



IAC-FH-CK-V1

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

Appeal Number: PA/12086/2019

THE IMMIGRATION ACTS

**Heard at Field House
On the 13th October 2021**

**Decision & Reasons Promulgated
On the 01st November 2021**

Before

**THE HONOURABLE MR JUSTICE SAINI
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE KEITH**

Between

**'AM'
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: Mr K Gayle, instructed by Elder Rahimi solicitors
For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which we gave orally at the end of the hearing on 13th October 2021.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Keane, promulgated on 21st April 2021. The judge had refused the appellant's appeal against the respondent's decision dated 30th October 2019 to refuse his protection and human rights claim, in the context of a deportation order having been made against him. An earlier protection claim had been dismissed by an Immigration Judge and the appellant's appeal rights were exhausted on 31st March 2008. On 25th June 2010, the appellant had been convicted, amongst other things, of possession with intent to supply 'class A' drugs (opium) and was sentenced two years' imprisonment. A deportation order was made on 30th September 2011. He subsequently appealed against that decision and his appeal was dismissed by the Upper Tribunal in 2012 and by the Court of Appeal on 26th of May 2012. He went on to commit further offences of domestic violence in 2014. He made further submissions between 2013 and 2019, which the respondent treated as a fresh claim, but which she rejected. It is these further submissions which are the subject of his appeal.
3. At §4 of his decision, the judge erroneously referred to the appellant's country of origin as Iraq (it should have been Iran) and the voluminous documentation to which, the judge said, the appellant had not referred in his witness statement, but which nevertheless the judge had considered. The judge also noted the report of an independent social worker. He recited the applicable law at §§8 to 9.
4. The judge went on to make findings of fact at §§10 to 14. In respect of whether, for the purposes of section 72 of the Nationality, Immigration and Asylum Act 2002, the appellant had been convicted of a particularly serious crime and constituted a danger to the community of the UK, the judge noted his use of a false passport and his conviction for serious drug offences, including possession with intent to supply 'class A' drugs. There was not, in the judge's view, a shred of evidence that the appellant had reformed or rehabilitated. The judge also noted that the appellant had persisted with false claims of ill-treatment by the Iranian authorities before entry to the UK. Previous judges had found that he had not come to the adverse attention of the Iranian authorities, as claimed.
5. The judge considered the appellant's PTSD. There was no dispute as to the availability either of treatment or medication in Iran and the judge dismissed his claim under article 3 ECHR.
6. In relation to family life, the judge concluded that the appellant's evidence in relation to his claims to care and support his partner's parents were vague. While at §§12 to 14, the judge accepted that the appellant had a genuine and subsisting parental relationship with his daughter by a former relationship, it was not particularly strong. There was no evidence of his caring responsibilities for his daughter and his contact was limited. His daughter's best interests were to remain with her mother in the UK after the appellant was deported.

7. The judge found that appellant's relationship with his current partner was genuine and subsisting but that it was established at a time when the appellant's immigration status was precarious. He had not been lawfully resident in the UK for most of his life and he was not socially and culturally integrated in the UK. There would not be very significant obstacles to the appellant's integration into Iran.
8. At §14, the judge considered and concluded that there were not very compelling circumstances in relation to the appellant's case (relevant to section 117C(6) of the 2002 Act).

The grounds of appeal and grant of permission

9. The appellant applied for permission to appeal against the judge's decision on 4th May 2021. He raised four grounds.
10. First, the judge had failed to consider or make findings on the risk to the appellant because of his "sur place" activities in the UK. The appellant had submitted extensive evidence to the judge, including printouts from his Facebook account which were highly critical of the Iranian regime. He had also demonstrated outside the Iranian embassy in London.
11. The judge had erred in failing to consider that he could depart from earlier judicial findings that the appellant had suffered adverse attention in Iran, as he had adduced further evidence about his PTSD, which he claimed was caused by that earlier adverse attention.
12. Third, the judge had erred in rejecting or failing to assess fully an independent social worker report which supported the strength of the relationship between the appellant and his daughter. The judge had erred in rejecting the report as speculative, with an excessive reliance on the appellant's account. The judge had not considered that the report was produced by an expert, who had a clear understanding of her duty of objectivity and that the expert had not relied solely on the appellant's account but had spoken directly to the appellant's daughter.
13. Fourth, the judge had adopted a "slipshod" approach, by referring to Iraq rather than Iran. He had also failed to engage properly with the evidence attesting to the genuineness of the relationship between the appellant and his partner. The judge had also ignored the absence of further drugs offences when assessing the appellant as not having rehabilitated (it was said that the offences of domestic violence were not of the same seriousness).
14. First-tier Tribunal Judge Andrew granted permission on 26th May 2021. The grant of permission was not limited in its scope.
15. The respondent served a rule 24 response on 10th August 2021. She conceded that the judge had failed to consider and make findings on the appellant's sur place activities in the UK since 2012, and whether he had a well-founded fear of persecution based on those activities. That concession was limited. The respondent maintained that the

judge's conclusions about the appellant not having suffered adverse attention in Iran; not rebutting the presumption under section 72; and the availability of treatment for PTSD, were open to him to reach.

16. In relation to the second ground, previous tribunals had considered the appellant's medical evidence about suffering from PTSD (which was accepted) and had rejected his claim that the cause of this was his ill-treatment in Iran. The judge had properly directed himself to Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702. The evidence before the judge was of the same kind as considered by earlier judges. To the extent that there was any difference, any new aspect of the evidence should be treated with the greatest degree of circumspection.
17. In respect of article 3, the appellant had conceded that there were adequate mental health facilities to treat his health condition and the grounds failed to demonstrate how he came anywhere near to the article 3 threshold.
18. In respect of the third ground, the grounds did not come close to identifying how the judge had erred in concluding that the "go scenario" (the appellant being deported while his wife and non-resident daughter remained in the UK) would be "unduly harsh" (see Exception 2, section 117C(5) of the 2002 Act).
19. In respect of the fourth ground, the reference to Iraq was clearly a typographical error and was not material.

Discussion and conclusions

20. Mr Gayle was content to rely on the grounds of appeal. While Mr Clarke made relevant and cogent submission in response, rather than recite them separately, we refer to them as necessary when we discuss each of the grounds below.

The first ground

21. The respondent rightly conceded that the judge had materially erred in failing to make any findings on the appellant's sur place activities. We have considered Mr Clarke's submission that the judge's error did not make his findings in relation to claims of ill-treatment before leaving Iran and in relation to PTSD, on grounds of article 3, unsafe. We reject Mr Clarke's submission. While we emphasise that the fact-finding will be intensely evidence-specific, the timing, nature and the extent of any sur place activities all potentially have bearing not only on whether the appellant is at risk because of those sur place activities in the UK, but also on the potential credibility of the appellant's allegations that he attracted adverse attention in Iran, and if so, why. Purely by way of example, if such sur place activities were of the same nature as those for which the appellant claims that he suffered adverse attention in Iran, and if he immediately began such sur place activities on entry to the UK, findings on those sur place activities could (and we emphasise, only 'could') be potentially relevant to the credibility of his account in Iran. We regard it as artificial, in that context, to expect a judge remaking an appeal to separate his or her assessment of the credibility of activity in Iran and sur place activity in the UK. Any

assessment of credibility is assisted by consideration of the evidence in the round. While we do not set aside the decision of the First-tier Tribunal (Judge Perry) which predates the judge's decision, and which remains a starting point in the context of Devaseelan, a judge remaking the appeal in this case should be able to consider evidence of both Iranian and UK activities, when assessing their credibility.

The second ground

22. We have already commented on a future judge being able to consider the credibility of the appellant's activities in Iran. On the one hand, we accept Mr Clarke's submission that the medical evidence before the judge was of the same kind as before Judge Perry. Both were diagnoses of PTSD, in the context of the appellant's claimed account of ill-treatment in Iran. Judge Perry had rejected the claim that the appellant's PTSD had been caused by and was corroborative evidence of the appellant's ill-treatment in Iran. On the other hand, had the judge assessed the further medical evidence in the context of his assessment of sur place activities, we do not rule out, as part of an holistic assessment, that the medical evidence would have been of no relevance. In the circumstances, the second ground also succeeds.

The third ground

23. We are conscious that an assessment of an expert report and the weight placed on it, is inherently fact-sensitive, and that the judge had the benefit of considering all the evidence, whereas we have not. Provided that his findings are adequately explained and reasoned, where the judge criticises such a report, mere disagreement with the weight the judge attaches to a report or with his conclusions, does not amount to an error of law.
24. That being said, we conclude that the judge's reasons were not adequately reasoned. While he made no concession, Mr Clarke's pragmatic description, without prompting, of the judge criticisms of the expert as "vague," confirmed our existing concerns. The judge's assessment of section 117C(5) of the 2002 Act (the effect of the appellant's deportation on his daughter) necessarily required substantial engagement with the expert report. We do not say that the judge erred in failing to defer to the expert's view. Where a judge does, however, place very limited weight on a report, because of substantial criticisms of it, they need to explain adequately the basis for that finding. In this case, the expert had made an assessment that the appellant and his daughter had a close and subsisting (albeit non-cohabiting) relationship. In contrast, the judge said at §14:

"I am not prepared to accord weight to [the expert's] conclusion that the two are party to a "close" and "substantial" relationship, I find that her conclusion owed much to speculation and an excessive reliance upon the account which the appellant gave her. Her report was prepared after only a single meeting and an opportunity to arrive at a reasoned conclusion that the two were party to a relationship of that quality did not easily arise."

25. The inadequacy of the reasoning lies in the reference to “speculation”, i.e. a conclusion that is not based on any facts or is based on an inadequate, or uncritical assessment of facts. Whilst we do not ourselves substitute our view as to any necessary finding, we did consider briefly to the expert report. The report includes a statement that the expert is aware of her independent duty to the court; it sets out in detail her expertise; and it explains that while contact time with families when compiling reports is inevitably limited, the author has considerable experience in doing so. The report states that the expert spoke not only to the appellant, but also directly to his daughter and aunt. The report also describes the regularity of the appellant’s access to his daughter and the activities they did together and sets out the expert’s conclusions.
26. The judge’s criticism of the report does not explain what in the report prompted his conclusion that there was excessive reliance on the appellant’s account, or in what sense the expert was uncritical. If it implied that elements of the appellant’s account were contrived, which the expert missed, that is not explained. The judge does not explain or suggest that the expert’s failure to spot any contrived account is because of a lack of impartiality or expertise. The judge’s reference to the report being based on a single interview is axiomatic. The report explains this, but also explains why, nevertheless, the assessment remains valid (her considerable experience of making assessments, as applied through careful observation and discussion). The judge does not analyse why that explanation is inadequate, resulting in such little weight being attached to the report. We do not say that the judge’s conclusion was not open to him to reach, so as to be perverse. What we say is that where, as here, a judge effectively applies no weight to an expert report, general observations that a report is speculative or relies uncritically on a witness’s account, without more, are unlikely to be sufficiently explained reasons. Instead, what is needed is a discussion of where in the report the flaw or speculation lies.
27. The judge’s error in assessing the social worker report goes to the core of the assessment of the appellant’s family life and is therefore a material error.

The fourth ground

28. We accept Mr Clarke’s submission that the typographical errors in the judge’s decision are not such as to indicate that he was not assessing the correct country of origin, or in the case of an incorrect date of birth, the correct child. We also accept his submission that the judge was unarguably entitled to consider the appellant’s conviction for domestic violence. The suggestion that domestic violence to a partner is irrelevant to the danger posed by the appellant to the community of the UK, because it is not drugs related, is plainly unsustainable.
29. Turning to the judge’s wider assessment of the danger posed by the appellant, Mr Clarke helpfully went through the five factors considered by the judge at §10. Of those five factors, which we list briefly, we conclude that the judge erred in respect of two of them. The first was that the appellant “persisted with false claims that the Iranian authorities ill-treated him before he left the country of origin.” As we

outlined in relation to the first ground, the judge's failure to consider the sur place activities potentially has relevance to the appellant's activities in Iran. That error infects this reasoning. Also, the judge does not explain why persisting with a claim could be relevant to whether the appellant constitutes a danger to the community of the UK, if all he does, as he is entitled to do, is to pursue a protection claim. While three of the other factors considered by the judge do not disclose any error (conviction for serious drugs offences; lack of rehabilitation; and convictions for domestic violence), the final ground does. This relates to the vagueness of the appellant's claimed care and support for others, presumably on the basis that this may result in him constituting less of a danger. We have referred to the judge's error in analysing expert evidence of the role the appellant plays with his daughter. That error similarly infects the judge's assessment in relation to this fifth factor.

30. Finally, for completeness, in relation to the article 3 ECHR, we have noted that the judge discussed the availability of medical treatment in Iran for PTSD, in the context of the judge's finding that the appellant would not face state-directed persecution on his return there. Where, as here, the judge erred in his analysis of the claim of persecution, that also must have a bearing on the extent to which the appellant would be able to access or engage with medical treatment in Iran. The judge's error in his assessment of the asylum claim also means that there is a material error in his article 3 assessment.
31. In summary, all four grounds relate to interlocking findings. In the circumstances, we find that the judge's findings and conclusions are unsafe and cannot stand.

Decision on error of law

32. We conclude that there are material errors of law in the judge's decision, which we set aside.

Disposal

33. With reference to paragraph 7.2 of the Senior President's Practice Statement and the extent of the necessary fact-finding, this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing. Both representatives were agreed on this course of action.
34. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed.

Notice of Decision

The decision of the First-tier Tribunal contains errors of law and we set it aside. We remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a complete rehearing, with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Keane.

The anonymity directions continue to apply.

Signed *J Keith*

Date: 21st October 2021

Upper Tribunal Judge Keith