Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01628/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 3 July 2014	**On 28th July 2014**

Before

THE HONOURABLE MR JUSTICE HADDON-CAVE
UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MR BAZADI MOHAMMADI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E King
For the Respondent: Mr C Avery

DETERMINATION AND REASONS

1. This is an appeal by Bazadi Mohammadi against a decision of First-tier Tribunal Judge Thanki sitting with Mrs L.R. Schmitt, a non-legal member, promulgated on 17 April 2014 whereby they dismissed the appellant's appeal against the Secretary of State's decision to make a deportation order pursuant to the automatic deportation provisions of the UK Borders Act 2007.

2. On 7 October 2012 the appellant was sentenced at St Albans Crown Court by His Honour Judge Plumstead to four and a half years' imprisonment on a plea for an offence under Section 18 of the Offences against the Person Act 1861, namely wounding with intent.

3. The circumstances of the offence, which are set out in paragraph 30 of the Determination and Reasons, involved a sustained attack by the appellant on the victim with a bottle which the appellant then broke in order to slash at the victim's face.

4. The background facts are that the appellant is a citizen of Iran. He arrived in the United Kingdom in August 2006 and upon arrest on arrival claimed asylum. His claim for asylum was refused on 18 October 2006 but he was granted limited leave to remain in the United Kingdom and then granted indefinite leave to remain in August 2010 outside the Immigration Rules.

5. Within about twelve months, he was then arraigned and sentenced at St Albans Crown Court, as we have said, for wounding with intent. The judge must have regarded this an offence of considerable seriousness since his sentence starting point was in excess of 4.5 years.

6. The appellant was served with a notice of liability to automatic deportation on 14 December 2011. His solicitors then wrote in January 2013 claiming that deportation would be a breach of the Refugee Convention and Article 8 ECHR.

7. Following a screening interview on 30 May 2013, the appellant was served with a notice of decision under Section 32(5) of the UK Borders Act 2007. A deportation order was made on 17 July 2013.

8. The appellant claimed in his submissions and evidence before the First-tier Tribunal that he would be at risk if he was returned to Iran because of his father's activity in Iran on behalf of the Kurdish community and his fear of persecution on the basis of political opinions imputed to him, the appellant.

9. The First-tier Tribunal rejected the appellant's various claims under the Refugee Convention, the Immigration Rules, humanitarian protection, Article 3 and Article 8 of the ECHR.

Credibility

10. Before us today the appeal is put by Ms King on behalf of the appellant on two grounds. The first relates to the Tribunal's findings on credibility. She submits that, on analysis, the Tribunal's findings on credibility were tainted by 'errors of law' as she put it. She relied primarily on the grounds of appeal prepared by her predecessor in this case.

11. First, she criticised the fact that the Tribunal had used as a starting point on credibility their finding that the appellant's failure to claim asylum in France in the course of his travel from Iran via Turkey through France to the United Kingdom. The Tribunal said in paragraph 35: "His failure to claim asylum in France damages his overall credibility."

12. Ms King submitted that this was a 'pivotal' finding by the Tribunal which was (a) an inappropriate starting point, and (b) not justified on the evidence.

13. She submitted that the appellant was a minor aged 17 when he engaged in this journey to the United Kingdom, and secondly that he had been in the control of an agent, and would have been travelling with an agent. The evidence, however, suggests otherwise. In his statement dated 13 September 2006 the appellant states that his relatives "found an agent who arranged my journey to Turkey" and the agent was paid monies by his relatives. He said he left Iran in July 2006, travelled to Turkey by foot, then he was put on a bus to Istanbul and, after staying in a flat, was hidden in the back of a lorry and changed lorries twice to the United Kingdom. It is far from clear that the appellant was travelling with an agent. The appellant gave an explanation for not having claimed asylum en route but that explanation was not in terms of having been under the control of an agent. His screening interview was not relied upon.

14. We have also considered his deportation questionnaire in which he answered the question "what was the reason for your coming to the United Kingdom?" With the answer "to have a better life for myself." In our judgment, it was plainly open to the First-tier Tribunal to conclude that his failure to claim asylum in France damaged his overall credibility.

15. The second point made by Ms King was a criticism of the First-tier Tribunal's reliance on the fact that the appellant's uncles in Iran remained unhindered, as did his mother and sisters by the authorities. Regarding this issue the Tribunal said as follows:

> "37. However, the fact remains that his two uncles remain in Iran unhindered as do his mother and sisters. The appellant has said that he is in danger because he is perceived by the State as a sympathiser, if not an activist, for the Kurdish cause in Iran. That is so just because he is his father's son. He is not involved in the Kurdish cause. We therefore find it incredible that his paternal uncle, despite being the father's brother, is left alone by the State to lead his life without hindrance. Similarly, other members of his family. The fact that the appellant can now name the political party his father belonged to does not enhance his case."

16. The latter reference is a reference to the fact that, when the appellant first came to the United Kingdom in 2006, he was unable apparently even to identify what cause his father was identified with.

17. Ms King submits that what distinguishes the appellant from his uncles is the fact that the appellant was travelling in a car with his father when he says Iranian guards recognised the car containing men who were guerrilla fighters. His father told the men to get out of the car and drove back to the village. Armed guards then arrived and arrested his father. However, in his witness statement of September 2006 the appellant said that "I was in the backyard and when I saw the soldiers I climbed the wall and ran away." The appellant's statement then goes on to say that whilst he was hiding:

> "My mother sent me a message not to return home as the police wanted to arrest me too. As my father was believed to have committed a wrongdoing it followed that I too would be punished as a male member of his family."

18. What is instructive about the appellant's own statement is he does not say at any stage that the police recognised him in the car or knew who he was, or when the police came to the house that they saw or recognised him prior to him making his escape. It is also telling that his mother's message was not that the police wanted to arrest him because they had seen him in the car with his father. Indeed, the appellant says in terms that the only reason he was being sought was because his father had committed a wrongdoing and "it followed that I too would be punished as a male member of the family."

19. It is therefore unsurprising that, that the First-tier Tribunal came to consider that they did an this issue. They used the logic of the appellant's own case and asked themselves the question: why was it that two uncles in Iran and his mother and sisters all remained unhindered? In our judgment, the First-tier Tribunal were entitled to conclude that they found it incredible that the appellant's paternal uncle, despite being the father's brother, was left alone by the state to lead his life without hindrance and similarly other members of the family, if indeed the story told by the appellant was true.

20. The third point that Ms King made was the criticism of the First-tier Tribunal's finding at paragraph 39 of the Determination and Reasons that the claim that the security services visited the family home every six months seeking the appellant was "not based on any evidence, not even to [the] lower standard as required in asylum cases." She submitted that there was evidence of this from the appellant himself. It is clear, however, that what the Tribunal were essentially saying was that there was no *independent* evidence of a visit every six months by the security services seeking the appellant. There is a further point which is that if indeed the security services visit the family home every six months why was it that they did not arrest the uncles or anybody else in the family? Given the vestigial nature of the appellant's case as far as the Tribunal were concerned thus far, it was open to them to consider that independent evidence of this sort of assertion was desirable if they were to be persuaded of the appellant's asylum case. It is also worth noting that in paragraph 39 the First-tier Tribunal found as follows: "There is no evidence

before us that the appellant is a member of any of the proscribed Kurdish groups."

21. We are satisfied that the findings of the Tribunal in paragraphs 35 to 39 of the Determination and Reasons were justified and their conclusion on this aspect of the case in paragraph 40 of the Determination and Reasons is unimpeachable: "We do not find the appellant has discharged the burden upon him that he is a refugee on the basis of imputed political opinion."

22. Ms King went on to criticise the Tribunal's reliance on the appellant's questionnaire to which we have referred and his illuminating answer that the reason for coming to the United Kingdom was "to have a better life for myself." She submitted that this was not inconsistent with a claim for asylum and it was 'unfair, unjustified and inappropriate' for the First-tier Tribunal to have relied upon it as a significant feature going to credibility. It is apparent from the structure of the Determination and Reasons, however, that the Tribunal only relied on the questionnaire as comfort or support for a conclusion which they had already reached. The reference to the questionnaire appears in paragraph 40 of the Determination and Reasons after they had reached the conclusion cited above that the appellant had failed to discharge his burden of proof.

23. We mention one further point on this aspect which is Ms King's submission that the findings by the Tribunal as to, for instance, the uncles' position went to plausibility but not credibility. In a case such as this plausibility and credibility often meld into one general factual issue as to whether or not an appellant has discharged the burden upon them of proving that they are at risk. The more implausible the story, the more incredible the storytellers' version of events.

Risk of Re-offending

24. The second aspect of the appeal related to the risk of reoffending. Ms King criticised the First-tier Tribunal's reliance on the risk of the appellant reoffending. She relied on a psychiatrist's report which puts the risk of reoffending as low to moderate under the VRAG scale. The OASys Report put the appellant's "likelihood of serious harm to others" as medium in relation to the public and medium in relation to a known adult.

25. However, as the Tribunal correctly observed, having cited Maslov v Austria [2008] ECHR [GC] 1638/03, whether the risk of reoffending was assessed as low or medium was not of itself of great significance given the seriousness of this offence and the fact that paragraph 398 of the Immigration Rules applied.

26. The Tribunal also referred correctly to Gurung v SSHD [2012] EWCA Civ 62 which explains that the risk of reoffending is not the ultimate aim of the deportation regime. The automatic deportation regime in relation to those

who have committed serious criminal offences in this country has other *desiderata* in mind, in particular the concern of the public and deterrent to those from abroad who might come to this country and then commit serious criminal offences.

27. The fact of the matter is that a Section 18 offence attracting a sentence of imprisonment of four and a half years after plea is by any stretch of the imagination a serious offence. Whether or not the risk of reoffending was low, low to medium or medium would not have affected the end result or conclusion.

28. The Tribunal's conclusion at paragraph 48 is unimpeachable:

> "48. He has lived in Iran up until the age of 17 and lawfully in the UK until his incarceration in 2011 for 4.5 years. He has no family in the UK but has an economic interest in running his business as a barber which was established in the full knowledge that he was subject to deportation.
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> 49. We come to the conclusion in our proportionality analysis that the balance is in favour of the respondent removing the appellant form the UK. We give significant weight to the nature of this offence and find that his private life rights do not tip the balance in his favour.
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> 50. After careful consideration of the appellant's case we do not perceive any circumstance which can be seen as an exception to the deportation as a result of his criminality. The appellant's position is not exceptional. The deportation of the appellant is a proportionate breach of Article 8 ECHR."

29. For all those reasons there is nothing in this appeal, which is dismissed. We do not think that permission to appeal should have been granted in the first place. The decision of the First-Tier Tribunal plainly did not involve any error of law.

Signed Date 21st July 2014

Mr Justice Haddon-Cave