Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09767/2016

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)	**Decision & Reasons Promulgated**
On 17th August 2017	**On 26 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

M P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cisnesos (Counsel)
Instructed by Migrant Legal Project (Cardiff)
For the Respondent: Mr D Mills (Home Office Presenting Officer)

DECISION AND REASONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or a court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This order applies both to the

Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Introduction

1. The Appellant, an Iranian national born in 1993, appeals with permission a decision of the First-tier Tribunal (Judge Fowell), dismissing his appeal on international protection grounds relating to risk on return through a pre-flight threatened honour killing by his father, and arising from his sur place conversion to Christianity.

2. Judge Fowell, taking account of medical evidence that the Appellant suffers PTSD found his account of criminals kidnapping him, raping him and sending a film on CD of the rape to his father to extort 50 million Toman in ransom money, credible. The judge did not accept that the Appellant's father decided that he would then kill the Appellant himself to preserve the family's honour, and concluded that he had fabricated a gloss on the account of kidnap and rape to create his claim. In terms of the claimed conversion to Christianity the judge found that the evidence of a genuine conversion was limited, and it was undermined by the timing of the claimed conversion, coming as it did, rapidly following the refusal of the asylum claim. Looking at the evidence in the round, and taking account of the poor credibility in terms of the threat from the father in Iran, he found it expedient.

The grounds to the UT

3. The grounds do not take significant issue with the discrete adverse credibility findings concerning the claimed conversion to Christianity, nor the judge's consideration of the oral and written evidence in relation to that matter, but rather assert that if the judge had taken a different view of the historical account and found the threat from the father had been made out, then the credibility of the conversion would have not been impugned, and the appellant would have succeeded.

4. The grounds assert that the assessment of the historical account is flawed for two reasons;

   (a) The judge has used his own cultural conditioning to decide what was likely or not in terms of the father's reactions.

   (b) The judge has failed to take account of the medical evidence that there were several triggers for PTSD in the Appellant's history including that he had received threats from his father, when assessing the credibility of the claimed threats.

5. The grounds were maintained by Mr Cisnesos, who had also represented the Appellant before Judge Fowell.

6. Mr Mills for the respondent agreed that if the judge had found the account of threats from the father credible then the appellant should have succeeded, however, he maintained that the judge was entitled to find the account was not credible.

Discussion

7. Having read the decision and heard the arguments I find that there is no error of law for the reasons I now set out.

8. The Grounds of Appeal argue that the judge failed to give the proper consideration to the medical evidence when considering the credibility of the father's reaction.

9. Mr Cisnesos submitted that when assessing the likely reaction of the father to the potential risk to the family's reputation in the event that other CDs had been retained and were subsequently released, the judge should have taken into account the doctor's report to the point that the reaction described, namely that his father would think it right to kill him in order to show his disapproval of his son being the victim of a rape, would be a potential trigger for the post-traumatic stress disorder suffered by the Appellant. The judge has in effect cherry-picked the report. Having said at [37] that he found it detailed and persuasive he should have found it detailed and persuasive not only as to the fact as to the likely cause of the PTSD being kidnapping, but also of the threats from the father.

10. I find the ground is not made out. Judge Fowell dealt with the medical evidence in some detail [17] and [18] and had clearly read all 47 pages of it. These grounds assert an inconsistency in the Judge's treatment of the evidence arguing that having found the medical report detailed, extensive and persuasive, in establishing the fact of the kidnapping he was bound to find the same about the opinion that the claimed fear of his father resulted in PTSD. That is incorrect. Dr Buttan's report, and the judge's consideration, is much more nuanced than the submission allows.

11. Dr Buttan's report identifies under the heading: "Causes of any mental health problems", at page 23 that:

    (a) "PTSD is caused by experiencing a very traumatic event. MP has very clear objective symptoms of severe PTSD. From the interview and collateral evidence (written statement) I could only identify him being kidnapped and raped at the age of 22 years and then facing fear of honour killing by his father along with risk of religious persecution due to his subsequent conversion as potential causes of PTSD"

    (b) Later in the same paragraph, when going on to look at his diagnosis of depression Dr Buttan mentions the threats again. He first refers to the multifactorial nature of the origins of a depression and then lists what he has identified as risk factors contributing to the Appellant having become depressed including his fear of honour killing:

(i) *Being brought up in a very strict and punitive environment from childhood including differential treatment to his other siblings by his father.*

(ii) *The kidnap and rape at the age of 22 years.*

(iii) ***Fear of honour killing by his father*** *and possible religious persecution due to his conversion to Christianity****.***

(iv) *Now facing uncertain immigration status and not being able to access appropriate help and work towards his own recovery and achieve his goals.*

12. It was entirely open to the judge to reach a reasoned view that in fact the claim to be at threat of an honour killing was not made out.

13. I deal now with whether the judge has fallen into the error of applying his own cultural and moral norms, and rejected the appellant's account as implausible when measured against those norms.

14. The criticism arises from page 10 of the 12-page decision where the judge states at paragraph [43]:

> *"that the version presented at the hearing, that his father took the view that if there were other CDs in circulation he could at least say that he had done the honourable thing and killed his son was illogical and extremely difficult to take seriously not least because if one had been told that the rape had arisen as a result of a failure to pay its hard to imagine any other plausible human reaction than remorse and outrage, not against his son but against his captors. Making every possible allowance for different cultural norms and attitudes, I am unable to accept that a father would blame his son in these circumstances, or would feel that he had brought shame on the family, whatever shame his son may have felt. Even if that could be imagined, the rest of the family – his mother, brother and uncle – were all supportive. It does not follow that each of them would throw their hands up and accept that there was nothing to be done with such a father."*

15. It is commonly understood that a decision must be read in the round. When reading this decision as a whole, including the 9 pages that appear before the impugned paragraph, and in particular the earlier reference to the medical evidence, it is clear that the judge is focused, from [35] onwards, on explaining to the Appellant that whilst he accepted that he suffered from post-traumatic stress disorder in light of the evidence from the doctor, counsellor and pastor, he nonetheless did not accept the assertion of risk from the father.

16. The judge starts off by pointing out that the fact of being a son who has been kidnapped and raped does not lead, logically, to a risk of death or

serious harm from the paying father because of having suffered shameful ill treatment.

17. He quite properly interrogates the position, he specifically reflects that there is no evidence to show that a different culturally normative position exists in Iran showing any likelihood that a victim would be held responsible. He points out that there is no evidence that rape is not a crime in Iran, or that in these circumstances the police would ignore or tacitly condone the threatened murder of a rape victim rather than prosecute the alleged perpetrator. The judge also noted that whilst the country information presented to him about male rape showed that it was practised by the security forces on political prisoners of both sexes as a technique of torture and intimidation, it did not indicate that male rape was not a crime in Iran. Further the judge noted there was nothing in the country information to suggest that being a victim of male rape in Iran would cause such stigma that it would give rise to honour violence of any sort. The judge noted that in many cases involving honour violence it was said that the police would not take effective action because they shared these prejudices or were prepared to turn a blind eye, but in cases such as the present, where even on the Appellant's case his father's reaction is illogical, that should not be the case. The judge was properly cautious finding an insufficient evidential base to form a definite view on the availability of protection, but also, as was open to him, finding that the fact that there had been no recourse to the authorities, and that it was not even considered, dented his confidence in the Appellant's account that his father was a threat to him.

18. The judge notes that on the appellant's own evidence it is not suggested that it is societally acceptable or the norm, but came about because of the individual characteristic of his father, who he says is not logical. The judge notes the appellant said that other members of his close family hid him and arranged his flight.

19. It follows that the judge's conclusion, that much as here, in Iran there was no public perception of "honour" being saved or upheld by a father killing his son in these circumstances, was founded in the evidence, and not simply a reflection of his own personal or cultural norms. In that context, the judge correctly identifies that the appellant has not brought forward any country information which lends credibility to the claim of honour killing in the circumstances he describes.

20. The judge does not say that without such supporting information the appellant cannot establish his case. He assesses the credibility of the Appellant's assertion.

21. The judge notes the difficulties for the Appellant of the explanation for why the father wanted to kill him emerging in cross-examination, at paragraph [20]:

> *"After his release he did not receive any medical treatment. His father paid the 50 million Toman ransom and destroyed the CD, but his father was a man with a good reputation, and wanted to kill him just in case there was another CD, just to show that he was against this."*

22. At paragraph [21] the judge records that, asked why his father would want to harm him when he had paid for his release, the Appellant said:

> *"His father was not a normal person, not a logical man. The first person he called when he was released was his paternal uncle. He did not call his father because he was angry with him. His father could have paid the money before they did anything to him. He phoned his father and was angry with him, swore at him, and asked why he had not helped him."*

23. The judge notes the further difficulties with the incoherence of the Appellants evidence in cross-examination being inconsistent with his previous statements that he had no contact with his father. The judge states:

> *" I cannot make sense of this series of events, and this difficulty is compounded by his later answer that he had no contact with his father following his release. "*

24. The judge had concerns about the evidence of how the Appellant came to know about the threat. The Appellant said the threat was passed on to him by his uncle, whom it had earlier been said had heard it from the Appellant's brother. There was no evidence that the family had taken any steps to challenge the father. The judge notes the contrast of this position with the evidence of the Appellant that he last spoke to his father on the phone and had "shouted and sworn at him" for not getting him out earlier, and yet, on being told second-hand that his father had decided to kill him, decides to leave Iran and come to the UK.

25. At 40 the judge noted the evidence of the unfolding of the Appellant's account, and the shift from the expression of internalised feelings of shame from the sexual violence; with the counsellor recording:

> *"He felt that he had brought shame on his family and that his father would seek to have him put away or even killed if returned. His father was only interested in protecting his own reputation and not caring for his son. MP told me that he was angry at what had happened, that he had no friends in Swansea and he sometimes felt that he would be better off dead."*

26. The judge notes that the emphasis is on the trauma and the Appellant's own sense of shame, not on any external threat from his father.

27. The judge finds at 41

> *"this unhappy picture of his mental processes seems to me far more plausible than the one presented at the hearing. On this view it is the Appellant who feels that he has brought shame on the family, and he is angry at his father for not being concerned about him. The shame of what happened has divided them. The suggestion that his father would kill him is thrown out as a possibility, perhaps a melodramatic one, rather than the main reason for him leaving the country. Later in the letter, describing the rape, she recorded his concern:*
>
> > *"The video was then sent to his father and a ransom demanded or the video would be distributed on the internet and MP's family dishonoured and shamed across the world."*

28. The judge finds that the alternative picture, presented at the hearing, of a vengeful and implacable father, does not need to be explored very far before the difficulties mount and the picture becomes unsustainable.

29. If the judge had simply relied on an expression of his personal view and replaced the assessment of evidence with his view, then the criticism would be well made, but that is simply not the case here.

30. The judge has been careful and considered. He has fully taken account of the medical evidence. He has taken account of the country information. He has provided detailed reasoning which shows that he has not relied on a lack of plausibility predicated on his own personal cultural norms, although he has rightly recognised them.

31. In short, the judge found the claimed risk from the father inconsistent with the father's action in paying a ransom for his release, the attitude of the other family members who assisted the Appellant, and noted that there was nothing in the country information to suggest that "honour killings" in such circumstances were societally acceptable. The judge has examined the evidence of the unfolding of the claim. The judge concluded that the claim was expedient, fabricated, in order to obtain an immigration benefit.

32. The judge notes that having embellished the account of his criminal abduction to include a subsequent threat from his father in order to bolster his claim, he must approach the Appellant's sur place claim with caution. The judge correctly identifies that the dishonesty in those aspects is not determinative of the sur place claim, and it is not argued that this is a case where the judge has segued from a finding of a lack of credibility in the historical account to a lack of credibility in the sur place conversion. There is no submission that the judge in dismissing the appeal otherwise fell into error.

33. Decision

The decision of the First-tier Tribunal does not reveal any error of law and it stands.

Signed Date

Deputy Upper Tribunal Judge Davidge

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date

Deputy Upper Tribunal Judge Davidge