediately went to the nursery. She was in no doubt that MA had been behind this. The second incident occurred when two bearded men on motorcycles drove up close to the car the appellant was driving and snatched her handbag which contained bank cards as well as

cash. She then received a call from MA who threatened to "burn her livelihood" unless she gave him the pin numbers for her cards, which she did. MA then emptied her bank accounts to the tune of £12,000.

30 The appellant explained that despite all these moves, they decided to stay in the area of Tehran for three reasons. First, her husband's livelihood was there; secondly, she felt MA was so powerful that he would find and harass her anywhere she went; and thirdly, although KiM was living with the appellant, her two other daughters from her first marriage lived in Tehran with their father and stayed with her at weekends.

31 The next time they moved was to Nahid Street in 2002. They stayed on that street for two years although they moved from one house to another within the same street and they changed their car. The next move was to Nobakhat Street, closer to the city centre. MA soon found them and the harassment continued along much the same lines. In 2006, they moved to Ferehteh Street, where they stayed until 2008. The harassment continued there. From there they moved to Peerooz Street in the Africa district to a flat on the fourth floor and although the harassment in relation to windows being smashed improved, their car continued to be vandalized.

32 By 2009, AA had once again become employed by the club and the couple decided to buy a property in Naseri Street in the Vanak district for three reasons. First, they were able to fund a mortgage; secondly, the constant moves had been very disruptive for the children; and thirdly, the damage caused to the rental properties had been problematic. The property they bought on Naseri Street was on the first floor in a building with six other residences and there was a garden and a communal pool which served as a buffer between the street and their house. Notwithstanding that, the appellant describes one day when NA was playing outside the house and she was approached by a bearded man who asked her if this was where AA lived. When he received an affirmative answer, he left. A short time after this incident, MA started telephoning the appellant again.

33 In 2009, the family's car was stolen whilst parked opposite to the club. AA had been about to pay some foreign coaches $200,000, which was in the car and which was stolen along with it. AA reported the matter to the police, but the following day the appellant received a telephone call from MA who claimed responsibility and said that unless the police complaint was dropped, he would cause more trouble. AA dropped the complaint, which caused him difficulties as manager of the club.

34 It was around this time that the appellant joined the Green Party. Not having been very active with the Komale in recent years, she felt she had to take a stand against the regime by supporting Mousavi in the 2009 elections. Mousavi lost and it was believed that the election was rigged. As a result, regular demonstrations took place in the streets of Tehran. The appellant would attend these demonstrations with her daughter every day

after school. During one demonstration, the appellant was beaten by masked men carrying batons. She fell into the canal and sustained injuries, but was too afraid to go to hospital in case she was identified and exposed to further danger. Afterwards, MA telephoned her and told her he had ordered the beating. Four days later, when the appellant rejoined the demonstrations, she was chased by anti-riot policemen on motorbikes and was kicked and beaten by them. She ran home, but they followed her and beat on her door until the glass behind it smashed. During this time MA continued to make threatening calls, reminding her that he had photos of her attending demonstrations and advising that she could be executed.

35 In 2010, the appellant travelled to Canada to visit KaM, who had emigrated there. She was granted a travel visa for herself, but did not apply for visas for her youngest children as they had been denied them in the past. Whilst in Canada, she was chased down the street by an Iranian man who said he knew she was a Green. She reported the matter to the police and shortly after she returned home to Iran.

36 About a week later, MA telephoned her and told her he had photos of her with NA. He told her that NA looked like a younger version of her and that he did not want her any more but wanted NA instead. He said he would arrange for the death of the whole family unless the appellant agreed to him taking NA as a wife. The appellant felt that it would be easy for MA to force NA to marry him, indeed under Iranian law if he raped her she would be forced to marry him. She believed his threats and believed him to be more determined than ever. The appellant discussed the threats with her husband and they decided that she should leave the country with their two children. AA decided not to accompany them as he had suffered a stroke some 6 months earlier, had been warned not to travel and was having weekly medical checks. It was also felt that if he stayed behind it would be less suspicious.

37 In order to finance the escape, they sold their house and then rented a flat, pending their departure. It was decided they would head for the United Kingdom as they felt that it was a safe place, governed by the rule of law. A driver took them to Baneh, near the border with Iraq, and there they were put in touch with an agent. A price was agreed and the agent arranged to drive them to Iraq and thereafter to Madrid from where they would take a plane to the United Kingdom. They were provided with Swedish passports which, it is not disputed, bore the names and photographs of others. Part of the fee was paid in advance and it was agreed there would be further payments along the way. From Iraq to Madrid the travel was by different cars and different drivers, normally at night. During the day they would rest in safe houses.

38 Eventually they arrived in Madrid airport in October 2010. Airport staff, however, prevented the appellant from boarding the flight to London. The appellant's evidence is that having been denied exit she was told by airport staff that she could take the next flight to London. Despite this reassurance, she decided not to take the next flight as she was worried the false passport would prevent travel. She did not know if she had been refused exit because of the passport, but this was an issue which caused her great concern. Therefore, upon the advice of the agent, she took a bus from Madrid to La Linea with the aim of catching a flight from Gibraltar. She crossed into Gibraltar and went to the airport. Despite having to show her passport at the frontier, the evidence of the appellant is that she was not aware she was crossing a frontier into a different country. Whilst waiting in the check-in queue, she noticed that the woman who had been travelling with her from Madrid (also Iranian) was apprehended by the authorities. The appellant panicked, went back into Spain, checked into a hotel and came back into Gibraltar the following day, Sunday, October 24th, 2010. On Monday, October 25th, 2010, she instructed lawyers to assist her in her claim for asylum. An application in writing supporting her claim was lodged on October 26th, 2010.

The statutory background

39 There are various relevant statutory provisions governing this appeal:

(a) The Immigration, Asylum and Refugee Act 1962. This deals with the control of entry and immigration of persons into Gibraltar;

(b) The Asylum Regulations 2008. These were made under the Act and transpose two EEC Directives—2003/9/EC (the reception directive) and 2004/83/EC (the qualification directive);

(c) The Asylum (Procedures) Regulations 2012, also made under the 1962 Act. These govern the appeal procedure; and

(d) The Gibraltar Constitution Order 2006. In particular, s.5 of Annex 1 ("the Constitution), which contains provisions against torture or inhuman treatment and s.7, which provides for the right to family life. Chapter II of the Charter of Fundamental Rights of the European Union contains similar rights and it is submitted applies to this appeal because it concerns legislation implementing EU law, namely the reception procedures and qualification directives (art. 51).

40 The appeal is advanced on three grounds:

(a) Refugee status pursuant to the 2008 Regulations;

(b) Subsidiary protection pursuant to the 2008 Regulations; and

(c) Breach of fundamental freedoms pursuant to the Constitution.

41 Part IV of the 2008 Regulations set out the criteria to be followed in determining refugee and subsidiary protection status.

42 Regulation 27(a) defines a refugee as—

> "a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his country of nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country."

43 Regulation 31 amplifies the reasons of persecution listed in the definition of a refugee in reg. 27. In particular, reg. 31(2)(e) states that a particular social group ("PSG") includes groups where—

> "(i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and
>
> (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society."

44 In relation to the definition of a refugee, reg. 29 defines persecution as a severe violation of basic human rights and includes, *inter alia*, a prohibition on inhuman or degrading treatment or punishment. Acts of persecution are listed at reg. 29(2) as including acts of physical and mental violence and acts of a gender specific or child specific nature. Actors of persecution are defined in reg. 30 as the perpetrators of persecution and include state actors and non-state actors where state actors are unable or unwilling to provide protection against persecution or serious harm.

45 Regulation 25 requires the applicant to provide all documentation and information at his disposal regarding the reasons why he is applying for asylum, including his age, identity and background, his nationality, any previous asylum applications, travel routes and travel documents.

46 Regulation 26(4) provides that where the elements of an applicant's statements are not supported by documentary or other evidence, those elements shall not require confirmation if—

> "(a) the applicant has made a genuine effort to substantiate his application;
>
> (b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for asylum at the earliest possible time or can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established."

47 Regulation 26(2) sets out the factors which must be taken into account when assessing a claim for asylum. Because it is incumbent upon the court to give them consideration, it is worth setting out the relevant provisions in full:

"(a) [A]ll relevant facts as they relate to the applicant's country of origin at the time of taking a decision on the application including the laws and regulations of the country of origin and the manner in which they are applied;

(b) all relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) the individual position and personal circumstances of the applicant including, in particular, whether the applicant is a minor or suffering from mental health problems;

(e) [not applicable]

(f) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship;

(g) any guidance issued by the European Commission or UNHCR including guidance issued on procedures and criteria for determining status."

48 Subsidiary protection is a fall back where a person does not qualify for asylum but nonetheless there are compelling reasons why they should not be returned to their home state. Subsidiary protection is defined in reg. 35.

The standard of proof

49 It was originally said for the respondent that the correct standard to apply was that of the balance of probabilities, certainly in relation to assessing the credibility of the appellant. In his closing submissions, counsel for the respondent conceded that it was probably fair to say that the standard is lower than a balance of probabilities.

50 For the appellant, it is said that the standard of proof in asylum cases is as defined in *R*. v. *Home Secy*. *ex p*. *Sivakumaran* (8) ([1988] A.C. at 1000) as "a reasonable degree of likelihood" that an applicant would be persecuted if he returned to his country.

51 The case of *Karanakaran* v. *Home Secy*. (4) provides invaluable guidance. In that case, Brooke, L.J. turned his attention to the case of *R*. v. *Home Secy*., *ex p*. *Kaja* (6), where the Immigration Appeal Tribunal attempted to resolve issues related to the standard of proof. He summarized their interpretation of the issue as follows ([2000] 3 All E.R. at 459):

> "The task of the decision-maker was to assess, to a reasonable degree of likelihood, whether the applicant's fear of persecution for a convention reason was well-founded. It might be that there were parts of the evidence which on any standard were to be believed or not to be believed. Of other parts, the best that might be said of them was that they were more likely than not. Of other parts it might be said that there was a doubt. The need to reach a decision on whether an appellant had made his case to a reasonable degree of likelihood arose only on the ultimate evaluation of the case, when all the evidence and the varying degrees of belief and disbelief were being assessed . . .
>
> It is clear that the majority was influenced by the notorious difficulty many asylum seekers face in 'proving' the facts on which their asylum plea is founded. In many of these cases, they said, the evidence will be the applicant's own story, supported in some instances by reports from organisations like Amnesty International. The stress generated by the nature of an asylum claim and the possible consequences of refusal, complemented by the highly formalistic atmosphere of interview or court, made the task of evaluating the evidence more complex. This did not mean that there should be a more ready acceptance of fact as established as more likely than not to have occurred. On the other hand, it created a more positive role for uncertainty. It would be a rare decision-taker who was never uncertain about some aspects of the evidence, particularly where, unlike civil litigation, evaluation was often concerned only with one version of the 'facts'."

52 As part of his analysis of the correct standard to apply, Brooke, L.J. found a number of Australian cases of great assistance, in particular that of *Minister for Immigration & Multicultural Affairs* v. *Rajalingam* (5), in which Sackville, J. summarized various principles from decided cases ([1999] FCA 719, at paras. 60–67): Brooke, L.J. summarized Sackville, J.'s conclusions ([2000] 3 All E.R. at 468):

> "(1) There may be circumstances in which a decision-maker must take into account the possibility that alleged past events occurred even though it finds that these events probably did not occur. The reason for this is that the ultimate question is whether the applicant has a real substantial basis for his fear of future persecution. The decision-maker must not foreclose reasonable speculation about the chances of the future hypothetical event occurring.
>
> (2) Although the civil standard of proof is not irrelevant to the fact-finding process, the decision-maker cannot simply apply that standard to all fact-finding. It frequently has to make its assessment on the basis of fragmented, incomplete and confused information. It has to assess the plausibility of accounts given by people who may be understandably bewildered, frightened and, perhaps, desperate, and who often do not understand either the process or the language spoken by the decision-maker/investigator. Even applicants with a genuine fear of persecution may not present as models of consistency or transparent veracity.
>
> (3) In this context, when the decision-maker is uncertain as to whether an alleged event occurred, or finds that although the probabilities are against it, the event may have occurred, it may be necessary to take into account the possibility that the event took place in deciding the ultimate question (for which see (1) above). Similarly, if the non-occurrence of an event is important to the applicant's case, the possibility that that event did not occur may need to be considered by the decision-maker even though it considers that the disputed event probably did occur.
>
> (4) Although the 'What if I am wrong?' terminology has gained currency, it is more accurate to see this requirement as simply an aspect of the obligation to apply correctly the principles for determining whether an applicant has a 'well-founded fear of being persecuted' for a convention reason.
>
> (5) There is no reason in principle to support a general rule that a decision-maker must express findings as to whether alleged past events actually occurred in a manner that makes explicit its degree of conviction or confidence that its findings were correct. (In *Guo*'s case, for instance, the High Court considered that it was enough that

the tribunal appeared to have no doubt that the probability of error was insignificant).

(6) If a fair reading of the decision-maker's reasons as a whole shows that it 'had no real doubt' that claimed events did not occur, then there is no warrant for holding that it should have considered the possibility that its findings were wrong."

53 His conclusion (*ibid*., at 469) was that—

"the approach in fact recommended by the majority of the Immigration Appeal Tribunal in *Kaja*'s case, as much more fully explained in the Australian cases whose effect I have summarised, is the approach which should be adopted at each of the stages of the assessment process with which we are concerned."

54 This view was endorsed by Sedley, L.J., who said (*ibid*., at 479):

"Like Brooke, L.J., I find the Australian cases of the greatest assistance. I would put my own view, in summary, as follows. The question whether an application for asylum is within the protection of the convention is not a head-to-head litigation issue. Testing a claim ordinarily involves no choice between two conflicting accounts but an evaluation of the intrinsic and extrinsic credibility, and ultimately the significance, of the applicant's case. It is conducted initially by a departmental officer and then, if challenged, by one or more tribunals which, though empowered by statute and bound to observe the principles of justice, are not courts of law. Their role is best regarded as an extension of the initial decision-making process: see Simon Brown, L.J. in *R.* v. *Secretary of State for the Home Department, ex p. Ravichandran*, [1996] Imm. A.R. 97 at 112. Such decision-makers, on classic principles of public law, are required to take everything material into account. Their sources of information will frequently go well beyond the testimony of the applicant and include in-country reports, expert testimony and—sometimes—specialised knowledge of their own (which must of course be disclosed). No probabilistic cut-off operates here: everything capable of having a bearing has to be given the weight, great or little, due to it. What the decision-makers ultimately make of the material is a matter for their own conscientious judgment, so long as the procedure by which they approach and entertain it is lawful and fair and provided their decision logically addresses the convention issues. Finally, and importantly, the convention issues from first to last are evaluative, not factual. The facts, so far as they can be established, are signposts on the road to a conclusion on the issues; they are not themselves conclusions. How far this process truly differs from civil or criminal litigation need not detain us now."

55 The assessment carried out in *Karanakaran* v. *Home Secy.* (4) leads me to agree with counsel for the appellant that the real question for the court is essentially whether the centrepiece of the story stands. This is determined by evaluating all the evidence, which comprises matters which are certain, others which are less certain, matters which are believed and others which are not, but it is important in these cases not to get bogged down by details which are often impossible to prove or disprove. In other words, a composite view must be taken of the story as a whole, with the assistance of such experts as the court might find helpful. With this in mind, I shall now proceed to consider the particular issues in this case.

The issues

56 Bearing in mind the factors which I must take into account pursuant to the 2008 Regulations, I propose to assess the evidence by reference to seven categories which, taken together, define the nature of the claim and enable its systematic consideration. These are the (i) evidence of Anna Enayat, (ii) evidence of Dr. Sheridan, (iii) exit from Iran, (iv) interviews and inconsistencies, (v) documentary evidence in support, (vi) refugee status, and (vii) risk of persecution upon return to Iran

The evidence of Anna Enayat

57 Immediately preceding her departure from Iran, Mrs. Enayat was, from 1971–1979, a lecturer in Economic Sociology in the University of Tehran. From 1983 she has been a Senior Associate member of St. Antony's College, Oxford University. She is an occasional commentator on political and cultural issues for the BBC World Service Persian Radio, from 1998 she has been an independent consultant on Iranian affairs, and she is an independent editor and producer of books on the Middle East. From 2001, she has provided services as an expert witness reporting in Iranian refugee cases and in this capacity has participated in numerous refugee cases. Her status as an expert witness and the nature and extent of her expertise is not challenged.

58 Mrs. Enayat's report is comprehensive, extending to almost 70 pages, and is supplemented by an addendum report consisting of 10 pages. The report sets out the history of the Islamic Revolutionary Guards from their inception in 1979 to date, gives an informative historical analysis of the political history in Iran from the time of the 1979 revolution to date, discusses the account given by the appellant, discusses whether it is consistent with the social and political situation at the time and finally draws certain conclusions.

59 It is not disputed that the Islamic Revolutionary Guards, or Pasdarans—

> "began life in 1979 as a kind of citizen's army created to defend the 1979 revolution, enforce Khomeini's concept of an Islamic state, and act as a counterweight to the regular army. Its original brief, according to an April 1979 public statement by the Revolutionary Council was:
>
> > 'Keeping order in cities and provinces, preventing instigations and conspiracies, preventing sabotages in the government and national offices, public places and embassies, preventing the penetration of opportunist and anti-revolutionary elements in the society, executing the interim government's orders and the verdicts of the Islamic Courts.'"

60 It is in addition not disputed that, aside from its conventional military function, the Pasdaran has, over the last two decades (i) retained its domestic security functions; (ii) become the single most important economic power in Iran aside from the State itself; (iii) become the primary mechanism through which Iranian power is exercised on the international stage; (iv) become a major political actor in its own right; and (v) become powerful figures in civilian state institutions who generally act with impunity. It is uncommon for citizens to dare to make a complaint against the Pasdaran, much less to pursue it. There are many examples of women being harassed by Pasdarans and other powerful figures and these women who become the subject of blackmail by powerful officials often find themselves in a helpless situation from a cultural and legal perspective. Further, it is not disputed that the World Justice Project, *Rule of Law Index* (2011) has ranked Iran last in the world for the protection of fundamental human rights and finds that Iranian law enforcement is often used to perpetrate abuses against citizens.

61 Mrs. Enayat was asked to consider the plausibility of the appellant's account.

Komale party

62 The evidence of the appellant is that she first became involved with the Komale Party in 1979 while she lived in Sanandaj, the capital of the Kurdistan Province in Iran, and that, shortly after, MA presented her with the photograph taken of her participating in demonstrations. The evidence of Mrs. Enayat was that the Komale is a socialist Kurdish party which was established clandestinely in 1969. It was active in the prologue to the 1979 revolution. In the early post-revolutionary period, Sanandaj was recognized as one of its strongholds. During this first period, demonstrations were fairly open and it was put to Mrs. Enayat that in fact any intelligent observer living in Sanandaj at the time could give a similar account of the activities of the Komale Party, which were largely in the public domain. Mrs. Enayat did not dispute this, but remarked that what was striking

about the appellant's account was that she did not exaggerate that first period. In her view, someone who was not genuinely involved with and keyed into politics at the time could well have made reports of arrests in order to bolster the story. The appellant's account, in the opinion of Mrs. Enayat, is entirely consistent with someone who had a "close observation post."

63 As Khomeini's government crushed the resistance movement in Sanandaj, by 1980 many members of the Kurdish resistance had moved to the countryside. In the opinion of Mrs. Enayat, it is not surprising that the appellant stayed in Sanandaj. Mrs. Enayat said:

> "(i) Short of abandoning her children, a married female supporter of Komale would obviously not have been in a position to go with fellow activists to the countryside. However, it is plausible that in the city she would continue to provide the party with clandestine help.
>
> (ii) If this was the case, [the appellant] was (based on her testimony) either good at concealing her activities, simply fortunate not to be arrested, or was (perversely) protected by the Guardsmen. Otherwise, pregnancies and children would not have protected her. Many young Kurdish activists (and opposition activists elsewhere in Iran) were arrested in this period simply for being in possession of an opposition leaflet. Many young married women were arrested with their children."

64 Counsel for the respondent suggested that there was a fourth possibility as to why the appellant was not arrested at this time and that was because she was in fact not involved with the Komale Party at all. Whilst Mrs. Enayat accepted that the security services would have had good intelligence of who was with Komale, she testified that it would be speculative to say that if the appellant had been with Komale she would inevitably have come to the attention of the authorities. Her view was that whilst many people were arrested, many were not and there exist many narratives from people which indicate that some were arrested and some escaped arrest.

65 Counsel for the respondent suggested that in any event, if the appellant had not come to the attention of the authorities for being involved with Komale, she would definitely have come to their attention when she received the 30 lashes. The first point Mrs. Enayat made was that the imposition of 30 lashes by the authorities for people expressing enjoyment was consistent with the regime at the time. The second point was that if the offence was recorded as a moral offence, it would not be on the same record as any political offence, but that in any event if there was an official interested in the appellant, who had engineered the punishment, she would probably not feature on the system at all.

Green movement

66 In the opinion of Mrs. Enayat, the appellant's claim that she joined the Green Movement around 2009 is consistent with the political situation at the time. She explained that during the 2009 general election campaign, no one was persecuted and a show of an open election, largely for the benefit of the international press, was encouraged. Moussavi, who had been prime minister of Iran for most of the 1980s, was one of two reformist candidates; his colours were green. It was widely believed that, notwithstanding the public show of democracy, the results of the election were fixed. As a result, there were spontaneous socio-political rebellious movements against this, which became known as the Green Movement. There were massive street demonstrations between June 13th and 20th, 2009 and, although they were largely peaceful, there were some violent incidents with some deaths and many beatings and arrests inflicted by the Basiji, *i.e*. plain clothes security forces. On June 20th, 2009, about 3 million people turned out on the streets and there was a massive security force crackdown, with violent confrontations around the city. In the six months which followed, there were sporadic demonstrations. I remind myself that, according to the appellant's account, during one such demonstration, she was beaten by masked men.

67 Mrs. Enayat tells us that some of these June 2009 demonstrations began from, or were centred on, Vanak Square. This was close to the appellant's home on Naseri Street. Mrs. Enayat refers to numerous reports of violence and that "beatings of women as well as male demonstrators on the pattern described by [the appellant] were commonly reported from the demonstrations." She quotes an article by Jon Lee Anderson from the *New Yorker*, from June 19th, 2009, which is instructive of the political climate of the time:

> "In the mass demonstrations that have taken place this week, the modus operandi of the Basijis has been brutal and predatory. They have used the same tactics as packs of African wild dogs worrying a herd of wildebeest. They choose their targets at the edges of the crowds, going for the vulnerable and unwary stragglers, and moving in as a group to reduce them with violence."

68 Referring to the incidents described by the appellant, Mrs. Enayat concludes:

> "Whether or not the incidents [the appellant] has described were in her case targeted is not a question that I can address, but it cannot be doubted that they might have taken place and the repetition of an attack 'on the margins' could well give rise to the suspicions she has voiced."

69 One of the issues raised by the respondent in terms of credibility of the appellant's story is that despite alleging that she received a substantial beating during in the 2009 demonstrations, she nevertheless did not attend hospital to seek medical attention—the implication being that in fact no beatings were received and hence there was no need for medical treatment. The appellant's evidence was that she was too afraid to go to hospital where she felt she would likely be identified, reported, and exposed to greater danger. This evidence is consistent with the evidence of Mrs. Enayat who stated:

> "It is well established that in the 2009 demonstrations security police ordered hospital staff to report injured demonstrators, interrogated and/or arrested the wounded in hospitals, and on at least one occasion actually attacked a hospital."

Photographs

70 Mrs. Enayat found that the appellant's evidence that photographs were taken of her whilst demonstrating is consistent with the testimony of ex-President Bani Sadr on the presence of Pasdaran surveillance personnel in this period. (Bani Sadr originally supported Khomeini but broke with him in 1980–1981 over civil rights issues. He fled to Paris and has since been a vociferous critic of the regime in Iran.)

71 In Mrs. Enayat's opinion, there is—

> "considerable evidence of vigorous, often aggressive, security force filming the protestors, carried out in a manner designed to intimidate them. See, for example, a series of stills showing Basij militia and plain clothes security men openly taking pictures collected by Radio Farda . . . Equally striking is a 'crowd sourcing' campaign conducted by the Revolutionary Guards' Centre for Organised Crime between June 2009 and January 2010, which invited citizens to identify stills of protestors posted on the Centre's website Gerdab, other Revolutionary Guard websites . . . and pro-Ahmaddinejad civilian sites such as Raja News . . ."

72 Speaking generally about the power of MA stemming from his position in the Pasdaran and commenting on the lengthy period of harassment allegedly inflicted on the appellant by MA, Mrs. Enayat said:

> "The long history of incidents described by [the appellant], first in Sanadaj and then in Tehran, is explicable only by reference to an IRGC [Iranian Revolutionary Guard Corps, *i.e*. the Pasdaran] officer who is part of the organization's domestic security apparatus, or close enough to that apparatus (through personal contacts, daily working relationships, etc.) to have access to its surveillance facilities. Such a figure would also have had access to the thuggish foot

soldiers who feature in some of the episodes described by [the appellant]."

Identification of MA

73 In relation to MA, there are two issues flagged as suspicious by the respondent. The first is the fact that despite determined and thorough online searches, neither the respondent—nor indeed Mrs. Enayat—could find reference to MA. In the respondent's view, this is a strong indication that in fact he is an invention. The second is that Mrs. Enayat's evidence on the subject of MA is flawed because, *ab initio*, she focused her report on the assumption that MA was a real person.

74 Taking these points in reverse order, Mrs. Enayat stated in cross-examination that "it never struck me that it was my function to decide if he existed or not, that was my frame of mind."

75 When pressed, she agreed that she had prepared her report on the basis that MA was a real person. I struggle to understand the relevance of whether or not Mrs. Enayat was convinced by the credibility of the appellant's story. As she herself has recognized, an assessment of credibility is not within her remit, but, rather, she is concerned about plausibility of the story as against social, political and historical backgrounds. It seems to me trite that if Mrs. Enayat is to assess the plausibility of the appellant's story then she must, for the purposes of that exercise, assume that the officer existed, else there would be no plausibility to assess.

76 In relation to the traceability of MA, Mrs. Enayat had this to say:

> "I have not been able—and when the solicitors raised the issue did not expect I would be able—to identify a senior member of the Revolutionary Guard by the name of [MA]. There are two reasons why such a figure might be elusive:
>
> First, there are no official lists and/or biographies of all high ranking Revolutionary Guard personnel (Sardar and above—the term Sardar is used loosely to denote any Revolutionary Guard officer, as opposed to regular army officer, above the rank of colonel, whether brigadier general, major general, *etc*.). As Ali Alfoneh, whose extensive writings on the Guards are widely respected, has remarked in relationship to his research:
>
> > 'Lack of transparency and freedom of information in the Islamic Republic, especially with regard to the IRGC, makes it difficult to research and assess promotion patterns and factionalism with the IRGC.'

> Some senior Guard commanders do have a public profile, and indeed make frequent statements to the press. Others, however, remain in relative obscurity.
>
> Secondly, there is evidence that some commanders who have been involved in intelligence work have aliases (also common among Ministry of Intelligence employees and Revolutionary Court Judges)."

77 I have no reason to doubt the accuracy of Mrs. Enayat's perception of the situation with regard to traceability of powerful prominent figures.

AA

78 Insofar as the appellant's account of her husband and his position as manager in the club is concerned, Mrs. Enayat is of the opinion that multiple web-based reports in both Persian and English confirm the appellant's account of her husband's career with the club. In her report she states:

> "According to press reports, [AA] was managing director of the club . . . He was re–appointed . . . and resigned/was dismissed . . . (it is not clear which) . . . The theft from [AA's] car . . . described by the client (statement, para. 56) was widely reported by the state media . . ."

Relocation doctrine

79 The relocation doctrine is based on the premise that an application for asylum is unlikely to meet with success if it can be established that the applicant need not have left the country to escape harm but could have instead moved to another part of the country for sanctuary.

80 Whilst the respondent accepts that the appellant and her family underwent various changes of address within Tehran, it is said that the fact that the appellant did not move a significant distance away from Tehran to avoid being pursued by MA is suggestive that in fact there was no such threat.

81 The appellant's evidence shows that when MA began his alleged harassment she lived in Sanandaj. About six months into the harassment, *circa* 1980, she moved to a house in Hassanabad Street which was further away from the centre of Sanandaj in the hope that this would put distance between her family and MA. MA discovered her new whereabouts, however, and the appellant and her family then moved to Tehran, in the hope that they could escape MA by immersing themselves in Iran's largest city. They lived in the Haftetir district, between the centre and north of Tehran. Thereafter they moved 15 times around various districts in Tehran. The appellant explains that they always stayed in Tehran because her

husband's livelihood depended on it, because her eldest children were in Tehran and because she believed in any event that "[MA] had the power to find us anywhere in Iran and it would make no difference if we were to leave Tehran." That view is supported by Mrs. Enayat whose evidence was that—

> "given that Iran is a nation state with integrated security and judicial system, it is unlikely that relocation from Tehran (population 12m. plus) would prevent a man with access to the resources of the security system from finding a woman he is pursuing . . . such a woman would not have the protection of the ordinary police or the courts enabling her, for example, to adopt a new identity."

82 In the opinion of Mrs. Enayat, even if the appellant had wanted to relocate to another part of the country, leaving her husband in Tehran was not a realistic option: "For a single woman who is deprived of the protection of her family in Iran, the prospects are so grim that breaking away to begin a new life in another area is unthinkable."

83 Considering all of the above, in my view, the fact that there should have been 16 moves in 30 years could well be indicative of attempts to escape a pursuer. Further, the fact that 15 of those moves were in Tehran as opposed to different areas around Iran does not, in my view, dent the plausibility of the appellant's story, particularly given the opinion of Mrs. Enayat and the appellant's own reasons for staying in Tehran. Further, upon the appellant's own evidence and that of Mrs. Enayat, I accept that moving away for a fresh start on her own, without the protection of her family, would not be a realistic option for her.

Threats to the appellant's daughter, NA

84 Whilst Mrs. Enayat rightly points out that the plausibility of a transfer of attention from the appellant to NA falls more in the area of expertise of Dr. Sheridan, as a country expert she made the following points:

(i) Polygamy is legal in Iran.

(ii) It is common in Iran for older men to take a younger bride. By the Civil Code, an Iranian woman—regardless of her age—must have her father's written consent for her first marriage. Mrs. Enayat agrees that a figure as powerful as MA could force the consent of AA and although NA would herself in theory need to consent, she would have little choice but to do so. In the event that she chose not to, she would be faced with two options:

> "To complain to the family court that she was being forced to marry. But by doing so she would risk trumped up charges or acts of violence against her parents, or herself without any prospect given

> the man's power of obtaining police or any other form of state protection"; or
>
> "To move away from her parent's home to a different area. But short of severing contact with them and acquiring a new identity (impossible in Iran without special permission from the courts and in light of the national ID card system), on the previous record of the man's persistence and his ability to find her mother she would not be safe."

The plausibility of NA moving away from home would also have to be considered in light of her young age, but in any event, Ms. Enayat's comments make it clear that in her opinion it would be difficult to impossible for any woman to live alone in Tehran. Moving away from her parents' home would therefore not have been a realistic option for NA.

85 Mrs. Enayat is of the opinion that "if [the appellant's] account is true, there is little doubt that had she remained in Iran her daughter would have been at risk of a forced marriage to a man of violent disposition much older than herself." Mrs. Enayat concludes that—

> "it is plausible that Iranian parents threatened with violent retribution if they do not consent to the marriage of their daughter to a figure such as the Revolutionary Guard officer described in [the appellant's] statements would conclude that the only way to protect her would be to take her out of the country"

Canada

86 The respondent submits that doubt is cast over the appellant's claim for asylum because she failed to claim asylum during her visit to Canada. In addition, it is said for the respondent that the fact that she was allowed to leave Iran on a travel visa is indicative that MA had no interest in her, and that she was able, if she so chose, to exit Iran legitimately.

87 The appellant's evidence was that at that point in her life she had never considered living outside Iran and she would certainly never consider staying in Canada without her dependent children. It is useful to remember that by this stage in her life, in 2010, the appellant, if she is to be believed, had been undergoing systematic harassment from MA for over 30 years and it is not unreasonable to suppose it must have become a way of life for her, a way of life which caused her distress and unhappiness, but which had not so far prompted her to flee her native land. I find it difficult to conceive that having suffered this harassment for 30 years she would suddenly up and leave her two youngest children in Iran and choose to stay in Canada. Having heard all the evidence, my conclusion in relation to this point is that at the time she travelled to Canada she had no intention of claiming asylum and had it not been for the catalytic development which occurred shortly after her return she would in all

probability have stayed in Iran and continued to suffer under the hand and rule of MA.

88 That catalytic development was the transfer of MA's attentions from the appellant to NA. It is in my view highly significant that the threats against NA are said to have occurred after her return from Canada. Had they occurred before her trip, the current asylum claim may have had to be viewed in an entirely different light. I accept, however, the appellant's evidence that they occurred after her return from Canada and find it to be a persuasive and convincing reason why she would choose to leave Iran at the point in time that she did, as opposed to any point in the preceding 33 years.

89 Turning briefly to the fact that MA did not prevent her leaving Iran for Canada, the opinion of Mrs. Enayat was that the political involvement of the appellant was fairly low level; it was therefore unlikely she would be the subject of an official court issued exit ban. She might well be on the watch list of the Revolutionary Guards, but whether or not they allowed her to leave the country would be a matter for conjecture. Mrs. Enayat explained she was aware of many examples of people who had been involved in political demonstrations and had nevertheless been allowed to exit Iran, and in her view it was not unusual for someone who had been politically active to be allowed to leave. In the opinion of Mrs. Enayat, the appellant was "small fish."

90 Ultimately, Mrs. Enayat concludes that the appellant's narrative is consistent with what is known of the historical context generally and to some extent specifically in Iran.

The evidence of Dr. Sheridan

91 Dr. Sheridan is a Chartered Forensic Psychologist with a PhD in stalking and harassment. She is an expert listed in the UK National Policing Improvement Agency's database, she regularly provides advice and training on stalking and harassment, for a number of years was part of the UK Association of Chief Police Officers' working group on stalking, and was the chief author of the stalking element of the Association of Chief Police Officers, *Domestic Abuse, Stalking & Honour Based Violence Risk Identification Assessment & Management Model* (2009). She has analysed thousands of cases of stalking, threatening and harassment in the last 15 years.

92 Dr. Sheridan conducted a behavioural analysis of the case material available with a view to addressing two matters in particular:

(i) Whether MA would continue to pursue the appellant over a period of 33 years without using his "power" to force her to comply with his requests with no apparent benefit to himself; and

(ii) Whether it is likely that MA would have turned his attention to NA.

93 Dr. Sheridan gave an informative descriptive account of stalking and the salient parts of her evidence in relation to stalking in general may be summarized as follows:

> (i) "Stalking may be described as 'a constellation of behaviours in which one individual inflicts on another repeated unwanted intrusions and communications' . . . Stalking is generally viewed as a form of harassment."
>
> (ii) "The account provided by [the appellant] is consistent with a subtype of stalking known as 'sadistic stalking.' The sadistic stalker is the rarest stalker subtype and his victim is an obsessive target of the offender and who's [*sic*] life is seen as quarry and prey."
>
> (iii) "The sadistic stalker derives gratification from having power over his victim and being able to demonstrate that power."
>
> (iv) "The sadistic stalker and his victim will initially have a low level acquaintance or not be known to each other prior to the commencement of the stalking. The stalker's behaviour tends to have an extremely negative orientation designed to disconcert, unnerve and ergo take power away from the victim . . . This subtype of stalker commonly broadens out targets to family and friends in a bid to isolate the victim and further enhance his control."
>
> (v) "This type of offender can be highly dangerous—in particular, with psychological violence geared to the controlling of the victim with fear, loss of privacy and the curtailment of her social world. Physical violence also occurs on occasion, especially by means seeking to undermine the victim's confidence in matters normally taken for granted."
>
> (vi) "The longest case of stalking by a sadistic offender that I have personally seen persisted for 43 years."

94 Applying those principles to the facts of this case as they were provided to her, Dr. Sheridan found the appellant's narrative entirely consistent with established patterns of stalking, she stated:

> "The description of his behaviour is particularly consistent with what is known about the sadistic stalker. After an initial request for a relationship, [MA] is said to have bombarded [the appellant] with telephone calls. This developed into vandalism, quite possibly representing a motivational shift from simple obsession to anger and revenge. The stalking is then said to have broadened out to include [the appellant's] husbands and eventually her daughters. The harassment resumed and worsened after [the appellant's] second marriage. This is consistent with the behaviour of this stalker subtype as he

> would have viewed this as a demonstration of independence (and therefore power) by [the appellant]. After all incidents—both major and minor—[MA] is said to have telephoned [the appellant] and claimed responsibility. This is certainly consistent with the behaviour of the sadistic stalker who derives satisfaction from observing his victim's increasing helplessness."

95 Counsel for the respondent put to Dr. Sheridan that MA in fact did not exist, the implication being that if he did not exist, her testimony would be of no relevance, but that in any event her testimony was of limited relevance because she had presumed from the start that the appellant's story was true and that MA had existed.

96 Whilst it is true that the question of credibility of the appellant's account is ultimately a matter for the decision-maker and not for the expert witness, there are areas where the expertise of the witness can be drawn upon to help the decision-maker assess whether the story is genuine. The issue of stalking and whether the behaviour of MA is consistent with stalking behaviour is one such area. From her extensive expertise in dealing with many thousands of stalker cases, Dr. Sheridan is in a unique position to be able to give an opinion as to whether the account put forward by the appellant of MA's behaviour and the appellant's own in response fit the recognized profile of stalker and victim. Dr. Sheridan admitted that she started from the premise that the appellant was telling the truth. This was because she was able to draw on her experience of studying between 3,500–4,000 cases a year and, as a result, from the start she could tell whether the story had a ring of truth about it. She explained that the question of whether MA existed as a stalker was the underlying question behind every single question she had to answer. Had she believed that he was a fabrication, she would not have undertaken the report. She stated that the account put forward of MA's behaviour presented the perfect case of sadistic stalking, ticking all the boxes.

97 For the respondent it is said that the reason this case was so perfect was precisely what dented its credibility because it was clearly the result of a careful internet study conducted by the appellant of Dr. Sheridan's material. The appellant was then able to apply what she had discovered on the internet to her case because she had studied psychology. Dr. Sheridan rejected the plausibility of this scenario. She explained that there was very little literature on the internet about the sadistic stalker who, she said, is the rarest type of stalker. Dr. Sheridan went on to say that whilst there were a few indicators on her sites about sadistic stalkers, these would be insufficient to make up a credible behavioural pattern. She was adamant that the detail and consistency in the appellant's story could not be fabricated. In fact, she said she had worked with world-leading famous crime writers who themselves would be unable to concoct such a case. In her view, the hallmarks of veracity were there, the hallmarks of false claims were not.

98 The respondent highlighted the fact that had MA been asking for sexual favours from the appellant from the moment his advances began and, as had he managed to break up her first marriage, he would have quite obviously have made sexual advances towards the appellant after her divorce. Dr. Sheridan disagreed and was of the opinion that MA's "restraint" fitted entirely with a stalker's aim of keeping his victim dangling from a proverbial chain. He could, if he so wished, have absolute power over the appellant but that would not present a challenge to him and would be too easy.

99 It is also said for the respondent that given that the appellant was allowed by the authorities to leave Iran to visit Canada, and given that MA could not have known whether she would return, the inference to be drawn from this is that MA in fact had no power over her and/or little interest in her. Dr. Sheridan disagreed and reiterated that this behaviour fitted perfectly with the profile of the sadistic stalker. In Dr. Sheridan's view, he knew she would return to Iran because her dependent children were there, so he was giving her a false sense of freedom and security, only to jerk the chain back at will.

100 Despite being pressed, Dr. Sheridan was adamant that in her opinion this was not a fabricated case. She did, however, state that were this a fictitious case it would be a "malingering case," *i.e*. one put forward for gain, but in her view this was not such a case. She could see no benefit and/or gain to be had by the appellant having left her family and comfortable home in Iran to come to a place where she was living on benefits in a cramped hostel with her two children. In any event, in her view, the consistency of the appellant's narrative was so credible that even if, as the respondent suggested, the economic situation in Iran was not as rosy as the appellant made out, it still would not have a negative bearing on the veracity of her case.

101 Ultimately, in the firm opinion of Dr. Sheridan, it is plausible, believable and entirely consistent with the established literature that MA should pursue and harass the appellant over a period of 33 years without using his power to force her to comply with his requests with no apparent benefit to himself.

102 In relation to NA, the opinion of Dr. Sheridan is that MA could realistically transfer his attentions to NA. In her opinion:

> "This switch would be consistent with the sadistic stalker's motives and aims for two reasons. One, he would be constantly seeking new ways with which to demonstrate his power over [the appellant] and seek to hurt her. Two, it is often the case that this type of stalker eventually becomes bored of one victim and will seek to harass another. The harassment of NA would serve both those purposes. It is at this stage that the original victim is at most risk of being killed."

Exit from Iran

103 It is not in dispute that the appellant exited Iran on a false passport, that she travelled overland from Iran to Madrid, necessarily passing through various European countries, before she finally arrived in Gibraltar. It is not in dispute that the appellant did not claim asylum in any of these countries. It is not in dispute that she tried to catch a flight from Madrid to the United Kingdom and, when she failed, did not claim asylum in Madrid. It is not in dispute that she came to Gibraltar overland from Madrid and made a failed attempt to catch a flight from Gibraltar to the United Kingdom. It is not in dispute that the original intention of the appellant was to have claimed asylum in the United Kingdom.

104 In relation to the false passport, evident from the case of *R.* v. *Uxbridge Mags. Ct.*, *ex p. Adimi* (10) that where the entry in reliance of a false passport is attributable to a *bona fide* desire to seek asylum, the use of false documentation should not be held against the asylum seeker. As the Secretary of State of the United Nations pointed out in a memorandum in 1950:

> "A refugee whose departure from his country of origin is usually a flight is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge."

105 In relation to the route taken and choice of the place where asylum was claimed, on the face of it, the appellant's route from Iran appears unnecessarily long and cumbersome. First instinct is to wonder why a claim was not made at the earliest opportunity in any of the European countries that are geographically closer to Iran. That said, I remind myself of reg. 7 of the 2012 Regulations which specifically provides that no application for asylum shall be rejected on the sole ground that it has not been made as soon as possible. The view of Brown, L.J. in *Adimi* was that ([2001] Q.B. at 678)—

> "some element of choice is indeed open to refugees as to where they may properly claim asylum. I conclude that any merely short term stopover en route to such intended sanctuary cannot forfeit the protection of the article, and that the main touchstones by which exclusion from protection should be judged are the length of stay in the intermediate country, the reasons for delaying there."

106 In addition, I remind myself that it is incumbent upon me to consider the appellant's personal circumstances (see *R. (Q)* v. *Home Secy*. (9)). The appellant explained that it had always been her intention to claim asylum in the United Kingdom because she felt that there was "a good security system" in the United Kingdom where she would be able to protect her children and where there was respect for women's rights. She

explained that with the money she obtained from selling her house she paid an agent to organize her exit from Iran and the trip to the United Kingdom; she had no idea what route they would take to get there and did not ask. She said she travelled in the back of a van with her children and there were two other people accompanying them—the driver plus another. She was told by the person in charge that if she wanted to get to her destination she should be quiet and not ask questions and so she did precisely that. When she left Iran, she left without travel documents and in fact was not given a passport until she arrived in Madrid. Her evidence was that at this point she noticed that the passport was false and she began to worry that she would not be allowed to leave the country. When she tried to board the flight in Madrid, she was told by airport staff that she was not going to be allowed on that flight but could take the next flight.

107 From the evidence before me, it appears that the length of stays in the intermediate countries were transitory and brief, and based on the authorities available there can be no detriment attached to this claim by reason of the choice of route, or failure to claim in a country closer to Iran.

108 Upon the facts, however, I am caused some concern by the appellant's failure to claim asylum in Madrid when she was refused exit by air, particularly in light of the provisions of reg. 26(4) of the 2012 Regulations. Following refusal of permission to board the flight in Madrid, it is fair to say she did not apply for asylum there and then, which might, on one interpretation, have been the earliest possible time after the disruption of the original plan. The question then is did the appellant have good reason for not doing so? There are no authorities before me which might assist in the determination of what constitutes good reason for these purposes, and therefore a common sense approach seems reasonable.

109 It is important not to fall into the trap of assessing the situation from the perspective of a person living in a Western society, enjoying the full protection of the rule of law. Neuberger, L.J. in *K* v. *Home Secy*. (3) made the point ([2006] EWCA Civ 1037, at para. 29) that "inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on." Instead, it is necessary to consider the plausibility of the appellant's actions against the backdrop of her perceived need to flee her home country for her safety and the safety of her children, and against the anxiety and fear she claims she felt throughout her journey. Upon her evidence, the appellant was frightened she would be apprehended in Madrid for having a false passport. She was worried she would be returned to Iran and her aim was to avoid this possibility at all costs. She explained she had gathered some information about London, but knew nothing about Madrid *vis-à-vis* what rights and protection she could expect to receive there, so it is perhaps not inconceivable that she would be determined to adhere to her original plan of getting to London. She explained that even when she failed to get to London via

Madrid, she was still hopeful that she could get there via some other route and her purpose for coming to Gibraltar was as a gateway to the United Kingdom. When she got to the airport in Gibraltar, upon seeing that the Iranian woman who was travelling with her was arrested, the appellant's instinctive reaction was to return to Spain and come back into Gibraltar the next day when she was calmer and begin her claim for asylum. The evidence of the appellant was that she was in a state of anxiety and confusion and her focus was on getting to London.

110 Given this scenario, it is conceivable that the appellant has applied for asylum at the earliest possible time, that being when she realized she could in fact not get to London from mainland Europe (although she returned to Spain at that point, it was—she claims—only because she was in a state of high anxiety and not thinking clearly). Alternatively, if I am wrong and the application was not made at the earliest possible time, I am of the view that given the appellant's focus on, and efforts to get to London, she has demonstrated good reason why the application was not made earlier.

Interviews and inconsistencies

111 For the respondent, it is submitted that the entire account of the appellant's exit from Iran, but in particular her account of her attempt to leave mainland Europe first via Madrid and later via Gibraltar, do not ring true and that that is evidenced by inconsistencies between what the appellant said in court and what she said at the screening interview ("SI") and the asylum interview ("AI").

112 During cross-examination, the appellant said that the lady at the airport check-in desk told her she could not board her scheduled flight to London, but could take the next flight at 3 o'clock. The appellant stated in answer to questions that the lady at the check-in desk had not commented on the validity of her passport, but that it was she herself who was worried that because it was false she would not be allowed to take the next flight and so she decided not to try. She was adamant that the reason she did not take the next flight out from Madrid was because of the passport. She was reminded that at the SI she had answered as follows:

> "(i) *Q*: Obviously she did not go to United Kingdom. She missed the flight, why did she miss the flight?
>
> *A*: Since I noticed the passport hand [*sic*] a problem so she knew she might have a problem to go to United Kingdom with it.
>
> (ii) *Q*: But the problem with the passport was the very first minute she knew it was false in Madrid?

A: She said since the lady in the airport told her you can take the next flight around 3 o'clock she thought it would not be a big problem she can still fly with the passport."

113 The respondent submits that what the appellant said at interview was that she didn't think there would be a problem flying on the passport, but in court she said she was convinced that the passport would prevent travel. The appellant explained that the "sentences are different but the issue is the same, the lady said I could take the next flight."

114 Aside from the predictable inaccuracies often integral in translations, it seems to me that when trying to determine precise words used, part of the problem in this case is that the interrogator posed the questions to the appellant in the third person. Thus, in the question, "She knew it was false in Madrid," "she" could foreseeably be the lady at the airport or it could be the appellant. Furthermore, we do not know how the "she" in that question was translated. The translator similarly translates some of the appellant's answers in the third person: "she thought it would not be a big problem," again, "she" could be the lady at the airport or it could be the appellant. The situation is further compounded because in some of the answers, in fact, sometimes even in the same sentence (as at (i) above), the translator switches from the first person to the third person. All this adds considerable confusion as to who thought what when and makes it undesirable to place rigid reliance on specific words and phrases. By way of general guidance for future cases involving interviews with translators, both the interviewer and the translator ought to make every effort to avoid use of the third person.

115 In any event, in my view, whether the appellant did not board the flight in Madrid because she was worried about the false passport, or because the lady at the desk identified that as a problem, is of little material relevance—first, because I do not believe that any discrepancy in the accounts was an intentional effort to mislead, and secondly, because it does not change the fact that the appellant did not exit Madrid as planned due to the false passport.

116 I take the view that this was all part of the same asylum-motivated journey (Iran to London) which was planned by the agent and which maintained a similar momentum from exit in Iran to the claim for asylum in Gibraltar when London was no longer an attainable target. I do not ignore the fact that the account the appellant gave at the SI may have differed a little from the account she gives now, but as the appellant explained, at the SI she was not in a good position emotionally and psychologically to answer questions. Over those few days she says she was under much stress and tension because she did not know what would happen to her.

117 The respondent has highlighted other inconsistencies between what was said at interview and what was said in court, as well as other issues attaching to the credibility of the appellant generally, which I will deal with in turn.

(i) ***Political party/involvement***

118 For the respondent, it is said that at the SI the appellant made no mention of the fact that she was a member of the Komale Party and this is an issue which goes to the very core of the credibility of her story. At the SI, the appellant was asked:

> "*Q*: Does she belong to any political party?
>
> *A*: She said last year when the demonstration has started she was within a group but it's not totally a political group it where all the people they were involved in it against the government but not specifically a political group. She said there was a part that came from her daughter's school."

The evidence-in-chief of the appellant as seen from her witness statement dated December 21st, 2011 was that she joined the Komale Party in 1979. Around 1986 the family moved from Sanandaj to Tehran and she was "generally less active in Tehran until my support of the Green party much later on."

119 For the appellant it is said that it is of no consequence that at the stage of the SI she did not mention membership of the Komale Party because her involvement with the Komale had effectively ended many years before, so it was not unreasonable to expect that it would not be foremost in her mind. What was fresh in her mind was the Green Movement because she had been more recently involved with the Green Movement and in her mind the Green Movement was not a political party.

120 In cross-examination, the appellant confirmed she was a member of the Komale Party, but reiterated that she had been telling the truth during the SI. She explained that her answer to the question whether she belonged to a political party was referring to the Green Movement and she was not part of any political party within the Green Movement.

121 That the Green Party was not a political party as such was confirmed by Mrs. Enayat who described it as a "spontaneous socio-political movement which encompassed people with various beliefs, outlooks and contacts whose overwhelming demand was for democracy and civil rights."

122 Although on the one hand one might be forgiven for thinking it perhaps a little surprising that the appellant should have made no reference to her membership of the Komale Party at the SI, her explanation for

not doing so is not devoid of merit and in any event she makes reference to it in her AI. There she states that before the Green Party she was she was a member of the Komale Party in Kurdistan. I accept the appellant's explanation as to why she made no mention of membership of the Komale at the SI and in the circumstances I find such a failure places no dent on her credibility.

(ii) ***Husband's failure to leave Iran with the appellant***

123 It is not in dispute that AA stayed behind in Iran. The appellant first explained why during her SI. When asked why her husband had not travelled with her from Iran, she stated he had stayed behind to protect the children, especially her daughter. In cross-examination she disputed the accuracy of this answer saying it was wrong because if she had left with her children, how could she say that he had stayed to protect her children. At the SI, the next question was a request that she explain what she meant by protecting the children. Her answer was long and somewhat diffuse. She explained she had been participating in demonstrations against Khomeini, that a government guard took a photo of her, that she was threatened that unless she had a relationship with the guard she would be denounced, that she kept receiving calls and that she kept moving house. Despite the length of her answer she failed even to mention her husband, let alone explain why he had to stay back to protect the children. She was asked again:

> "*Q*: Why didn't the husband come with her? Isn't he at risk? It's all one family.
>
> *A*: She said I am still under threaten [*sic*] especially he wanted my daughter that is why I needed to escape. She said because was under threaten [*sic*] so suddenly they came to this conclusion her and her husband that she need to escape to protect her daughter so during the night she left to Iraq."

Once again there is no explanation as to why AA stayed in Iran.

124 At the AI she was asked why her husband had not travelled with her. This is what she said: "My husband after all these serious threats and loss of job, he had a stroke and it wasn't even clear how we were going to come outside Iran. He can't be too far from a doctor."

125 In her witness statement which she adopted as evidence-in-chief she said:

> "We decided that I should leave Iran with AHA and NA but that AA should stay behind as he had suffered a stroke about 6 months before, was therefore not well enough to travel, needed to have weekly medical checks and had been advised that he could die if he

travelled. Also we hoped that his staying behind meant that fewer suspicions would be raised, at least initially."

126 In cross-examination, the appellant maintained that there were two reasons why AA stayed behind, one was not to arouse suspicions and the other was because he had suffered a stroke. She said that the most important reason why he didn't travel was because he was ill. Although she was adamant that at the SI she had told the interviewer that her husband had had a stroke and that "whoever was recording the interview didn't put it in," she later conceded in re-examination that that perhaps she was thinking of the AI with reference to the mention of the stroke.

127 For the appellant it is said that all this was not a question of inconsistency, but rather of the appellant developing her account over time as is to be expected.

128 When asked in court about the effect of the stroke upon her husband, the appellant said it was a very shattering thing and whilst it didn't affect him physically on his body, he did have a problem with memory and speech, *i.e*. a stutter. She was then referred to an article in the Persian media. It was suggested to her that the views of AA expressed in that article were logical and "switched on" comments. The appellant replied that that was a written interview, where a journalist asked questions and could then complete the answers, so it would be impossible to detect a stutter or difficulties with his memory. She made the point that he had not suffered a total memory loss which would have made him totally incapacitated.

129 It appears from the above analysis that at the SI the reason given by the appellant for AA not travelling was to protect the children. At the AI, the reason given was that he had had a stroke. In her witness statement, the reason given was the stroke and the need to stay behind so that suspicions should not be aroused. In cross-examination, these two latter reasons were confirmed. These inconsistencies cannot be ignored and must be taken account of in the assessment of the appellant's credibility.

(iii) ***Arrival/departure in Gibraltar***

130 The evidence of the appellant is that she failed to appreciate that Gibraltar was a different country from Spain, or that there was a land frontier between Gibraltar and Spain, this despite having had to show her passport upon entry to Gibraltar. She thought it was the start of the airport. She said she had been out of Iran three times—once to Turkey, once to Dubai and once to Canada, but she had never seen a border like this one where you walk from one street to another and you are in a different country. She only realized Gibraltar was not Spain when she crossed over for the second time.

131 For the appellant, it is said that it was perfectly plausible that "the appellant (especially in her state) would have not thought twice about having to show her passport a few minutes before arriving at the airport terminal which is located so close to the border." For the respondent it is said that it is simply not credible that an educated woman who had travelled out of her country of origin three times in the past would not realize that she was crossing a land frontier, especially a frontier such as the Gibraltar–Spain frontier which involves showing a passport.

132 Whilst both submissions have some merit, I do have some difficulty believing that an educated person like the appellant, who had been exposed to international travel, would not have realized she was crossing a land frontier.

Documentary evidence in support

133 I now turn to consider what documentary evidence the appellant has produced in support of her statements and her claim. She has produced:

(i) Her birth certificate, which bears her photograph on the face of it.

(ii) The birth certificate of her daughter, NA, which bears the names of NA's parents, the appellant and AA.

(iii) Some family photographs, showing herself her husband and her children, amongst them NA and AHA.

(iv) A photograph of some men, amongst them the man she alleges to be her husband.

134 From the documentary evidence before me, I conclude that the appellant is indeed who she says she is, that her daughter is NA, and that her husband is AA. Although I have no birth certificate in support, from the circumstantial evidence, I also accept that AHA is her son. The remaining elements of the appellant's claim are not supported by documentary evidence. Bearing in mind the entirety of the evidence before me, and considering this as against the provisions of regs. 26(1)–(4), where I have not done so already, I now turn to consider whether and to what extent those provisions are met.

135 I do not ignore the fact that the appellant has provided no documentary evidence in support of her political activity within, or membership of, either the Komale Party or the Green Movement and that most of the evidence she relies upon in this respect is widely available in the public domain. Indeed, had she been able to provide such documentary evidence, my task in respect of assessing the credibility of that part of her story and her political involvement would have been made considerably easier. In this regard, however, the comments of Mrs. Enayat are relevant, where she said that—

> "those who were members or supporters of Komale in the early 1980s would be unable to provide 'proof' of their involvement except by their own testimony, and perhaps in a few cases corroborating testimony by a former colleague or family member resident abroad. Even if Komale issued membership papers/cards (unlikely), as the political situation became even more dangerous in the early 1980s it would have been foolhardy to retain them . . . The same goes for the 2009 demonstrations, which were not organized by structured political parties with regular members. The only kind of 'proof' [the appellant] could offer beyond her own account would be photographs or the written testimony of friends/colleagues. Even if [the appellant] and her daughter took pictures of one another at the demonstrations, they would have been at risk if they retained them."

In light of Mrs. Enayat's opinion, it is perhaps not surprising that there is no documentary evidence in support of the appellant's political involvement.

136 It seems to me that caution is required before dismissing a part of the claim as unbelievable largely on the grounds that there is no documentation in support and that the information relied upon is easily accessible to the general public. Non-clandestine activities of political parties are bound to be public to a greater or lesser extent and, in my view, the lack of documentation showing membership of such a party does not necessarily diminish the credibility of the story, rather, presence of documentation would fortify the story. In any event, the legislation is clear: where statements are not supported by documentary evidence, they shall not require confirmation if "the statements are coherent and plausible and do not run counter to available and specific and general information relevant to the applicant's case." In my view, it is of crucial importance that the evidence, documentary and/or otherwise, has a serious and sustainable connection in terms of plausibility to the appellant's account and to what was happening in the country at the relevant time.

137 The *Handbook on Procedure & Criteria for Determining Refugee Status under the 1951 Convention & the 1967 Protocol relating to the Status of Refugees* states (at paras. 196–197):

> "It is a general legal principle that the burden of proof lies on the person submitting a claim. Often, however, an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule . . . The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself. Allowance for such possible lack of evidence does not, however, mean that unsupported

statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant."

138 I am of the view that the appellant has made a genuine effort to substantiate her application. She has given cogent evidence; she has engaged two expert witnesses, both leaders in their field, who have proved helpful to this court; and although the documentation she has provided is somewhat scant, it is indicative of an effort to support this application and does indeed support parts of it. The reason given for not providing further documentation, or in any other way submitting other relevant elements in support of her application, is that the decision to leave Iran was taken in haste, under the new and immediate threat presented by MA, and, against this background it was felt that the gathering of further documentation would alert the authorities.

139 Upon the expert evidence of Mrs. Enayat and Dr. Sheridan, and for the reasons given, I find that the appellant's statements are coherent, plausible and consistent with the relevant available specific and general information. Thus, the question lies not with plausibility, which in my view has been conclusively established, but with credibility. The provisions of reg. 26(4)(e) refer to whether the "general credibility" of the appellant has been established. By its terms, the regulation attaches a degree of generality to the assessment of credibility. It appears to envisage not a specific dissection of each element of the appellant's evidence, but rather an overview of whether that evidence bears the stamp of believability. This is consistent with the "reasonable degree of likelihood" approach adopted in *Karanakaran* v. *Home Secy*. (4). An assessment of evidence in asylum cases should not, in my view, be approached from a nit-picking perspective where every point, minor and major, need be conclusively established. Given the nature of asylum cases such an approach would be likely to condemn them all to certain failure.

140 Whilst I am cognizant that the court should not be eager to accept factual assertions without more, I am of the view, in light of the authorities discussed, that the court can accept the centrepiece of the story as credible whilst at the same time have some doubt over certain aspects of the evidence. This is precisely the case in this matter. There are aspects of this case which have troubled me, amongst them:

(i) The long-winded route out of Iran;

(ii) The failure of the appellant's husband to leave the country with his wife and children, and specifically the inconsistencies previously discussed in relation to the reason why;

(iii) The lack of detail provided in relation to why the appellant was not allowed to board the flight in Madrid; and

(iv) The appellant's assertion that she did not realize that Gibraltar was a country separate to Spain, despite crossing the frontier and showing her passport.

When I consider these within the framework of the appellant's evidence in the round, however, I find that my focal point is drawn to the centrepiece of the story which I found credible. The appellant struck me as a truthful witness and her evidence in general was convincing. This, coupled with the fact that every aspect of her account was consistent with the available socio-political country information supplied by Mrs. Enayat, and with the behaviour and nature of a stalker as described by Dr. Sheridan, leads me to conclude that the general credibility of the appellant has been established. The *UN Handbook* advises (at para. 203) that even—

> "after the applicant has made a genuine effort to substantiate his story there may still be a lack of evidence for some of his statements . . . It is therefore frequently necessary to give the applicant the benefit of the doubt."

Refugee status

141 I remind myself of the provisions of regs. 27 and 31. Clearly, to qualify for asylum, a person not only needs to have a fear of persecution for one of the stated reasons but must also establish that the fear is well-founded and that they are unable or unwilling because of that fear to avail themselves of the protection of their country.

142 The first issue to consider is whether the acts complained of by the appellant amount to persecution. I remind myself that persecution is defined in reg. 29 as including acts of physical or mental violence, and prosecution or punishment which is disproportionate or discriminatory. The *UN Handbook* makes the point that there is no universally accepted definition of persecution and that aside from a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group, other serious violations of human rights would also constitute persecution. Whether prejudicial actions or threats would amount to persecution, however, will depend upon the particular circumstances of each case.

143 I remind myself that it is said for the appellant that she has been subject to persecution during the time she lived in Iran. MA, a Pasdaran with the full force of the power and authority his position endowed upon him, continually harassed and hounded her over a period of approximately 33 years. In 1986, she was detained for 22 days and subjected to 30 lashings. If true, all this in my view would amount to persecution and/or serious harm. In addition, if they are genuine, an assessment of the appellant's personal circumstances as discussed herein, and the acts to

which she has been or could be exposed to by MA, would in my view amount to persecution or serious harm.

144 The next issue to consider is whether the fear of persecution is well-founded. In the *UN Handbook* (at para. 53), the view is expressed that—

> "an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on 'cumulative grounds.'"

And (*op. cit.*, at para. 201):

> "Very frequently the fact-finding process will not be complete until a wide range of circumstances has been ascertained. Taking isolated incidents out of context may be misleading. The cumulative effect of the applicant's experience must be taken into account. Where no single incident stands out above the others, sometimes a small incident may be 'the last straw'; and although no single incident may be sufficient, all the incidents related by the applicant taken together, could make his fear 'well-founded' . . ."

145 Whilst I would not be inclined to describe the threat against NA as a "small incident," it was nevertheless, in my view, the "last straw" which, taken together with the cumulative effect of the type of harassment described by the appellant over a period of 33 years, not only amounts to persecution but would in all probability give rise to a well-founded fear of persecution.

146 The next matter to consider is whether the appellant's fear falls within the reasons of persecution listed in the regulations. The appellant's fear of persecution stems from her gender and her membership of a particular social group. I am in no doubt that the appellant is a member of a particular social group. In *Islam* v. *Home Secy.* (2), the House of Lords held ([1999] 2 A.C. at 644) that "women in Pakistan" or "women in a society that discriminates against women" constituted a particular social group. It is evident from the evidence before me that Iran is a society which discriminates against women. The UK Border Agency's *Operational Guidance Note on Iran*, 6th ed., at 3.11.2 (2011) states:

> "The constitution nominally provides women with equal protection under the law and all human, political, economic, social and cultural rights in conformity with Islam . . . However provision in the Islamic civil and penal codes, particularly sections dealing with family,

> property and personal status, legalise the subordination of women, treating them as second-class citizens with unequal rights . . . Many articles in the Civil Code discriminate in the areas of marriage, divorce, nationality and custody of children. Under the Penal Code, a woman's testimony is worth half that of a man's, women receive half as much compensation for injury or death, and girls face prosecution as adults at a much younger age than boys."

147 This view is endorsed by Mrs. Enayat who was of the view that—

> "the mindset of the Iranian judiciary is notoriously patriarchal and the courts fall far short of protecting women from public and private violence, particularly sexual violence . . . few women would venture to lay a complaint of sexual harassment against a powerful official for fear not only of public disgrace but also of further victimisation at the hands of their persecutor and of the courts."

148 In assessing whether the appellant has been unable or unwilling to seek protection from her country, the *Operational Guidance Note on Iran* advises that account should be taken of whether the appellant has actually sought the protection of the State authorities and if not why not. In this case the appellant has not, evidently because she felt that given her gender, and given the status of the perpetrator as a powerful Revolutionary Guard, any protection the state might purport to offer would not only be ineffective but most likely expose her to further and greater harm.

149 Bearing all the evidence in mind I am of the view that the appellant falls within the definition of a refugee.

Risk of persecution upon return to Iran

150 For the appellant, it is stated that there is a real and significant risk to their well-being and safety should she and her children be returned to Iran, not only because of their illegal exit but also because of her vulnerable position (and that of her daughter) due the threats she received while she lived in Iran. For the respondent it is said that, of itself, illegal exit would not expose the appellant to any significant risk upon return and that, given the evidence of Mrs. Enayat that the appellant was a low ranking political player, she would in reality face little or no risk of harm upon return to Iran.

151 Dr. Sheridan was not asked, and has not addressed, the issue as to how likely it would be that MA would resume his harassment of the appellant and her daughter should they return to Iran after an absence of approximately four years. From the comprehensive evidence before me, on the nature of MA's stalking, I am able to draw the inference that if he were still alive and in his post as a Revolutionary Guard, he would, in all

probability, continue with his campaign of harassment, which of itself would put the appellant and her daughter at risk of harm.

152 In relation to the issue of risk, Mrs. Enayat deals at some length with the procedure and regulations for the issue of passports and other travel documents to Iranian citizens resident abroad. I do not propose to rehearse her evidence, save to say that I accept her opinion that the appellant would not be able to apply for an Iranian passport because she lacks a valid residence permit in the United Kingdom and would therefore have no option but to apply for an Emergency Travel Document ("ETD"). Return on an ETD would attract lengthy interrogation at the airport and "a likely security force investigation into her background." In addition, an ETD application would involve submission of personal details, proof of Iranian nationality, proof of manner of exit from Iran as well as submission of documents relating to the asylum application or its rejection, or a deportation order.

153 In the opinion of Mrs. Enayat, and based on information accumulated since mid-2009, "the risk on return arising from discovery of an association with the election protests or any other form of political activity critical of the state is now enhanced." This view is substantiated by the comments of an unnamed Iranian judge, interviewed by the *L'Organisation Suisse d'Aide aux Refugies*, who is quoted as saying that "if the person was either politically active in Iran before leaving or has been active abroad, they must be tried and receive a punishment appropriate to their activities."

154 Mrs. Enayat states:

> "The enhanced risk is underlined by two further cases cited in a detailed study of Iranian torture victims after 2009, published in March 2013 by the highly respected NGO, *Freedom from Torture* (Medical Foundation for the Care of the Victims of Torture). At p.15 of its report which is based on a sample of 50 cases, *Freedom from Torture* writes:
>
> > 'None of the cases in the sample [of 50] had previously applied for asylum abroad although two had (separately) left the country with the intention of doing so, but returned or were removed to Iran en route [from the United Kingdom] to a third country having been discovered to be travelling on false documents. Both cases were detained and tortured on return to Iran and among other things were interrogated about their reasons for seeking to travel abroad and links with groups in the United Kingdom and elsewhere. Both were also accused of having links with "foreigners" and "spies"'."

155 Mrs. Enayat has gone to some length in identifying individual case histories which, viewed collectively, would seem to suggest that a real risk attaches to returning individuals who have exited illegally and who can be associated with some involvement in opposition to the political regime in Iran. Certainly from the evidence of Mrs. Enayat, lengthy interrogations, detention and even torture appears not to be restricted to those individuals who can be labelled with a high degree of political involvement, but extends also to low key opposers of the regime. Mrs. Enayat states that the information suggests that—

> "whether or not the authorities are already in possession of information suggesting a political profile, if [the appellant] is returned in current circumstances there will be a high interest in discovering whether she has been politically active in Iran, and the nature of her activities and contacts while she was abroad."

156 I accept that illegal exit of itself would not rate as a serious enough risk, but the case of *SB* v. *Home Secy.* (11) is authority for the proposition that if the person were to face other difficulties with the authorities, it could be a factor adding to risk. Mrs. Enayat makes the point that whilst illegal exit by itself may draw relatively minor punishment, that, taken together with temporary documentation, enforced removal and some connection with political opposition to the regime will in all probability draw attention to a returnee and trigger an investigation and probably a court hearing. In my view, even if the respondent were right, and objectively speaking the appellant was a low key political player, I cannot ignore that, by virtue of his obsession with her and his powerful position within the Revolutionary Guard, MA would have the power and ability to, and could foreseeably, elevate her political profile to any level he chose, thereby establishing a degree of political involvement which would attract state retribution upon return.

157 The latest country update issued by the Foreign & Commonwealth Office on Iran in December 2013, states:

> "There was no substantive improvement in the human rights situation in Iran between October and December 2013. The Iranian government continued to make positive public statements on civil rights issues, but there has been no sign of institutional change to improve the human rights situation, including for minority religious and ethnic groups, journalists and human rights defenders, prisoners and women."

In light of this, there is no comfort to be drawn from the possibility that the state approach to returnees in the situation of the appellant might have softened. I conclude that there is a reasonable degree of likelihood that the appellant's fear of persecution is well-founded and that indeed there is a

reasonable degree of likelihood that should she return to Iran she would be exposed to persecution.

158 I am of the view that this is a challenging case in so far as the determination of credibility is concerned. The HCSRO evidently gave very careful consideration to the issues and he provided the appellant with the fullest reasons for refusal, which no doubt greatly assisted in the formulation of this appeal, and indeed have been of assistance to this court. However, I reach a different conclusion and for the reasons aforesaid the appellant and her dependent children meet the criteria for refugee status and qualify for a grant of asylum.

159 On the basis of the assurance given by the Attorney that the HCSRO will give great weight to my determination, it is unnecessary for me to consider the further submissions raised in relation to subsidiary protection or breach of human rights pursuant to ss. 5 and/or 7 of the Constitution. In the circumstances, I quash the decision of the HCSRO and remit the matter to him with a direction that he reconsider his decision.

Order accordingly.