



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11731/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 28 September 2020**

**Decision & Reasons Promulgated
On 1 June 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MG

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr A Vaughan, Counsel instructed by James & Co Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the respondent (also identified as “the claimant”). Breach of this order can be punished as a contempt of court. I make this order because the respondent is an asylum seeker.
2. This is an appeal brought by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant” appeal against a decision of the Secretary of State on 22 November

2019 refusing him international protection and/or leave to remain on human rights grounds. The claimant is subject to deportation to Iran.

3. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Keith. He gave the following reasons for his decision:

“2. The grounds assert that the (1) FtT erred in his evaluation of whether, for the purposes of Section 117C(6) of the Nationality, Immigration and Asylum Act 2002, there were very compelling circumstances over and above Exceptions 1 and 2 (the FtT concluded that there were), although the basis of the ground (at [3]) is unclear; and (2) that the FtT’s reasons in relation to the protection claim at [57] about ‘current tensions’ between Iran and the UK as forming the basis of a fear of persecution on imputed political opinions were not adequately explained.

3. In relation to ground (2), the FtT’s reasons in referring to ‘current tensions’ as forming part of a conclusion about persecution on the basis of imputed political opinions are arguably insufficiently explained, so as to amount to an arguable error of law. While ground 1(1) appears to be a weaker ground (the basis of the ground is unclear, and the FtT’s reasoning was detailed), permission is granted on all grounds.”

4. Permission had been refused by Resident Judge of the First-tier Tribunal Zucker, who said:

“Contrary to what is asserted in the grounds the decision is adequately reasoned, with the judge making findings that were open to him, on the particular facts of the case advanced.

5. I begin by looking carefully at the First-tier Tribunal’s “Decision and Reasons”.
6. This shows that the claimant was born in 1989. He is now 31 years old. He entered the United Kingdom in January 2006 and has remained there, so he has now lived in the United Kingdom for fifteen years.
7. He claimed asylum on arrival, basing his case on a professed fear of persecution because he followed the Christian religion. This claim was disbelieved but he was given discretionary leave to remain in the United Kingdom.
8. On 15 September 2013 he was sent to prison for fifteen months for an offence of sexual assault with a concurrent term of four months for an offence of battery. On 29 November 2013 the respondent served him with a notice of intention to deport him from the United Kingdom and he responded by again claiming asylum.
9. On 22 November 2019 the respondent refused his application for leave to remain as a refugee and/or on human rights grounds and that led to the decision complained of in the First-tier Tribunal when it allowed the appeal.
10. The First-tier Tribunal Judge, Judge Bulpitt, noted, correctly, that the claimant started with the disadvantage of having been disbelieved in his previous application for asylum and subsequent appeal. However, the judge accepted that the claimant left Iran as an unaccompanied 16 year old and concluded that he left illegally. He had no travel documents identifying him as a citizen of Iran and the judge found he left evading compulsory military service and that he continued to evade compulsory military service by remaining out of the country.

11. His presence in the United Kingdom has always been lawful but his status was for the purposes of the Rules “precarious”.
12. The judge found that the claimant had “become firmly established” in a coastal town in the United Kingdom. He had become proficient in the use of the English language and had built on experience in the catering trade to establish, with his life partner, a kebab and pizza business. He had taken over an existing concern and now employed three people and used the services of a further five self-employed drivers for deliveries.
13. The judge noted that there was a large amount of documentary evidence concerning the business which was unchallenged including unaudited accounts showing a solid overall profit.
14. The judge had no hesitation in accepting that the claimant had established a close personal relationship with his partner, who was also his business partner. The judge found there was “very strong evidence of the [claimant]’s cultural and social integration” into the town where he lived.
15. There was some dispute about the extent of the claimant’s criminality because it appeared that the claimant’s brother had got into trouble and had used the claimant’s name but the judge resolved these issues in the claimant’s favour.
16. Whilst noting that the offence that led to the claimant’s imprisonment was described by the sentencing judge as “not of the worst kind by any means”, it was sufficiently serious to lead to an immediate custodial sentence. In outline, a woman had mistaken the claimant for a taxi driver and entered a vehicle he was driving. When she tried to leave he grabbed her by the wrists and tried to pull her back into the car. He had also been cautioned for harassing an ex-partner, which the judge found aggravated the seriousness of the sexual assault.
17. Whilst acknowledging the seriousness of the offence, the First-tier Tribunal Judge found “powerful evidence” of subsequent rehabilitation and found that the claimant posed a low risk of future offending. Certainly, the judge was not told of any offence committed after his release from prison in 2014. The judge found that the claimant still had links with Iran because he was in touch with his parents and sister, who continued to live there. He did not suggest otherwise.
18. The judge found that the claimant would be returned on a laissez passer. At paragraph 49 the judge begins a section entitled: “Whether the [claimant] is reasonably likely to face persecution because of an imputed political opinion?”. The judge remind himself that there is clear evidence from the decision in **SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC)** that a person returned on a laissez passer could expect to be questioned by the authorities but that mere illegal exit does not establish a real risk of persecution.
19. The judge acknowledged Mr Vaughan’s submissions that as well as being returned on a laissez passer the claimant would be identified as someone who had evaded military service and who had committed a criminal offence in the United Kingdom and as someone who had committed an offence against Islam by living with his partner when they were not married.

20. The judge then directed himself to two reports by Sheri Laizer dated 3 November 2016 and 22 January 2020 respectively. Dr Laizer said there would be a risk and she made reference to “the current heightened state of tension between Iran and the United Kingdom and the USA and the increased possibility this brings of the authorities showing an interest in the [claimant] given the fact that he has been in the United Kingdom for more than fourteen years and has integrated so successfully in the United Kingdom.”
21. Ms Laizer said there was a risk of the claimant “being considered a dissident or even a spy for the United Kingdom” and that his “illicit sex” would be seen as an aggravating factor as would his failure to practise the Islamic faith and his apparent preference for western countries’ rights and freedoms.
22. At paragraph 55 the First-tier Tribunal Judge said:

“What has not been done in the respondent’s refusal letter and what is necessary in order to determine this question is a holistic assessment of the [claimant]’s situation in the light of the current tensions between the United Kingdom and Iran. The fact the [claimant] left illegally whilst of limited significance alone, is of greater significance when combined with the fact he has evaded military service for fourteen years and instead lived as a non-practising Muslim in a long-term sexual relationship with a British woman despite them not being married. In this context the fact that he is a failed asylum seeker which suggests a preference for life in the West is also of greater significance. Perhaps the most significant factor in the holistic assessment of the [claimant]’s case however, is my finding that the [claimant] has become significantly integrated socially and culturally in the United Kingdom over the extended period of fourteen years.”
23. The judge found that the claimant was a refugee.
24. It is not the case where the Secretary of State has argued that the claimant is disentitled to protection under the Refugee Convention, presumably because his prison sentence was less than two years.
25. The judge was very aware of the impact on the claimant and, importantly, the claimant’s partner, that would be consequent on his deportation. She could not be expected to establish herself in Iran and she would lose her life partner and her business partner but the judge found that was not unduly harsh. The judge did say at paragraph 63:

“Notwithstanding this, I do find that there are very compelling circumstances which outweigh the public interest in the deportation of the [claimant] as a foreign criminal. In reaching this conclusion I recognise and give considerable weight to the strong public interest in the removal of foreign criminals. As s117C(2) recognises however, the strength of the public interest in a removal varies according to the seriousness of the offence. Here the offence triggering deportation can be described – and indeed was so described by the sentencing judge – as *‘not of the worst kind by any means.’* The sentence imposed was at the lower end of the type which attracts automatic deportation. When this is added to the report which suggests the [claimant] is a low risk of reoffending, plus the [claimant]’s response since the offence including the fulfilment of his sentence without issue and seven years without offending, the public interest in removal is reduced.”
26. The judge allowed the appeal.

27. I consider how this decision is attacked in the grounds. I have to say that I find the grounds unimpressive.
28. Ground 1 complains that the judge, having found that the claimant should be recognised as a refugee after a holistic assessment, has failed to give adequate reasons for findings that any of the matters raised at paragraphs 50, 51, 52 and 53 gave rise to a real risk. I do not agree. The judge has referred to a respected expert whose expertise was not challenged, who gave a clear opinion that the factors indicated would put the claimant at risk and the judge has believed the expert. I see no reason to make a “further examination” of the “current tensions” between the UK and Iran. The report was written at a time when there was increased tension between the countries which might be reasonably expected to create a degree of extra wariness to people who are returned to that country. The reference to “current tensions” is I find an unfortunate distraction. Clearly, it concerned Judge Keith when he gave permission and, with respect, I understand his concern because it is at least arguably so vague that it is no reason at all. However the point is that the claimant faces at least a real risk of interrogation in the event of his return. This is the point made in paragraph 49 where there is the reference to the country guidance decision in **SSH and AR** and there is no basis for criticising that finding and indeed it is not criticised in the grounds.
29. The contention in ground 2 that the claimant was not “integrated” is, I find, entirely misconceived. The judge has given very full reasons for finding the claimant to be integrated. In outline, they relate to his having built up a solid business and having a committed partner. I really find the suggestion that he is not integrated close to unarguable and the suggestion that the judge was wrong to conclude that he had is entirely misconceived.
30. The main contention that the judge has failed to make an adequate public interest assessment is also I find wrong. The judge has identified all the points that matter and reached a conclusion that the Secretary of State does not like.
31. Although the grounds do not impress me, Mr Melvin’s written submissions are more helpful. He recognises that the judge has given reasons for finding that the claimant would be at risk but contends that the judge has not explained why those things could lead to an imputed political opinion.
32. He also asserts that there is no “objective evidence that returnees from Britain are subjected to any ill-treatment unless either previously been of interest to the Iranian authorities or had engaged in anti-regime activities within the UK”. He is probably right about that. Certainly none is before me but one of the problems in Iranian cases is there is very little evidence indeed of anybody being returned to Iran against their wishes. There are notorious cases of people who returned to Iran voluntarily ending up in trouble. The judge’s decision is clearly based on the expert opinion of Ms Laizer. Ms Laizer’s opinion is clearly based on conjecture and speculation but it is conjecture and speculation that is informed. Her belief is that a person identified as one who ran away from Iran illegally avoiding military service, who lived in the United Kingdom with a woman to whom he was not married and abandoned the practice of Islam would be perceived as someone who was westernised to the point of being a threat to Iran. That might not be right but it is explained and is

the opinion of someone with expertise and the judge has accepted it and the Secretary of State has not given any reasons that I can see to show that the judge was not entitled to accept it and has done very little to suggest that he should not accept it apart from saying that the Secretary of State does not like the result.

33. Given that finding, the criticism of the additional decision to allow the appeal under Article 8 of the European Convention on Human Rights becomes otiose but again it is clearly only criticism of the judge's exercise of judgment. The judge has recognised the public interest, has recognised the contravening factors and had made a decision.
34. Mr Melvin's submissions before me were short. He had relied on the grant of permission and the written submissions which I have outlined. He pointed out there was no remorse for the offence and that the claimant had been untruthful including claiming falsely to be a practising Christian.
35. Mr Melvin is right but they do not amount to errors of law.
36. I have considered Mr Vaughan's submissions. They were helpful but they were really going over the points that I had considered already. It is hard to avoid the conclusion that the claimant would be stopped, what happened after that is a matter of conjecture and the conjecture is informed. He reminded me just how serious it can be to be in the wrong side of the Iranian authorities but that is not necessary; once the risk of persecution is established the extent of the risk and the severity of the persecution are unimportant.
37. In his reply Mr Melvin again said there were no objective evidence to show what will happen at the airport at Tehran and emphasising that being a failed asylum seeker is not enough. That may well be right but it does not mean that the judge was wrong in deciding on the totality of the evidence that the claimant was at risk. This view the judge was entitled to take.
38. I want to make it very clear that in concluding as I have that the judge has given adequate reasons for a decision to which the judge was entitled to come I am not in any way implying that this was the only conclusion permissible on the evidence. This decision is certainly not a decision of the Upper Tribunal to say that a person cannot be returned safely to Iran if they had been in the United Kingdom for some time. Any suggestion of that kind would be based on a total misreading of the decision. All I am saying is that having considered the matter carefully, I am not persuaded that the judge's decision was unlawful.
39. I therefore dismiss this appeal.

Notice of Decision

This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 13 May 2021

