IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005016

First-tier Tribunal No: PA/50051/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 30th of January 2025

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Khalid, Consultant Solicitor with Batley Law
For the Respondent: Ms Yung, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 24 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Saffer ('the Judge'), promulgated following a hearing at Bradford on 19 September 2024, in which the Judge dismissed the appeal against the rejection of the Appellants claims made on protection and human rights grounds.

2. The Appellant is a citizen of Iran of Kurdish ethnicity born on 21 December 1983 who it is accepted left Iran illegally.
3. Having considered the documentary and oral evidence and submissions the Judge sets out his findings of fact from [23] of the decision under challenge.
4. The Appellant claimed a real risk based upon a relationship with a woman, G, but the Judge did not accept it likely he had such a relationship or there were any repercussions arising from it. The Judge notes that G was here but had not attended to give evidence.
5. The Judge does not accept it was reasonably likely the Appellant had any political activity in Iran for the reason stated at [24].
6. The Judge finds the Appellant's failure to claim asylum in France and Italy damaged his credibility, as the Judge does not accept he was under the control of an agent all the time, he was fingerprinted in Italy, and failed to establish that by her uncle owning a restaurant in France he will be able to locate them [25].
7. The Judge finds the Appellant will not be at risk of harm for being a failed Kurdish asylum seeker who exited Iran illegally [26].
8. For the same reason the Judge does not accept the Appellant had established a real risk sufficient to breach Articles 2 or 3 ECHR [28].
9. In relation to Article 8, the Appellant is not in a relationship with G and has no children. The Appellant failed to establish he has family life recognised by Article 8. In relation to private life the Appellant fails to establish what that entails but, in any event, he developed his private life while his leave in the UK is precarious [29], and that had proportionality been the issue, that the decision is proportionate [30].
10. The Appellant sought permission to appeal asserting the Judge erred on more than one occasion in proceeding on the basis that corroborative evidence was necessary, examples being given in relation to findings at [23 – 24]. Which is said to impose upon the Appellant requirement to produce corroborative evidence to support aspects of his account when there was no requirement in law that there should be such corroboration, that prevented the Judge from undertaking an assessment of the Appellant's own evidence on the matters in question.
11. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Rastogi on 9 December 2024, the operative part of the grant being in the following terms:

> 2. It is arguable that the judge made adverse credibility findings due to the appellant's failure to corroborate key aspects of his claim whereas there is no duty upon the appellant to corroborate his claim. Whilst the lack of corroboration was not the only reason for the adverse credibility findings, it is arguable it infected that decision.

12. The Secretary of State opposes the appeal in the Rule 24 response dated 17 December 2024, the operative part of which reads:

> 2. The Respondent opposes the Appellant's appeal. The Appellant's sole ground concerns a number of findings in which the Judge placed weight on a lack of corroboration. Contrary to the grounds, the Judge was entitled to do so. With respect, MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216 is not authority for the proposition that a Judge may never take into account a lack of corroboration – see §86:
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> > *It was common ground before this Court that there is no requirement that the applicant must adduce corroborative evidence: see Kasolo v Secretary of State for the Home Department (13190, a decision of the then Immigration Appeal Tribunal, 1 April 1996). On the other hand, the*

absence of corroborative evidence can, depending on the circumstances, be of some evidential value: if, for example, it could reasonably have been obtained and there is no good reason for not obtaining it, that may be a matter to which the tribunal can give appropriate weight. This is what was meant by Green LJ in SB (Sri Lanka) at para. 46(iv).

3. In this case the lack of corroborative evidence that concerned the Judge was clearly evidence which could reasonably have been obtained and for which no good reason for the failure to do so had been given. In particular:

    (a) As per §23, G could plainly have given evidence as she was a dependent upon his claim (§19). Her failure to do so was a matter that the Judge was entitled to attach weight to.

    (b) As per §24, the Appellant stated in his interview that he had in his possession a document concerning his sentence in Iran. As the Judge explains, that is a document relevant to his asylum claim. His failure to produce it despite being in possession of the document was again something that the Judge was entitled to attach weight to. It was also open to the Judge to attach weight to the fact that no one had attended the hearing in order to corroborate the Appellant's claim to have attended demonstrations in the UK. It is not unreasonable to expect such corroboration given that activity has taken place in the UK and G, on the Judge's finding, could have given evidence on that activity.

4. The above were all matters that the Judge was entitled to place weight on and did not offend any principle articulated in MAH. The weight to be afforded those factors was a matter for the Judge. It is also not a case in which the claim failed owing to a lack of corroboration. Rather, the Judge places weight on a number of factors including inconsistencies (see §23) and section 8 factors (§25). In short, the Judge was entitled to reject the Appellant's claim for the reasons he gave and he did not fall into legal error in doing so.

5. In summary, the Respondent will submit inter alia that the judge of the First tier Tribunal directed himself appropriately.

Discussion and analysis

13. When considering the merits of an allegation the judge below has made an error of law, guidance has been provided by the Court of Appeal in in Volpi v Volpi [2022] EWCA Civ 462 at [2], Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 at [26], and Hamilton v Barrow and Others [2024] EWCA Civ 888 at [30-31], which I have considered.

14. The Appellant relies upon the case of MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216 submitting that this prevents a judge from requiring corroboration and dismissing the appeal on the basis that was no such corroboration provided, which was unfair.

15. The problem for the Appellant is that such a proposition does not accurately reflection of the decision of the Court of Appeal which is that set out at [86] of MAH where the Court found "*It was common ground before this Court that there is no requirement that the applicant must adduce corroborative evidence: see Kasolo v Secretary of State for the Home Department (13190, a decision of the then Immigration Appeal Tribunal, 1 April 1996). On the other hand, the absence of corroborative evidence can, depending on the circumstances, be of some evidential value: if, for example, it could reasonably have been obtained and there is no good reason for not*

obtaining it, that may be a matter to which the tribunal can give appropriate weight. This is what was meant by Green LJ in SB (Sri Lanka) at para. 46(iv). (my emphasis)

16. It is important to read the determination as a whole. The Judge does not dismiss the appeal for want of corroboration. The comment by the Judge that there was no further evidence provided from various sources is a factual statement, no more. It is also finding within the range of those reasonably open to the Judge on the evidence.
17. Following Ms Khalid repeating her submission that the Judge erred in seeking corroboration, she was asked in what circumstances a First-tier Tribunal judge was able to say there was no evidence from witnesses to support an appellant's claim? This was because the impression given by her submissions was that even saying this was the situation would give rise to a claim of legal error on the basis of it appearing the Judge required corroboration. If find that is conflating two completely different issues.
18. Ms Khalid eventually stated she accepted a First-tier Tribunal judge could say this, which is legally correct.
19. The point at issue here is that the Judge does not say in the determination, nor can it be implied, that the reason he dismissed the appeal was as a result of a lack of corroboration for the Appellant's claim.
20. At [23] the Judge records not accepting it was reasonably likely the Appellant had a relationship with G or that there are any repercussions. The recorded concerns of the Judge in relation to this finding are (i) despite her being in the UK G had not attended to give evidence – a factually correct statement, (ii) there is a discrepancy as to whether the relationship was secret or not – a finding reasonably open to the Judge on the evidence considered as a whole, (iii) it was not reasonably likely the Appellant's family would ask for her hand in marriage if it brought shame on them – a finding reasonably open to the Judge on the evidence, (iv) there was a discrepancy in the evidence as to whether the Appellant was beaten by G's uncles 5 or 6 months after they eloped, or that they were going to Iraq to elope - a finding within the range of these reasonably open to the Judge on the evidence, (v) the Appellant's failure to mention the relationship in his December 2023 interview despite it being over before September 2023 – a finding within the range of those reasonably open to the Judge on the evidence, (vi) that the Appellant referred to G as his partner and not ex-partner – a finding within the range of those reasonably open to the Judge on the evidence, (vii) the Appellant had ample opportunity since December 2023 to obtain and submit any documents he wants – that is a factually correct statement.
21. Further evidential concerns identified by the judge at [24] are (i) in his interview the Appellant said he had a document to show his court sentence but then said it related to property he owned – a finding within the range of those reasonably open to the Judge on the evidence, (ii) despite being aware from the refusal letter that the alleged risk is challenge the Appellant had not produced a letter allegedly sentencing him from the court - a factual finding reasonably open to the Judge on the evidence, (iii) no one here attended to confirm he attended any meetings or demonstrations in the UK – a factually correct observation by the Judge, not the Judge requiring corroboration without which the appeal would fail, (iv) G had not attended to confirm any political activity in the UK or what knowledge she had of their respective tribal affiliations or political connections – a factually correct finding by the Judge on the evidence.
22. The Judge also found the failure of the Appellant claimed asylum in France or Italy damaged his credibility pursuant to section 8, a finding also within the range of those reasonably open to the Judge on the evidence.

23. The core finding of the Judge is that although the Appellant himself gave evidence he did not have to accept the Appellant claims just because he says it, and that given the numerous adverse credibility findings he had made the Judge did not accept its reasonably likely the Appellant made donations to the KDPI or that any member of his family had been politically involved or martyred.
24. Ms Khalid referred to [99] of MAH (Egypt) in which the Court considering Ground 7 of the challenge to the determination of the Upper Tribunal in that appeal, on the basis of an issue of irrationality. In this paragraph the Court find:

> 99. In my view, Ground 7 is made out. When one applies the correct standard of proof, the positive evidence which supported the Appellant's claim, including his own evidence of what he had observed before his father was arrested; the circumstances of that arrest and his father's imprisonment; and the expert evidence, which was consistent with – although not directly probative of – his case, could reasonably lead only to one conclusion: that the Appellant does have a well-founded fear of persecution if he is returned to Egypt. I stress again that the Appellant does not have to show that this will happen or even that it is likely to happen on a balance of probabilities. It suffices that there is a reasonable degree of likelihood. He therefore qualifies as a refugee.

25. Two points arise from the submission the Judge erred in not allowing the appeal on the basis of this finding by the Court, the first is that if one looks at the grounds of appeal to the Upper Tribunal this matter was not raised and permission was not considered or granted to the Appellant to pursue it. Indeed, the Grounds of appeal only plead one matter namely that it is claimed the Judge on more than one occasion proceeded on the basis that corroborative evidence was necessary contrary to the principles set out in MAH (Egypt).
26. The second point is that the requirements of the Judge to consider all the evidence holistically and to take all relevant factors into account is clearly what the Judge did in this appeal. In MAH (Egypt) there were a number of aspects of the evidence which supported the Appellant's claim, including his own evidence of what he had observed before his father's arrest and the circumstances of that arrest and his father's imprisonment. There was in addition consistent expert evidence leading to it being the fact that his case could reasonably leading to only one conclusion namely that the Appellant has a well-founded fear of persecution if returned to Egypt and should therefore succeed. In the current appeal those pieces of the jigsaw that were material to the finding of the Court of Appeal are not present. The Judge had the Appellant's evidence which was taken into account by the Judge but had no other material consistent with or probative of the case such that there was only one outcome in the Appellant's favour. Indeed, on the basis of the evidence the Judge was asked to consider the only outcome reasonably available to the Judge was that which appears in the determination, namely the dismissal of the appeal.
27. Whilst the Appellant disagrees with the outcome, clearly prefers a more favourable resolution to enable him to stay in United Kingdom, the Grounds fail to establish legal error material of the decision of the Judge to dismiss the appeal. That has not been shown to be a finding outside the range of those reasonably open to the Judge on the evidence and has not been shown to be rationally objectionable.
28. The findings of the Judge are in accordance with the guidance of the Court of Appeal in MAH (Egypt) in relation to the manner in which the Judge evidentially treated the fact that evidence that could have been provided was not made available.

Notice of Decision

29. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 January 2025