Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09778/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 February 2021	**On 24 February 2021**
Extempore decision	

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

RMQ
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A S Islam, Solicitor, Fountain Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

This is an appeal against a decision of First-tier Tribunal Judge Thapar promulgated on 5 February 2020. The judge dismissed the appellant's appeal against a decision of the Secretary of State dated 27 September 2019 to refuse his asylum and humanitarian protection claim.

Factual Background

The appellant is a Kurdish citizen of Iran born in March 1994. He arrived in this country on 16 December 2015, having left Iran in October 2015. It appears he sought to make a claim for asylum at that stage. Having travelled through a number of EU Member States *en route* to this country, the Secretary of State initially sought to return the appellant to Bulgaria, where he had claimed asylum, in order for his claim to be considered substantively there. That did not take place for reasons which are not relevant to these proceedings. The appellant had claimed asylum here in December 2015, but it was not refused until 27 September 2019.

The appellant's case has evolved over time. At his screening interview on 17 December 2015, the basis of his claim was that he had encountered "a problem" with the family of a girl with whom he was in a relationship. By the time the appellant was interviewed substantively, on two separate occasions, his claim had evolved. The first interview took place on 19 June 2019. In that interview, he said that he feared the government of Iran. That was as a result of both the relationship that he had conducted with the girl he mentioned earlier, and also his illegal exit from the country. Both he and his girlfriend were at risk, he said. He claimed in that interview to have been shot by an uncle of the girl in 2012. That had catalysed events leading to his departure, he claimed. He also said that his parents had been killed by the Iranian authorities. That interview had to be end before there was time to finish, and it resumed on 12 July 2019.

In the 12 July 2019 interview, the appellant said that the girl with whom he had been in a relationship was now dead. Whereas he contended in his initial interview that he commenced the relationship with this girl in 2011 and it had lasted for six months, in the second interview, he said that he commenced the relationship in 2012 and that it had continued up until his departure in 2015.

The overall thrust of the appellant's reformulated claim was that he faced a risk of being persecuted by the government, having left the country illegally, pursued a relationship with a girl outside marriage and having had to endure his parents being murdered or killed by the regime.

The decision of the First-tier Tribunal

At [12], the judge considered that the appellant's failure to claim asylum in the safe countries of his transit prior to his arrival in this country harmed his credibility. Specifically, he had travelled through Germany and France and not made a claim for asylum there, and although he had made a claim in Bulgaria he did not remain in that country to wait for it to be determined. Those were factors which affected the appellant's credibility.

At [13], the judge said that the appellant's account of why his parents were killed had been "vague". He could provide no reason why the authorities would have targeted either his parents, or would subsequently target him upon his return. The appellant had confirmed in his evidence that his parents were not politically active, and that he had not been politically active either. Consequently, found the judge, the appellant would not be at risk in Iran due to

his political opinion. It was, therefore, possible for the appellant to return to his parents in Iran, or to the friends who must have financed his journey to this country.

In relation to the appellant's claim that he had been involved in a relationship with a girl, the judge did not find that aspect of the appellant's evidence to be credible, either. She outlined the discrepancies between the different accounts the appellant had provided across the two substantive asylum interviews, which I have outlined above. The appellant's account was that he had been shot by the girl's uncle in 2012, yet considered it appropriate and safe to remain in the country until his eventual departure in 2015.

Further, as the judge noted at [15], the appellant was unable to state how his girlfriend died, or provide any other details regarding her death. This led to the judge's operative reasoning in these terms:

> "I find the appellant's account to be inconsistent and vague, he provided different accounts within his interviews and statement regarding his relationship. I do not accept as credible that the appellant was in a relationship, or that the relationship was opposed by his girlfriend's family. As a result of, I do not find that the appellant is at risk from his girlfriend's family."

The judge applied the relevant country guidance authorities through the lens of those findings of fact. At [17], she set out her consideration of SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC). That case held that an Iranian male who sought to return to Iran who does not possess a passport would be returnable on a *laissez passer*, which could be obtained from the Iranian Embassy. Further, where such an individual was not the subject of any adverse interest previously on the part of the Iranian state, there would be no risk of that person being persecuted or otherwise subject to Article 3 of the European Convention on Human Rights ("the ECHR") mistreatment upon their return.

The judge then addressed HB (Kurds) Iran CG [2018] UKUT 430 (IAC). The judge noted the following from the headnote:

> "The mere fact of being of Kurdish ethnicity with or without a valid passport, and even combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment."

The judge therefore dismissed the asylum element of the appeal.

In relation to Article 8 ECHR, the judge found at [18] that the appellant had not established a private life in the United Kingdom sufficient to engage Article 8 of the ECHR. She did not accept that the appellant was without any family or friends in Iran; he would therefore not face any significant obstacles to his integration if he were to return.

At [27] the judge considered that the requirements of paragraph 276ADE(1)(vi) were not met. That was because the appellant's case concerning his claimed

difficulties to integrate in Iran stood or fell with his asylum narrative. As a result, found the judge, there would not be any very significant obstacles to the appellant's integration in Iran and his refusal would not breach Article 8.

Grounds of Appeal and submissions

There were two grounds of appeal upon which permission was granted by First-tier Tribunal Judge Haria.

Ground 1 contends that the judge failed to make adequate findings as to why the appellant's human rights claim under paragraph 276ADE(1)(vi) and Article 8 of the ECHR was not made out.

Ground 2 contends that there were irrational material findings of fact and inadequate reasoning.

Developing the grounds of appeal, Mr Islam focussed first on ground 2, as it was common ground at the hearing before me that much of the judge's Article 8 analysis stood or fell with her analysis of the appellant's asylum claim, as she identified at [27]. Mr Islam submitted that the judge's overall findings failed to consider key aspects of the evidence; the appellant had given a consistent account of the relationship with his girlfriend across the two asylum interviews. The judge's concerns that the appellant had given a "vague" account in relation to certain aspects of his case was not a sufficient reason for rejecting his claim. In addition, Mr Islam relied on a further point set out in a skeleton argument submitted to the Tribunal dated 19 August 2020, in which the judge is said to have failed to apply the so-called "hair trigger" guidance given by this Tribunal in HB (Iran). That is a submission based on [10] of the headnote of HB (Iran). Recalling that this appellant is Kurdish, the headnote provides:

> "The Iranian authorities demonstrate what could be described as a 'hair trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme."

In relation to ground 1, Article 8 Mr Islam contends that there was an inadequate analysis that was conducted and that the judge failed to address Article 8 outside the Rule in the manner that was incumbent upon her.

Discussion

Dealing with ground 2 first, it is necessary to recall that challenges to findings of fact reached by the First-tier Tribunal must necessarily be approached with a degree of caution by an appellate court or tribunal. An appeal lies only to the Upper Tribunal on the basis of an error of law and not on a disagreement of fact. Certain findings of fact are capable of being infected by an error of law as was notably summarised in R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982 at [9]. There are many judgments of the higher courts which underline the distinction between errors of fact and errors of law. A now oft-quoted judgment of Lord Justice Lewison in Fage UK Ltd v

Chobani UK Ltd [2014] EWCA Civ 5 at [114] speaks in the following terms about the restraint which it is necessary for Tribunals in the position of the Upper Tribunal to exercise when engaging with findings of fact reached by a trial judge. His Lordship said as follows:

> "Appellate Courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact but also to the evaluation of those facts and to inferences to be drawn from them."

His Lordship then proceeded to give the reasons for that approach, including:

> "(i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
>
> (ii) The trial is not a dress rehearsal. It is the first and last night of the show.
>
> …
>
> (iv) In making his decisions the trial judge will have regard to the whole sea of evidence presented to him, whereas an Appellate Court will only be island hopping."

Although the judgment in Fage UK Ltd v Chobani UK Ltd is now some seven years old, it continues to represent a useful summary of the law on the approach to findings of fact and the deference owed by Appellate Tribunals and Courts to first instance judges. See also the Supreme Court in Perry v Raleys Solicitors [2019] UKSC 5 at [52], which summarised the principles on the above "constraints" on Appellate Courts and Tribunals in these terms. Lady Hale said the principles:

> "may be summarised as requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached."

Most recently see for example the Court of Appeal in Lowe v The Secretary of State for the Home Department [2021] EWCA Civ 62.

Against that background, I approach the submissions of Mr Islam concerning the judge's findings of fact.

Although the judge gave brief reasons, in my judgment she gave reasons that were open to her on the evidence for why she rejected the appellant's asylum claim. She provided sufficient reasons for explaining the approach she took. It cannot be said that the judge's reasoning was not open to any reasonable judge. On the contrary, and having read the appellant's asylum interviews in detail and with anxious scrutiny for myself, I agree with the judge that the appellant had given a vague account concerning the death of his parents.

There had been material changes from one interview to the next in relation to, for example, the claimed death of the girlfriend. The judge gave sufficient reasons concerning her rejection of the credibility of the appellant's account. For example, at [14] she outlined how in the first substantive asylum interview conducted in June 2019, the appellant claimed that his relationship with the girl in question started in 2011 and lasted for six months or possibly seven. In the second interview conducted the next month the appellant by contrast said that the relationship had started in 2012 and that it continued until the appellant left the country. It is not incumbent on a judge to recite back to the parties each piece of evidence they have relied upon.

The judge was also entitled, as she did at [13], to note that in the appellant's screening interview the full extent of his problems were said to be relating to problems with the family of the girl with whom he had been in a relationship with. Of course, in that paragraph of the screening interview, there was no reference to the girl having been killed but more importantly, and as identified by the judge, there was no mention of the death of the appellant's parents at the hands of the Iranian authorities. Had it been the case that his parents had been killed and that the appellant feared a similar fate, it could reasonably be expected for him to mention that as a key plank of his claim at the screening process. This is not to say that every judge would have approached the matter as this judge did, but it is to say that the approach taken by this judge was based on the evidence before her and was well within the range of responses to that evidence that were open to her.

Drawing that analysis together, therefore, the judge reached findings of fact that the appellant had a family to return to in Iran, that he was not sought by the authorities, and that his parents had not been murdered or killed by the authorities or other persons. She rejected the account the appellant had given of the girl's uncle shooting him in 2012.

It was against that factual background that the judge came to apply the country guidance.

Mr Islam submits that the judge's application of HB (Kurds) was flawed. He specifically submitted that the judge failed to consider the appellant's illegal exit, the relationship he had conducted outside of marriage with the girl and the death of his parents. In my judgment it was not necessary for the judge to consider the second and third of those two factors. The judge had found that the appellant had not engaged in a relationship of the sort claimed, and that his parents had not been killed. Therefore the only HB (Iran) factor for the judge to consider was the significance if any of the appellant's illegal exit from Iran in light of his Kurdish ethnicity. That she did consider.

Addressing Mr Islam's submission that the judge failed to address the so-called "hair trigger" approach of the Iranian authorities, it is important to recall what the guidance given by this Tribunal was on that occasion. It concerned any, no matter how slight, involvement in Kurdish political activities or support for Kurdish rights. The guidance was not that *any* returned Kurdish failed asylum seeker would themselves automatically and in every case be subject to the

"hair trigger" risk which certain persons face upon their return. The guidance given in HB (Iran) concerned those with an enhanced, albeit only potentially marginally, but nevertheless greater than a normal apolitical profile, such as that of the appellant.

It follows therefore that in relation to ground 2 there was no error of law. The judge reached findings of fact open to her on the evidence. She applied the country guidance through the lens of those findings, reaching conclusions that were open to her.

I now address ground 2. As the judge noted at [27], ground 2 stood or fell with the findings concerning the substantive asylum claim. If the appellant were not found to have a well-founded fear of being persecuted or to be facing a real risk of serious harm on the same grounds, then many of the claimed obstacles to his integration in Iran upon his return would simply not be present. That was a finding which was open to the judge. Additionally, the judge found that the appellant would be returning to his parents, who had not been killed. Those features of the appellant's case mean that it was not open to the judge to reach a finding that this appellant would face very significant obstacles. The evidence before her strongly militated in favour of the conclusion that she reached, namely that there were no very significant obstacles.

Mr Islam's secondary submission in relation to the Article 8 ground is that the judge failed to conduct the required Article 8 proportionality assessment outside the Immigration Rules. It is true that the judge's Article 8 analysis is relatively brisk, however, at [18] she outlined that the appellant had not provided evidence to demonstrate that he had a private life that was sufficient to engage Article 8(1) of the ECHR. Although Mr Islam did not attack the finding that Article 8(1) was not engaged, in my judgment it appears that what the judge was doing here was conflating Article 8(1) with Article 8(2). The proposition that a person who has resided in this country for five years has not established at least a private life is one which is not likely to be reached by many judges approaching this factual matrix. However, the judge did consider that the evidence adduced on behalf of the appellant going to matters relating to his private life was minimal. Accordingly it was entirely open to the judge to consider that the matters advanced on behalf of the appellant concerning any claimed integration in this country were of such insignificance as to not amount to a breach of Article 8(1) in the event of his removal.

The decision must therefore be read as a whole. What the judge was in fact saying at [18] was that there was nothing remarkable about the private life of this appellant. Remarkable or exceptional features would be required in order to demonstrate that it would not be proportionate for the appellant to be removed. In submissions before me, Mr Islam did not outline any evidence which the judge is said to have failed to have considered relating to the appellant's private life in this country. There was no material before the judge which could properly have been said to lead to the conclusion that the appellant's removal would not be a fair balance between the public interest in the maintenance of immigration control, on the one hand, and his own private life, on the other. Although it may have been helpful for the judge to have

been clearer in addressing the distinction between the engagement of Article 8(1) and the proportionality of any interferences with it under Article 8(2) at [18], and while it may have assisted if the judge had expressly set out a 'balance sheet approach', nothing in the judge's overall conclusions about the proportionality of this appellant's removal was unsound.

The submissions advanced by Mr Islam in relation to both ground 1 and ground 2 may properly be categorised as a series of disagreements rather than errors of law made by the judge.

For those reasons this appeal is dismissed.

I maintain the anonymity direction already in force.

Notice of Decision

The decision of Judge Thapar did not involve the making of an error of law.

This appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Stephen H Smith* Date 10 February 2021

Upper Tribunal Judge Stephen Smith