



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

Appeal Number: HU/01980/2020

THE IMMIGRATION ACTS

Heard at Field House

On 14 October 2021

**Decision & Reasons
Promulgated**

On 20 January 2022

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR GHANADZADEH SHAHIN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms N. Willocks-Briscoe, Senior Home Office Presenting Officer

For the Respondent: Mr Parham Reza Partovi, step-brother of the appellant

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Bartlett promulgated on 18 December 2020, in which the judge allowed an appeal by the appellant before the First-tier Tribunal, a citizen of Iran born on 13 September 1971, against a decision to refuse his human rights claim made in the form of a request to revoke a deportation order.

2. For ease of reference, I will refer to the parties as they were before the First-tier Tribunal, unless otherwise stated.

Factual background

3. The appellant entered the United Kingdom in February 2009 on a two year family visit visa. In December 2009, he was deported to Iran, having been convicted in October of that year of assault occasioning actual bodily harm and sentenced to 15 months' imprisonment. The appellant had engaged in a sustained and violent assault against his former partner. According to the sentencing remarks of His Honour Judge Price QC, the attack entailed repeated punches to the face and head of the victim, and continued despite her pleas for the appellant to stop. When the victim fell to the ground, the appellant bound her wrists and placed a plastic bag over her face. The ordeal was, said Judge Price having listened to the recording of the 999 call, utterly terrifying for the victim.
4. Although the sentencing judge recommended the appellant's deportation, the appellant was subject to the automatic deportation provisions contained in the UK Borders Act 2007, and the appellant later applied under the Facilitated Returns Scheme to be removed to Iran. On 25 November 2009, the Secretary of State made a deportation order against the appellant, which was enforced on 7 December 2009.
5. Some members of the appellant's family live in this country. In March 2016, he applied for a family visit visa. The application was refused on the grounds that the appellant was subject to a deportation order. On 7 February 2017, he applied for his deportation order to be revoked. That application was refused on 18 December 2019, and it was that refusal decision that was under appeal before the judge below.

The decision of the First-tier Tribunal

6. The judge summarised the appellant's family situation at [5] of her decision. The appellant's stepfather lives here. He is elderly and unwell. He requires full-time care, which is provided by Mr Partovi-Tabar, the appellant's stepbrother. The stepfather is too ill to travel to Iran. The appellant's mother, Mrs Mehrnaz Parsadmehr also lives here. She experiences anxiety and depression, and was very anxious about the hearing before the First-tier Tribunal. Mr Parsadmehr misses her son terribly. His deportation, she said, had caused her anxiety and depression. She experiences a number of health conditions which made long haul travel difficult. She visited the appellant in Iran around two and a half years before the hearing in the First-tier Tribunal, but she incurred substantial debts in doing so. She is behind on her utility payments and her mortgage. She cannot afford to visit the appellant in Iran again.
7. After directing herself concerning the burden and standard of proof in human rights claims [10], the judge set out the provisions of the Immigration Rules concerning the revocation of deportation orders, and

Court of Appeal authority on the issue at [11] to [16]. The judge reached a number of findings of fact concerning the strength and depth of the appellant's relationship with his mother, stepfather and stepbrother. She accepted that the appellant enjoys a close adult relationship with his mother and stepfather, that the stepfather experiences Alzheimer's and a number of other conditions preventing him from travelling outside the United Kingdom. She found that there was some evidence to support the claim that Mrs Parsadmehr experienced anxiety and depression, and accepted the evidence of Mr Partovi-Tabar that the impact of the appellant's deportation on her health had been significant. The judge found that Mrs Parsademehr would be unable regularly to travel to Iran to see her son due to the financial cost and her ill-health. There were no impediments to the appellant's two British step-siblings visiting him in Iran.

8. The judge directed herself concerning the public interest in the deportation of foreign criminals, and the particularly horrific nature of this appellant's crime. However, the judge noted that "the deportation order was made over 11 years ago and the public interest in the appellant's exclusion has diminished. There was no evidence before me that there were any aggravating factors against the appellant: he has no further criminal convictions and he has not breached the deportation order." See [18].
9. The judge reached the following operative findings concerning Article 8 of the European Convention on Human Rights ("the ECHR"), which it is necessary to quote in full:

"19. I do not find that the appellant can establish that he has a family life in the United Kingdom within the meaning of Article 8 ECHR. The appellant is not in the United Kingdom and he has a life in Iran through his job which provides him with independent financial means and he is married there. I do not accept that the appellant has the emotional and financial dependency on his adult family members in the United Kingdom required to establish a family life under Article 8 ECHR.

20. However, I have accepted that the appellant's exclusion from the United Kingdom is a significant contributing factor to his mother's depression and anxiety. I have the benefits [*sic*] of seeing her give evidence and accept that she is extremely emotionally distressed by the long and continued separation from the appellant. I find that the effect of the separation on her demonstrates that she has an emotional dependency on the appellant which amounts of [*sic*] a family life within Article 8 ECHR pursuant to the guidance set out in *Ghising (family life - adults - Gurkha policy)* [2012] UKUT 00160. I find that the exclusion of the appellant from the United Kingdom has a significant negative impact on his mother.

21. I accept Mr Partovi-Tabar's evidence that he arranges video calls between the appellant and the appellant's stepfather and that the appellant's stepfather is happy to see the appellant by these means. I do not accept that modern means of communication such as the telephone and video calls are a sufficient substitute for face-to-face contact when one of the individuals involved has severe dementia.

22. I have weighed the impact of the exclusion of the appellant from the United Kingdom on the severe negative impact on the appellant's mother, the real and severe difficulties in the appellant's mother visiting the appellant and the inability of the appellant's stepfather to meet with the appellant against the public interest in deportation (which has diminished over time). Overall, I find that the respondent's decision is not proportionate to the interference in Mrs Parsadmehr's family life. She has not been able to adequately maintain that family life through social media, telephone calls and visits as is demonstrated by her mental ill-health."

10. The judge allowed the appeal.

The hearing before the Upper Tribunal

11. The hearing took place remotely, having been listed at a time when it was necessary to do so in order to guard against the spread of Covid-19. At the conclusion of the hearing, all parties confirmed that they were content that no fairness concerns had arisen from the proceedings being conducted remotely.

12. Mr Partovi-Tabar represented the appellant at the hearing before me as an unqualified lay representative, as he had done before the First-tier Tribunal. Although Mr Partovi-Tabar is not a party to the appeal, his role was analogous to that of an unrepresented sponsor in an entry clearance appeal. I was satisfied that it was in the interests of justice to permit him to address the tribunal, and there was no objection from Ms Willocks-Briscoe. Mr Partovi-Tabar provided a written skeleton argument, which I have considered. The appellant, who remains in Iran, did not participate in the hearing.

13. Shortly before the hearing, the appellant provided a psychiatric report dated 12 October 2021, in respect of his own mental health. I explained to Mr Partovi-Tabar, and the other members of the appellant's family in the UK who were assembled on the video call, that the report was not relevant to my assessment of whether the First-tier Tribunal had made an error of law. Its contents therefore play no part in my decision.

Grounds of appeal and submissions

14. The Secretary of State appeals on the following grounds, pursuant to permission to appeal granted by Upper Tribunal Judge Macleman.

15. First, there is a material contradiction between [19], in which the judge found that the appellant could *not* establish that he enjoys “family life” in the United Kingdom for the purposes of Article 8 ECHR, and [20], in which the judge found that the appellant *did* enjoy family life in this country, with his mother, in light of her emotional dependency upon him.
16. Secondly, that the judge’s reliance on *Ghising* was a material error. There was no correlation between the facts of the two case, and *Ghising* involved an adult child who remained financially, emotionally and practically dependent on his family in the UK, and was seeking to resist removal from the UK.

The law

17. There is no right of appeal against a refusal to revoke a deportation order, but there is a right of appeal against the refusal of the human rights claim upon which an application to revoke a deportation order may be based. In this case, Article 8 of the ECHR lies at the heart of the human rights claim made by this appellant. It provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

18. In *R v Secretary of State for the Home Department ex parte Razgar* [2004] UKHL 27, the House of Lords gave guidance concerning a staged analysis of the differing considerations at play when considering an appeal against the refusal of a human rights claim. The *Razgar* approach remains good law, and it provides a helpful lens through which to analyse the issues in this case, if one reads “proposed removal” as though it referred to the refusal of a human rights claim to refuse to revoke a deportation order. At [17], the House held that the following questions are relevant to any analysis of Article 8:

“(1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?

(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?

(3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

19. Underlying the first question is the issue of whether Article 8 is engaged case at all; it is only once Article 8 is engaged that the First-tier Tribunal has the jurisdiction to hear an appeal against the refusal of the human rights claim. In the case of adult family members, the jurisprudence of the European Court of Human Rights, as applied authoritatively by *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31, is that "family life" for the purposes of Article 8 is not engaged between parents and their adult children unless something more exists than normal emotional ties. As Arden LJ said at [24] and [25] of *Kugathas*, with emphasis added:

"24. There is no presumption that a person has a family life, even with the members of a person's immediate family. The court has to scrutinise the relevant factors. Such factors include identifying who are the near relatives of the appellant, the nature of the links between them and the appellant, the age of the appellant, where and with whom he has resided in the past, and the forms of contact he has maintained with the other members of the family with whom he claims to have a family life.

25. Because there is no presumption of family life, in my judgment **a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties**: see *S v United Kingdom* (1984) 40 DR 196 and *Abdulaziz, Cabales and Balkandali v United Kingdom* [1985] 7 EHRR 471. Such ties might exist if the appellant were dependent on his family or vice versa. It is not, however, essential that the members of the family should be in the same country."

20. In relation to the fifth *Razgar* question, which concerns the proportionality of an interference in an Article 8 right, the Immigration Rules set out the Secretary of State's view concerning the public interest in the maintenance of deportation orders. See paragraphs 390 and following.

Submissions

21. Expanding upon the grounds of appeal, Ms Willocks-Briscoe submits that, not only did the judge make contradictory findings at [19] and [20], the findings reached by the judge concerning the existence of family life could not be substantiated on the evidence in any event. By approaching family life in the disparate way that she did at [19] and [20], the judge conducted

her analysis in “silos”, rather than holistically. The judge’s subsequent proportionality analysis was infected by a failure to give sufficient reasons, and irrationality. The judge’s erroneous reliance upon *Ghising* confused matters further; the Secretary of State is entitled to know the basis upon which she has lost. In this matter, the judge made contradictory findings, relied on an irrelevant authority, and reached operative findings that were not rationally supported by the evidence.

22. For the appellant, Mr Partovi-Tabar accepted that there was an apparent contradiction between paragraphs 19 and 20, stating that he was a bit confused by them. However, while he accepted that there is no dependence on the part of the appellant in relation to his mother, he stated that the judge found that there was dependence by Mrs Parsadmehr upon the appellant. That was why, he said, the judge referred to the *Ghising* case; family life is not one-dimensional, he stated, it was necessary to consider the way in which each individual in the family would be affected. At paragraph 20 the judge explained why she accepted that article 8 was engaged, and then paragraph 22 she gave reasons for finding that it would be disproportionate for the appeal not to be allowed. Despite the apparent contradiction, Mr Partovi-Tabar submitted, the judge reached the “correct” decision, and the Secretary of State’s appeal should be dismissed.

Discussion

23. The premise of the Secretary of State’s criticism of paragraphs 19 and 20 is that, if there is to be Article 8 dependence in the context of adult family members, it must be mutual; dependence must flow in both directions. The logical conclusion of Ms Willocks-Briscoe’s submission is that it would only be if the appellant were dependent upon his mother, and his mother were correspondingly dependent upon him, that Article 8 family life would exist between adult family members.
24. In my judgment, neither the authorities nor common sense support that proposition. Properly understood, there is no contradiction between paragraphs 19 and 20 of the judge’s decision, for the following reasons.
25. First, in *Kugathas* itself, the Court of Appeal addressed the characteristics of dependency of the sort likely to engage Article 8 between adult family members. Arden LJ specifically envisaged the possibility that dependency may be one-directional, at paragraph 25. I have already quoted it above, but the following sentence demonstrates the possibility of support flowing in one direction, and dependency receiving it from the other:

“Such ties might exist if the appellant were dependent on his family or *vice versa*.”

26. In the judgment of Arden LJ, it could be the appellant who was dependent upon his family, or his family who were dependent upon him: that is why she said “or *vice versa*”. *Kugathas* is consistent with the proposition that, within the confines of Article 8 family life, there may be a dependent

party, on the one hand, and a corresponding party providing support to the person who is dependent upon them, on the other. Nowhere is there a requirement for *mutual* dependence, as an irreducible minimum of Article 8 family life in adult dependents.

27. Secondly, a requirement for mutual dependence would exclude many beneficiaries of the protection guaranteed by Article 8 from its scope. The more vulnerable and in need of support a person is (in other words, the more *dependent* they are), the less eligible they would be for the protection of Article 8, for they would be unable to provide a corresponding level of support to the person upon whom they depend for the support they require. The scope of Article 8 would be reduced to providing protection to those with the capacity to reciprocate any support they receive from a person upon whom they would be dependent. This would render the protection of Article 8 largely futile in the adult dependent relative context.
28. While it may have been helpful for the judge to articulate the above point with greater clarity, I consider the decision to be tolerably clear, especially when analysed alongside *Ghising*. The Secretary of State is correct to submit that the facts of *Ghising* are at odds with the present matter; plainly, this appellant is not an adult son of a former Gurkha soldier, resident in this country and seeking to resist removal. However, it is a mistake to confine authorities, especially in this fact-sensitive jurisdiction, to providing guidance only to those cases with identical factual matrices. That was the error that a different constitution of this tribunal was held to have made in *MI (Pakistan) v Secretary of State for the Home Department* [2021] EWCA Civ 1711. See [30], per Simler LJ, addressing the approach the tribunal had taken to *PG (Jamaica) v Secretary of State for the Home Department* [2019] EWCA Civ 1213, in light of the guidance given in *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176:

“The second way of describing the UT's error is that the UT took the factual situation in *PG (Jamaica)* together with the holding that that factual situation did not justify the “unduly harsh” conclusion reached, and elevated it to a legal proposition based on the apparent similarity of the facts of *PG (Jamaica)* when compared with this case. That is legally impermissible. It is dangerous to treat any case as a factual precedent as *HA (Iraq)* made clear (at [129]). In the particular context of an evaluative exercise there is a limit to the value to be obtained from considering how the relevant legal test was applied to the facts of a different (albeit similar) case, especially where there may be questions as to the true level of similarity between the two cases given the almost infinitely variable range of circumstances and subsisting parent/child relationships that might be involved (see *HA (Iraq)* at [56]). Ultimately it is the statutory test itself that matters and that must be applied by the first instance tribunal making its own evaluation of the facts in the case with which it is concerned.”

29. The propositions for which *Ghising* was reported include those stated in the judicial headnote to the decision, the first paragraph of which is as follows:

“1. A review of the jurisprudence discloses that there is no general proposition that Article 8 of the European Convention on Human Rights can never be engaged when the family life it is sought to establish is between adult siblings living together. Rather than applying a blanket rule with regard to adult children, each case should be analysed on its own facts, to decide whether or not family life exists, within the meaning of Article 8(1). Whilst some generalisations are possible, each case is fact-sensitive.”

See [62] of the decision of Lang J in *Ghising*, which is the source for the above proposition in the headnote.

30. Drawing this analysis together, therefore, it was not an error for the judge to approach her analysis of the existence of Article 8 family life between the appellant and his mother in this way. She found, at [19], that the appellant was not dependent upon his mother. By contrast, at [20] she found that his mother was emotionally dependent upon him. The judge considered the facts of this case on their own terms, consistent with her self-direction concerning *Ghising*. Properly understood, the judge’s findings are coherent and consistent with the authorities concerning adult dependence. It mattered not that the facts in *Ghising* were wholly distinct from those before the First-tier Tribunal.
31. Turning to the judge’s findings of fact, she found that the anxiety and depression experienced by Mrs Parsadmehr demonstrated her support upon him: see [20]. That finding must be read alongside the judge’s earlier findings at [17] that (i) the appellant has a “close adult relationship” with his mother and stepfather (see [17(i)]); (ii) there was some medical evidence that Mrs Parsadmehr experiences anxiety and depression; that Mr Partovi-Tabar’s evidence as to the effect of the appellant’s deportation on her health was credible; and (iii) she was a vulnerable individual for whom regular travel to Iran would be prohibited by the financial cost and her ill-health (see [17](iv)). Also at [20], the judge found that the appellant’s exclusion has a significant negative impact on his mother, and at [22] described that as “a severe negative impact”, coupled with “sever difficulties in the appellant’s mother visiting the appellant...” The Secretary of State has not challenged any of those findings of fact; the focus of her challenge was the apparent inconsistency between [19] and [20], and the judge’s reliance on *Ghising*. For the reasons I have set out above, both submissions are flawed.
32. While Ms Willocks-Briscoe’s submissions as developed at the hearing attempted to mount reasons and rationality-based challenges to the judge’s substantive finding that there were more than emotional ties between the appellant and his mother, the Secretary of State did not apply for, or have, permission to appeal on that basis. The relatively brief

application for permission to appeal encompassed a single proposed ground of appeal and did not advance criticisms of the findings which lay at the heart of [20] on those bases. The challenge was confined to the discreet bases that [19] and [20] were inconsistent, and the reliance on *Ghising* was misplaced, both of which are without merit. The grounds of appeal confined their challenge to the judge's proportionality analysis to the perceived inconsistency between [19] and [20], contending that, in light of the findings at [19], there was no need even to conduct a proportionality assessment: see paragraph 7 of the grounds of appeal. There was no application by Ms Willocks-Briscoe to advance additional grounds of appeal, and I decline to permit the Secretary of State to do so by stealth.

33. The Secretary of State did not challenge the judge's earlier self-direction that the public interest in maintaining the appellant's exclusion was "diminished" in light of the passage of time (see [18] and [22]), the judge's findings that there were no broader aggravating features, such as additional criminal convictions or breaches of the deportation order (also at [18]) or the remaining features of the judge's proportionality analysis at, for example, [23]. The judge reached his conclusions while fully cognisant of the horrific nature of the appellant's crime, having dwelt upon it at some length, with a lengthy recitation of the sentencing remarks, so it cannot be said that the judge was not aware of the circumstances of the underlying offending.
34. In summary, the judge applied approached the existence of Article 8 family life between the appellant and his mother in a tolerably clear manner that was consistent with the leading authorities on the issue. The Secretary of State did not seek or obtain permission to appeal to challenge the findings of fact inherent to the judge's operative findings of fact or her proportionality analysis; in effect, she confined her challenge to the judge's approach to the first *Razgar* question, without engaging with the remaining stages of the *Razgar* analysis (other than at the hearing, without making an application to rely on additional grounds of appeal out of time). Based on the appeal as advanced by the Secretary of State's grounds of appeal, the decision of the First-tier Tribunal did not involve the making of an error of law such that it must be set aside.
35. The appeal is dismissed.

Notice of Decision

The appeal is dismissed.

The decision of Judge Bartlett did not involve the making of an error of law such that it must be set aside.

No anonymity direction is made.

Signed Stephen H Smith

Date 17 January 2022

Upper Tribunal Judge Stephen Smith