Neutral Citation Number: [2019] EWCA Civ 6

Case No: C5/2016/1803

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
Upper Tribunal Judge Taylor
Upper Tribunal appeal number: AA/0950/2015

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/01/2019

Before:

LORD JUSTICE HAMBLEN
and
LORD JUSTICE NEWEY

- -

Between:

KS (IRAN)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

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- -

Mr Tasaddat Hussain (instructed by **Bankfield Heath Solicitors**) for the **Appellant**
Mr Zane Malik (instructed by the **Government Legal Department**) for the **Respondent**

Hearing date: 19 December 2018

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Approved Judgment

Lord Justice Newey:

1. This is an appeal by KS against the dismissal by the Upper Tribunal (Immigration and Asylum Chamber) (Upper Tribunal Judge Taylor) on 22 February 2016 of her appeal from a decision of the First-tier Tribunal ("the FTT") (FTT Judge Dickson). Judge Dickson had rejected the appellant's challenge to a decision refusing her leave to remain in the United Kingdom.

Basic facts

2. As can be seen from the FTT decision, the appellant, who is an Iranian citizen, has explained that she was born on 24 March 1974 in Sardasht, a town some 700 km from Tehran which was her home throughout the time she lived in Iran. She says that she attended school up to the age of 14 before becoming a self-employed beautician with a successful business. She was married in 1989 and had two children (a daughter born in 1992 and a son born in 1994), but in 2003 or 2004 her husband left for the United Kingdom, where he obtained indefinite leave to remain. The appellant's children later followed their father to the UK, where her daughter was granted refugee status after arriving in 2010 and her son, who reached the UK in 2012, achieved indefinite leave to remain. According to the appellant, her husband spoke of her, too, coming to the UK, but he subsequently said that he wanted a divorce and, although this was not her wish, they were divorced in 2013. Thereafter, the appellant lived with her father, who, she says, would rarely allow her to go out and latterly insisted on her marrying an 80-year old man whom she did not know. She managed to escape, however, and she made her way to the UK, entering clandestinely on 10 October 2014. She claimed asylum the next day.

3. On 18 March 2015, the Secretary of State refused the appellant's asylum claim, on the basis that there was no reasonable degree of likelihood that she would be persecuted on return to Iran. The Secretary of State did not accept that the appellant had been asked to enter into an arranged marriage by her father and also considered that "a suitable internal relocation option is available to [the appellant] should [she] feel [she is] unable to return to [her] family in Sardasht" (see paragraph 41 of the refusal letter). With regard to the latter point, this was said:

> "44. It is noted that Iran is a country with a land mass of 1,648,195 sq km, and a population of 80,840,713. Therefore given the vast size of Iran and its large population it is considered that you would be able to relocate to another area and not be located by your brothers or father. You speak Farsi …. Your language is the official and widely spoken language in Iran.
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> 45. It is also noted, according to your evidence, that whilst you have not previously resided anywhere other than Sardasht, you have previously owned and run you[r] own business as a beautician ….
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> 46. I have therefore considered whether it would be reasonable for you to relocate to Tehran.

> 47. It is considered that whilst you have stated that your father and brothers would be able to locate you on return to Iran, you have provided no basis to consider that they have the necessary power or influence to be aware of your return to the country or to be able to locate you in a different city in Iran.
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> 48. It is noted that whilst you were educated only to the age of fourteen in Iran, this did not prevent you from finding work as a self-employed beautician in Sardasht …. It is also noted that your business allowed you to make approximately 600,000 – 700,000 rials per month in Iran …. Furthermore, you were able to use savings made from this employment to fund your exit from Iran and journey to the United Kingdom.
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> 49. It is considered that you could utilise the experience gained from working in this business to obtain employment in a similar field or alternative field to support yourself and aid your relocation to a different area of Tehran.
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> 50. If your concerns about relocating are merely financial, you are reminded that the Home Office operates an assisted voluntary return programme which could provide you with reintegration assistance upon your return. It is considered that you could use this financial assistance to establish your life in Iran, or possibly use it to enter into a similar employment field as in Sardasht.
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> 51. It is noted from background information that there are no restrictions on freedom of movement or travel for women in urban areas of Iran and you have provided no demonstration in the evidence you have provided that you would be an exception to this. Moreover, it is noted that you have previously been able to travel independently to Turkey and the United Kingdom, as well as within Sardasht itself. There is no reason why this freedom would not continue on your return to a similarly urban area of Iran.
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> 52. Whilst it is considered that you may encounter some difficulty in returning to Iran as a single woman, it is not considered that those difficulties would be insurmountable. It is noted that you have already demonstrated considerable resilience and resolve in escaping your problems in Iran and travelling independently to the United Kingdom. You have also demonstrated that you are capable of establishing your own self-employment in a largely male dominated and patriarchal society. It is noted that you are in regular contact with your daughter in the United Kingdom and you have provided no reason why this moral support could not continue whilst you are in Iran."

On that footing, this conclusion was reached (in paragraph 53):

> "the individual circumstances of your claim do not indicate that it would be unreasonable to expect you to return to Tehran and as such you do not qualify for international protection".

4. The appellant appealed to the FTT, but her appeal was dismissed in a decision dated 6 July 2015. A further appeal to the Upper Tribunal was, as already mentioned, similarly unsuccessful, but the appellant obtained permission to appeal to this Court on one of the four grounds she had advanced, viz. that relating to internal relocation within Iran.

Legal framework

5. Applications for asylum and humanitarian protection are addressed in part 11 of the Immigration Rules. Rule 339O, which is included in part 11, deals with the possibility of "Internal relocation". It states:

> "(i) The Secretary of State will not make:
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> (a) a grant of refugee status if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
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> (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
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> (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making a decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
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> (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

6. The House of Lords gave guidance as to the test to be applied in *Januzi v Home Secretary* [2006] UKHL 5, [2006] 2 AC 426. Lord Bingham, with whom the other members of the House agreed, said at paragraph 21:

> "The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so."

7. The House of Lords returned to the subject of internal relocation in *AH (Sudan) v Home Secretary* [2007] UKHL 49, [2008] 1 AC 678. It stressed that the test quoted in the previous paragraph provided the correct approach to the problem of internal relocation, and Lord Bingham observed in paragraph 5:

> "The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is."

For her part, Baroness Hale explained at paragraph 21:

> "By definition, if the claimant had a well-founded fear of persecution, not only in the place from which he has fled, but also in the place to which he might be returned, there can be no question of internal relocation. The question presupposes that there is some place within his country of origin to which he could be returned without fear of persecution. It asks whether, in all the circumstances, it would be unduly harsh to expect him to go there. If it is reasonable to expect him to go there, then he can no longer claim to be outside his country of origin because of his well-founded fear of persecution."

Baroness Hale also said this (in paragraph 30) about how appeals from the relevant tribunals should be approached:

> "This is an expert tribunal charged with administering a complex area of law in challenging circumstances. … [T]he ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right…. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

8. In *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49, [2011] 2 All ER 65, Sir John Dyson (giving the Supreme Court's judgment) observed (in paragraph 43) that the Court should "always bear in mind" the last of the quotations set out in the previous paragraph. He went on to say this:

> "[44] … The role of the court is to correct errors of law. Examples of such errors include misinterpreting the Human Rights Convention (or in a refugee case, the Refugee Convention or the Qualification Directive (Council Directive (EC) 2004/83 (OJ L304 p 12)), misdirecting themselves by propounding the wrong test on some legal question such as the burden or standard of proof; procedural impropriety such as a breach of the rules of natural justice; and the familiar errors of

> omitting a relevant factor or taking into account an irrelevant factor or reaching a conclusion on the facts which is irrational.
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> [45] But the court should not be astute to characterise as an error of law what, in truth, is no more than a disagreement with the [Asylum and Immigration Tribunal's] assessment of the facts. Moreover, where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account."

9. In *SC (Jamaica) v Home Secretary* [2017] EWCA Civ 2112, [2018] 1 WLR 4004, Ryder LJ noted (at paragraph 36) that:

> "the evaluative exercise is intended to be holistic and … no burden or standard of proof arises in relation to the overall issue of whether it is reasonable to internally relocate".

The decisions below

10. FTT Judge Dickson, having heard oral evidence from, among others, the appellant herself, arrived at these conclusions (in paragraph 27 of the decision):

> "I am satisfied that the Appellant received threats from her husband's family to agree to the divorce. Her own family did not agree to the divorce and were in the process of forcing her to marry her father's friend who was an old man of around 80 years old. If the Appellant returned to Iran she may well receive ill-treatment from her father and her brothers and forced to enter into this arranged marriage. In that event she will suffer persecution as a member of a social group."

11. On the other hand, Judge Dickson did "not consider that the Appellant will face problems on her return by virtue of her being a failed asylum seeker" (paragraph 28 of the decision). As to that, the Judge said in paragraph 28:

> "The current country guidance cases indicate that it is possible for failed asylum seekers to return to Iran although they may be questioned by the authorities on their return. The Appellant fears her family and has not had any problems with the Iranian authorities."

12. Judge Dickson then considered the "internal flight option" and, more specifically, whether, as had been submitted to him on behalf of the Secretary of State, the appellant "could return safely to Tehran" (paragraph 29 of the decision). After referring to *Januzi*, *AH (Sudan)* and other cases, the Judge said this in paragraph 31:

> "I would … agree with [the Home Office presenting officer's] submissions and the matters set out in the refusal letter. The Appellant has run a successful hairdressing/beautician business from home. She has proved to be resilient by escaping from the clutches of her family with the assistance of her friends. The

> Appellant has funded her journey to the United Kingdom through an agent from her savings from the business and the monies that she had received from her husband at the time of the divorce. The refusal letter refers to the Home Office Assisted Voluntary Return programme which gives reintegration assistance as well as financial assistance …. I would agree that the Appellant could encounter some difficulty in returning to Iran as a single woman. [The appellant's counsel] referred to the problem in obtaining a government licence on return to Iran before she could open a business. I have not seen any background information concerning the difficulty in obtaining such a licence. In any event the Appellant could work for another business as a hairdresser/beautician in Tehran before setting up her own business."

13. Judge Dickson went on to say that, in his view, the appellant "could … return to live in Tehran" (paragraph 32 of the decision) and the "internal flight option is available" (paragraph 34).

14. On appeal, Upper Tribunal Judge Taylor considered that Judge Dickson had been "perfectly entitled … to conclude that on the information before him the appellant would not face problems on return as a consequence of her being a failed asylum seeker, particularly since the appellant's case is based upon a fear of family rather than being an opponent of the government" (paragraph 12 of the decision). Judge Taylor continued (in paragraph 13):

> "So far as internal relocation is concerned the judge considered the appellant's particular circumstances and her personal characteristics and it was open to him to find that she would be able to earn a living and to live away from her family without fear. If the country guidance case presently being heard in the Upper Tribunal reaches a different conclusion from *SB Iran* then the appellant can make a fresh claim in the light of new country guidance."

The present appeal

15. Mr Tasaddat Hussain, who appeared for the appellant, did not suggest that the FTT had not accurately identified the material legal principles. His complaint was that the FTT had not applied those principles. He argued, in particular, that the FTT had failed to have proper regard to relevant matters. Significant matters, he maintained, went unmentioned or undiscussed. The appellant was left wondering how the FTT had arrived at its decision.

16. In his oral submissions, Mr Hussain made extensive reference to the "Guidelines on International Protection" published by UNHCR in 2003 ("the UNHCR Guidelines") and the "Country of Origin Information (COI) Report" in respect of Iran issued by the Home Office in 2013 ("the COI Report"). Mr Hussain relied particularly on paragraph 7 of the former document, which so far as material reads:

> "In the context of the holistic assessment of a claim to refugee status, in which a well-founded fear of persecution for a Convention reason has been established in some localised part of the country of origin, the assessment of whether or not there is a relocation possibility requires two main sets of analysis, undertaken on the basis of answers to the following sets of questions:
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> I. The Relevance Analysis
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> …
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> (c) *Is the agent of persecution a non-State agent?* Where there is a risk that the non-State actor will persecute the claimant in the proposed area, then the area will not be an internal flight or relocation alternative. This finding will depend on a determination of whether the persecutor is likely to pursue the claimant to the area and whether State protection from the harm feared is available there.
>
> (d) *Would the claimant be exposed to a risk of being persecuted or other serious harm upon relocation?* This would include the original or any new form of persecution or other serious harm in the area of relocation.
>
> II. The Reasonableness Analysis
>
> *Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship?* If not, it would not be reasonable to expect the person to move there."

Mr Hussain also took us to paragraph 28 (which explains that "the deprivation of any civil, political or socio-economic human right in the proposed area" will not necessarily disqualify it from being an internal flight or relocation alternative and that what is required is an assessment "from a practical perspective" of "whether the rights that will not be respected or protected are fundamental to the individual, such that deprivation of those rights would be sufficiently harmful to render the area an unreasonable alternative") and paragraph 29 (which notes that it would be "unreasonable … to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence", but that "a simple lowering of living standards or worsening of economic status may not be sufficient to reject a proposed area as unreasonable"). As regards the COI Report, Mr Hussain stressed passages indicating the patriarchal nature of Iranian society and discrimination against women.

17. Mr Zane Malik, who appeared for the Secretary of State, pointed out that there was no mention of either the UNHCR Guidelines or the COI Report in the grounds of appeal or Mr Hussain's skeleton argument. Nor, he noted, was either document put before Judge Dickson. Against that, Judge Dickson was, Mr Hussain said, referred to the *Januzi* case and Lord Bingham there spoke of the UNHCR Guidelines providing

"valuable guidance" and quoted paragraphs 7(II), 28 and 29 (paragraph 20 of his speech).

18. Even so, it seems to me that there is no basis at all for impugning the FTT's decision. As Sir John Dyson explained in the *MA (Somalia)* case, the Court should be "slow to infer" from the fact that a relevant point was not expressly mentioned that it was not taken into account. In the present case, moreover, it is apparent from the FTT's decision that it had in mind the relevant legal principles and there is no good reason to think that it did not apply them appropriately. With regard to the parts of the UNHCR Guidelines to which Mr Hussain drew our attention:

    i) *Paragraph 7(I)(c) (risk of persecution by non-State actor on relocation)*: Judge Dickson clearly considered that the appellant would be safe from her father and brothers in Tehran. In that connection, it is significant that Judge Dickson expressed agreement with "the matters set out in the refusal letter" (paragraph 31 of the decision). Those matters included the conclusions that "given the vast size of Iran and its large population … [the appellant] would be able to relocate to another area and not be located by [her] brothers or father" (paragraph 44 of the letter) and that the appellant had "provided no basis to consider that [her father and brothers] have the necessary power or influence to be aware of [her] return to the country or to be able to locate [her] in a different city in Iran" (paragraph 47 of the letter).

    ii) *Paragraph 7(I)(d) (risk of persecution or other serious harm on relocation)*: As I have said, it was plainly Judge Dickson's view that the appellant would be safe from her father and brothers in Tehran. Further, he stated in terms that he did "not consider that the Appellant will face problems on her return by virtue of her being a failed asylum seeker" (paragraph 28 of the decision).

    iii) *Paragraph 7(II) (leading a relatively normal life without facing undue hardship)*: The refusal letter, with which Judge Dickson agreed, concluded that the appellant would be able to move freely in an urban area such as Tehran (paragraph 51) and that the difficulties that the appellant might encounter in returning to Iran as a single woman would not be insuperable notwithstanding the "largely male dominated and patriarchal society" (paragraph 52). Echoing that, Judge Dickson agreed that the appellant could encounter some difficulty but nonetheless decided that the appellant could return to live in Tehran (paragraph 32 of the decision).

    iv) *Paragraph 28 (respect for human rights)*: As mentioned above, Judge Dickson evidently had in mind the prospect of the appellant facing problems as a single woman, but did not consider this to preclude her return to Iran. It is noteworthy in this context that the UNHCR Guidelines themselves explain that deprivation of a human right may not be inconsistent with relocation and that (to repeat points made already) the refusal letter, which Judge Dickson endorsed, concluded that the appellant would be able to move freely in an urban area such as Tehran and that the difficulties that the appellant might encounter would not be insuperable.

    v) *Paragraph 29 (economic survival)*: Judge Dickson obviously considered that the appellant would not "face economic destitution or existence below at least

an adequate level of subsistence". To the contrary, he concluded that, even if she could not set up on her own at first, she would be able to work for another business as a hairdresser/beautician (see paragraph 31 of the decision). It is to be remembered that "[t]he humanitarian object of the Refugee Convention … is not to procure a general levelling-up of living standards around the world" (to quote from Lord Bingham in *AH (Sudan)*).

19. The reality, as I see it, is that the appeal amounts to "no more than a disagreement with the [FTT's] assessment of the facts" (to use the words of Sir John Dyson in *MA (Somalia)*). There is no question of it being "quite clear that they have misdirected themselves in law" (as Baroness Hale said in *AH (Sudan)* should be the case for decisions not to be respected). In my view, it is apparent from his decision that Judge Dickson had the relevant legal principles in mind; he arrived at conclusions that were properly open to him; and he sufficiently explained his reasoning. The Upper Tribunal was therefore right to uphold the decision.

20. I would dismiss the appeal.

Lord Justice Hamblen:

21. I agree.