



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01736/2018

THE IMMIGRATION ACTS

Heard at HMCTS Employment Tribunal Liverpool  
On 20<sup>th</sup> September 2018

Determination Promulgated  
On 21<sup>st</sup> September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

MMK  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bednarek, of Broudie, Jackson and Canter Solicitors  
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1 The appellant appeals against the decision of Judge of the First-tier Tribunal Herwald dated 3 April 2018 dismissing his appeal against the respondent's decision of 21 January 2018 refusing his protection claim. The appellant claimed to fear harm in Iran as a result of a series of incidents in 2015 which are, in summary:

- (i) that he was arrested by security forces in a council office when he refused to pay a bribe to process a planning application and he complained about government complacency about bribes; he was arrested, detained for a week, beaten, and released with a warning that he should not cause any problems in the future;
- (ii) sometime later at a bank he complained loudly that he was being made to wait to see someone about a bank loan whereas others were being shown

through to see the bank manager; he was arrested, detained for 4 days, beaten and upon being released was told that this was his second warning (witness statement [19]) and could face a charge of blasphemy for insulting the supreme leader;

(iii) a week later at the same bank he asked to complain to the bank manager who called him a troublemaker; during a fracas he pulled down pictures of the supreme leader, shouted 'down with this regime' and stamped his feet on the pictures of the Ayatollah; he later became aware that the authorities had visited his home looking for him.

- 2 It is also part of the appellant's case that he has become divorced from his wife in Iran, and since his arrival in the United Kingdom in August 2015, has entered into an Islamic religious marriage with Ms. VK, 'Congolese' (as described on the copy of an Islamic marriage certificate at page E1 of the respondent's bundle), who has discretionary leave to remain in the UK. At the time of the appeal before the judge, VK was pregnant.
- 3 The appellant arrived in United Kingdom on 5 August 2015, and underwent a screening interview on that date. Some amendments to the screening interview were sent to the respondent by the appellant's solicitors on 12 July 2016. His SEF interview took place on 7 December 2017, and the respondent's decision was made on 22 January 2018.
- 4 The respondent did not believe the appellant's account of events in Iran, and found that as the appellant's partner in the UK was not a British citizen, or a person who was settled or with refugee status, she did not meet the definition of partner for the purposes of Appendix FM of the immigration rules, and refused the application.
- 5 The appellant's appeal came before the judge on 6 March 2018. The appellant, VK, and VK's father gave oral evidence.
- 6 The judge made findings on the appellant's account of events in Iran at paragraph [14(i)-(j)], and held at [14(k)] that he rejected the appellant's account of being wanted by the authorities in Iran.
- 7 Further, the judge considered the appellant's private and family life under article 8ECHR at [32]-[35] and held at [32] that the evidence given by VK was persuasive and was satisfied that she believed that she was in an ongoing relationship with the appellant. However the judge held, also at [32], that given the appellant's credibility, and his lack of honesty in telling the court about his supposed divorce proceedings in relation to his first wife in Iran, and that the appellant was an economic migrant to the UK, that although VK had a desire for a genuine and subsisting relationship, the appellant did not. "All the evidence points to his using her as a potential vehicle for remaining in the United Kingdom, along with any child which she may bear."

- 8 The judge found in the alternative at [33] that even if there was an interference with the appellant's family life engaging the operation of Article 8 ECHR, the decision was in accordance with the law and had the legitimate aim of forwarding the economic well-being of the United Kingdom. In finding at [34] that the decision was proportionate, the judge noted firstly that the appellant was not a credible witness and had told lies to the immigration officer and was not telling the truth about his history in Iran. The judge made some observations about the strength of the appellant's relationship with VK, held at [35] that VK's immigration status was not settled and the appellant's was precarious, and held that the appellant's removal would not be disproportionate. The appeal was dismissed.
- 9 The appellant appealed to the Upper Tribunal in grounds dated 17 April 2018. The grounds are extensive, but necessarily so, and I do not criticize them for that. I set the nature of the grounds out below under 'Discussion'.
- 10 Permission to appeal was granted by Judge of the Upper Tribunal Lindsley on 9 July 2018.
- 11 I heard submissions from the parties today. Mr. Mills was helpful in indicating that he conceding certain matters, as I set out below.

## **Discussion**

### **The protection claim**

- 12 At [14(c)], the judge noted that at question 3.2 of the screening interview the appellant had said that he had not been arrested; at question 3.3 that he was not the subject of any arrest warrant or was wanted by any authority in any country, and at question 4.2 when asked to explain his reasons for claiming asylum, the appellant had said only "In Iran if you do not like the government the government dislike it. For example when some Iranians were deported from UK back to Iran the government they were executed", and had not mentioned any incidents in a bank. The judge held at [14 (d)] that the appellant was telling the truth in the screening interview, and impliedly, was therefore not telling the truth when he later set out his claim to have been arrested twice, and to be wanted by the Iranian authorities.
- 13 At [14(c)] the judge referred to a letter of representations dated 12 July 2016 making an amendment to question 3.3 at the screening interview, to the effect that the appellant was wanted by the Iranian authorities as he had insulted the supreme leader and the plain clothed authorities had visited his home and had been looking for him. The judge noted that this amendment had come almost a year after the screening interview took place.
- 14 Further, the judge noted that the appellant's actual explanation as to why he had not set out matters more fully in the screening interview was that he was tired and that there were problems with the interpreter at the screening interview. The judge noted that the appellant had said he was 'fit and well to be interviewed' at the

screening interview, and had not complained about any interpreting problems at the time or in the later representations of 12 July 2016.

- 15 These matters were all, on considering the structure of the judge's decision, matters which contributed to his overall decision at [14 (k)] that he did not believe the appellant's account.
- 16 In challenging those findings regarding the screening interview at paragraphs [4]-[10] of his grounds of appeal, the appellant argues that the delay in providing representations dated 12 July 2016 was because neither the appellant nor his representatives had been provided with a copy of the screening interview until shortly prior to that time.
- 17 Further, it was asserted that the appellant did not say that he was fit and well to be interviewed; a potentially relevant passage on that issue in the screening was question 2.1 which reads as follows:

"Do you or your dependents ... have any  
- medical conditions  
- disabilities  
- infectious diseases  
- taking any medication?"

The handwritten answer is recorded as 'No, fit and well'.

- 18 I find, even taking into account that the appellant may have had a legitimate reason for not providing any statement of correction to the screening interview until almost a year later, not having been provided with a copy of that screening interview, that the judge was entitled nonetheless to have regard to the differences between the screening interview and the subsequent evidence of the appellant, when assessing the appellant's credibility. It is to be noted that the judge observed as follows at [14(c)]:

"I might have been able to give some more credit to that letter [of amendments dated 12 July 2016] had it not taken so long to make that explanation, *but more importantly*, before me, he said that the problem with the screening interview was that firstly, he was tired." (And the judge also refers to the timing of the appellant's complaint about the interpreter.) (Emphasis added)

- 19 Thus, it is apparent that the judge placed *more* reliance on the fact that there was no evidence of the appellant being tired at the screening interview, and that no complaint about the quality of interpreting had been made at the screening interview or in the letter of 12 July 2016, than on the delay in making amendments to the screening interview, when treating the differences between the screening interview and the later evidence as diminishing the appellant's credibility. Any

misapprehension that the judge may have made about the reasons for the timing of the letter of 12 July 2016 was not material therefore.

- 20 As regards the appellant's claim that he was tired at the screening interview, I find that there was no error in the judge treating the appellant as fit and well at that interview. Although I agree with Mr. Bednarek that the words 'No - fit and well' at question 2.1 of the screening was the appellant's response to the question about whether he had any ongoing medical conditions or disabilities, infectious diseases, etc, and those questions are not necessarily questions about how a person feels in that particular moment, I note that appellant was previously asked at the outset of the screening interview, at A1 as follows:

"Please let me know if you feel unwell at any time during this interview

Are you ready to be interviewed?"

To which the answer is recorded, 'Yes'.

- 21 Therefore the appellant indicated he was ready to be interviewed, having been specifically advised that he should let the interviewer know at any time if he was unwell. There was no complaint then or later in the screening interview that he was unwell in any way.
- 22 Further it is correct to note that there was no complaint at the screening interview or in the letter of representations dated 12 July 2016 that there was any interpreting problem. I therefore find no error in the judge's findings at [14 (b)-(d)].
- 23 However, at [14(e)], the judge purports to set out discrepancies about what the appellant had taken down from the wall in the third incident, and whether or not he had stamped on images of the Ayatollah. Before me, it is accepted by Mr. Mills, after we considered all the relevant evidence relating to this part of the appellant's account, that there was no material discrepancy in the appellant's account on which the judge could reasonably have relied. Mr. Mills therefore accepts that the judge erred in law at [14(e)] in purporting to find a discrepancy in the appellant's evidence, when there was none. Mr Mills argues however that the error was not material.
- 24 Further, at [14(f)] in a very closely packed paragraph, and in which most of the evidence referred to is unsourced (but most of which is actually derived from the SEF interview,) the judge advanced in a series of propositions, that the following matters could not be reconciled with one another:
- (i) having set out the appellant's description of a visit by the authorities to the appellant's home, looking for the appellant (which I find to be a quote from SEF questions 113 - 116), the judge said of the appellant that 'later on he claimed that the authorities never returned to the house and did not leave any documents', which cannot be reconciled

with his claim that his wife was given documents two or three times telling her that she had to go to the authorities to be questioned;

- (ii) neither could it be reconciled with his claim that someone from the authorities came to the door and asked her to sign for letters;
- (iii) further, this cannot be reconciled with the appellant's claim at 4.3 of the screening interview that he had no documents and could access no documents because 'The Iranian government does not issue these documents'.

25 To analyse the judge's reasoning here, it is necessary to set out the actual evidence on which the section is based, from the SEF:

"113 After for five days who got in touch

My brother's friend came to see me, he told me after the incident the authorities came to my house searching for me.

114 What did the authorities say you

They asked my wife where I was and searched the house that day

115 How long after the incident did the authorities search your house

It wasn't more than 1 or 2 hours after the incident

116 Did the authorities say anything else you

No my wife didn't have any information and she was frightened

117 Did they leave any documents

No just asked for me

118 How many people were there

4 or 5

119 Did they return

No

120 If they didn't say why they were looking for you and didn't leave any documents then why did you decide to flee the country

2 or 3 times she had letters to say she had to go to be questioned and they told her she had to cooperate. My wife was saying that the house was under surveillance.

121 When did she get the letters

After they searched the house 2 days later she got a letter

122 And after that

The 2<sup>nd</sup> letter was 4 days after the incident

...

129 Did they send her the letters or hand them to her

Somebody from the authorities came to the door, gave them to her and asked her to sign

130 You said earlier that the authorities didn't leave any documents you know (sic) say that they left letters with your wife, can you explain

They didn't leave anything when they searched the house"

26 Also relevant to this passage of evidence is the appellant's evidence in his witness statement as follows:

"38 The home office referred to the fact that I stated that my wife was given documents to report to the authorities [RFRL 37]. This is correct. When I stated that my wife was not given any documents [AI R117] I was referring to that particular visit. My wife was not given documents on the first visit. When I was asked if the people returned [AI R119] and I responded "No" I was referring to those specific people. The same people did not return however other people did return. I was not asked if the authorities returned.

39 My ex-wife was issued with letters to report to the authorities. My ex-wife also informed me that the house was under surveillance [AI R120].

40 The Home Office referred to my response in screening interview that the Iranian authorities do not issue documents [SI 4.3] [RF RL 37]. My response was referring to documents relating to the charges against me. My wife was issued with letters advising her to report to the authorities. She had to produce the letter in order to access the building. This is not inconsistent."

27 The appellant argues within his grounds of appeal that in relation to the alleged discrepancies in the appellant's account as discussed by the judge at [14(f)], either that no such discrepancy arose, or that the judge failed to take into account the appellant's explanations about such matters in his witness evidence.

- 28 I find that those arguments are made out. In relation to the judge's suggestion that the appellant had stated that the authorities 'never returned to the house and did not leave any documents', that is not an accurate quote from question 119 of the SEF interview where he had immediately beforehand been describing the incident when 4 or 5 people had searched his home and when asked if they returned, the appellant said 'no'.
- 29 I also note that in answer to question 129 as to whether the authorities sent his wife letters or handed them to her, the appellant said "Somebody from the authorities came to the door, gave them to her and asked her to sign."
- 30 I therefore find that within the SEF interview itself, there is a distinction to be made between the group of 4 or 5 people who attended on the first occasion on the one hand, and single people ("Somebody") coming on later occasions, and what they did or did not hand over on those visits. The judge does not appear to have recognised the distinction to be made. Further, the appellant gave his explanation about those answers at his paragraph 38 of his witness statement, above. The judge does not appear to have given any consideration to that explanation.
- 31 I therefore find that the judge errs in law in stating that the appellant's answers in interview on this issue 'cannot be reconciled'.
- 32 Paragraph [12] of the appellant's grounds of appeal addresses the alleged discrepancy between the appellant's account in the SEF interview that documents were given to his wife, compared with his reference at question 4.3 of the screening interview that he had no documents and could not access any documents 'because the Iranian government does not issue documents'. The judge had also described this as evidence which could not be reconciled. I note that the appellant gave a response to that issue at paragraph [40] of his witness statement, to the effect that his response was referring to documents relating to the charges against him, as opposed to letters issued to his wife advising her to report to the authorities. Whatever is to be made of that explanation, it is one which was not taken into account by the judge. I find this to be a material error of law.
- 33 The judge also states at the end of [14(f)] that the appellant's evidence at paragraph [39] of his witness statement that "My ex-wife also informed me that the house was under surveillance" cannot be reconciled with the appellant's earlier claim that he had not been in contact directly with his ex-wife at all while in hiding, and he had only received messages about her from the friend of his brother. However it seems to me that the appellant has not positively asserted that his wife spoke to him directly about that matter. As per question 120 of the SEF, quoted above, the appellant stated "My wife *was saying* that the house was under surveillance". His answer does not say to whom she said that the house was under surveillance. The appellant did not positively assert that she stated that directly to him. Therefore, it seems to be that there is little if anything here to be reconciled.



- 34 It is to be noted that the judge appeared to treat the alleged discrepancies set out at [14(f)] as being significant, because he describes issues which he had mentioned before that point as being 'the least of the problems with the appellant's story', and yet I have found errors of law in respect of the judge's approach to the evidence at [14(f)].
- 35 At [14(g)] the judge finds that it was implausible that the appellant would choose to leave Iran after the third incident, given that he had been warned and released on two previous occasions. Mr Mills accepts the appellant's challenge to that finding at paragraph [13] of the appellant's grounds of appeal. I find that it was not open to the judge to treat this part of the appellant's account as being implausible, given his account that he had been detained and beaten twice already, that on the second occasion, the appellant had been warned that he might face blasphemy charges, and on the third occasion, his account was that he stamped on a portrait of the Ayatollah. It needs no imagination, if that last event actually took place, to consider that an individual may be at real risk of serious harm in Iran as a result of such actions. Thus, the judge's reasoning at [14(g)] also falls away.
- 36 The judge's point at [14(i)] appears to be a repetition of the point raised at the bottom of paragraph [14(f)] on page 7, regarding alleged discrepancies in the manner in which the appellant was in contact with his wife. I have already dealt with that matter at [33] above.
- 37 Overall, I find that there are sufficient errors of law, including those errors which have been accepted by Mr. Mills, so as to result in those errors being material to the outcome of the appellant's appeal in his protection claim.
- 38 I therefore set aside the judge's decision on the protection claim.

### **Article 8**

- 39 Mr. Mills accepted the argument at paragraph [28] of the appellant's ground of appeal that there had been evidence before the judge, in the form of a witness statement and oral evidence from VK's father, and supporting letters from others, which was relevant to the credibility of the appellant's claim to be in a genuine relationship with VK, but which the judge had not referred to in his decision. Both parties examined their respective notes of evidence, and confirmed that VK's father had been asked questions in cross-examination, and by the judge, about whether he thought the appellant may be seeking to use his relationship with VK as a means to gain leave to remain in the United Kingdom. VK's father had replied, in summary, that he did not think that this was the case, and that the appellant was a good and open man. However, Mr Mills argued that any error on the part of the judge in failing to refer to that evidence would not have been material to the judge's overall assessment on Article 8, given the adverse credibility findings found within the judge's finding on the protection claim.

40 However, given the judge's finding at [32] that the appellant did not have honest motivations for entering into his relationship with VK, and his finding at [34] that the appellant's lack of credibility impacted on the proportionality assessment, I find in light of my findings above regarding errors in the assessment of the protection claim, that there are material errors of law in the judge's decision on Article 8 as well.

### **Decision**

I find that the making of the judge's decision involved the making of material errors of law.

I set aside the entirety of the judge's decision.

Due to the extent of the findings of fact which will need to be made in the remaking of the decision in this appeal, I remit the appeal to the First-tier Tribunal for rehearing

Signed:

Date: 20.9.18



Deputy Upper Tribunal Judge O'Ryan

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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

Signed:

Date: 20.9.18



Deputy Upper Tribunal Judge O'Ryan