Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02873/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 May 2019	**On 13 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

DRUPAD [P]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P. Lewis, Counsel
For the Respondent: Mrs N. Willocks-Briscoe, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India who was born on 8 October 1989. He is now 29 years old. He appeals to the Upper Tribunal against the determination of First-tier Tribunal Judge Mace promulgated on 29 January 2019 dismissing his appeal against the decision of the Secretary of State made on 11 December 2017 refusing his claim for international protection.

2. In paragraph 2 of the determination, the judge described the appellant's claim in summary form as concerning criminals who had become involved in the business of his father and his uncle. The criminals had stored illegal goods at their warehouse. The appellant claimed they would continue in their campaign to target him on return and the police would do nothing to protect him. As a result, the appellant is suffering from PTSD and depression.

3. It is as well to point out at the very beginning that these events are said to have commenced in 2007, some 12 years ago, when the appellant was still a minor. He arrived in the United Kingdom in 2009 but felt able to return to India on 7 January 2010. However, he claimed that, on his return to India, he was abducted, unlawfully detained and seriously assaulted before being left on a roadside. He then returned to the United Kingdom without seeking further leave to remain when his student visa expired and did not claim asylum until 13 April 2017, over seven years later. In the meantime, he had been encountered by immigration officials in October 2015, found to be an overstayer. This prompted an unsuccessful claim to remain on Article 8 grounds which did not mention the subsequent claim that he should be recognised as a refugee. Notwithstanding this unsuccessful claim made in December 2015, he made further submissions on the same grounds in January 2016 which were rejected in a reasoned decision made in the same month. Inevitably, this poor immigration history featured in the overall assessment of the claim.

4. The First-tier Tribunal Judge did not find the appellant credible. Her reasoning is found between paragraphs 22 and paragraph 39. She did, however, accept the appellant had been the victim of a serious assault and that he suffers from mental health problems, [paragraph 38]. The Judge found he could return to his immediate family in India where he had lived the majority of his life and that his mental condition could be managed by medication enabling him to fully participate in society there.

5. In granting permission to appeal to the Upper Tribunal, the First-tier Tribunal Judge relied upon what he considered to be an arguable case that the judge had attached insufficient weight to various parts of the evidence. The grant does not immediately identify an obvious and arguable error of law since the weight that is to be attached to the evidence is a matter for the judge of the First-tier, absent irrationality or perversity.

6. At the hearing before me, the appeal was advanced on the basis that the error of law was a failure to consider the appellant's claim within the context of conditions in India: 'What is plausible

or implausible in the context of the United Kingdom is different when assessed in its context in India.'

7. Thus, it becomes necessary to consider the judge's determination, paragraph by paragraph, in order to establish whether the judge did, indeed, assess the evidence from a parochial, British, standpoint or whether the adverse credibility findings were properly open to her regardless of the prism that should properly be placed upon the evidence by reason of the facts occurring in India.

8. In paragraph 22 of the determination, the judge had to consider whether it was likely that the appellant was so deeply involved in his father's business as to have been, and continue to be, a target of attention on the part of criminals. Both his father and his uncle ran the business. His father died in December 2007 but his uncle continued to run it until he sold it. The uncle provided no evidence of his having experienced any difficulties. He continues to live in India. This was such an obvious point that the judge was bound to take it into account when comparing the position of the appellant in 2007 who was still a minor.

9. As the judge pointed out in paragraph 22, the appellant stated he worked part-time in the warehouse and, after that, was working for a consultancy as a clerk in a visa consultancy company where he did administration work. This work started in June or July 2008 and continued until 2009 prior to his coming to the United Kingdom. Furthermore, during part of the relevant period, the appellant had been studying on a degree course in Commerce which he had discontinued in 2007. There was, therefore, overwhelming evidence that the appellant was at the periphery of involvement with the business run by his father and uncle such as to raise a question as to why criminals should target *him*.

10. There can be no doubt that the process of reasoning adopted by the judge in paragraph 22 was both reasonable and sound common-sense.

11. Paragraph 23 makes a further sustainable point. Given the appellant's evidence as to his other activities working for the visa consultancy company, the appellant's statement in his interview that, after the death of his father in December 2007, he worked full-time in the business was inconsistent.

12. In paragraph 24 of the determination, the judge recorded that his uncle was then said to be living in Baroda, having sold the business. It was his uncle who had, apparently, struck the deal with the criminals. The judge then considered a claim of rivalry between the named criminals. She did not believe it. She gave

her reasons and cannot, even arguably, be said to have erred in law.

13. So far, none of the findings made by the judge have to be reassessed by reason of Mr Lewis's argument that the judge failed to contextualise them into an Indian setting.

14. In paragraph 25 of her determination, the judge considered the appellant's claim that one of the criminals wished to stand for election. The difficulty in this part of the appellant's case was that it was said that the individual did not identify the political party. Notwithstanding this, the individual demanded the political support of his uncle and father without his naming the political party and leaving them to surmise which one it might be. The judge did not believe it. The judge did not find it credible that this individual wished to be involved in party politics when he was known to be a local gangster whose principal activity was harassment, kidnap and blackmail. If, as the appellant said, everyone knew he was a thug, this sat uneasily with his evidence that one of the criminals identified himself in dealing in cosmetics and toys and that his criminal activities were only discovered later. Once again, these comments amount to a rational analysis of the appellant's evidence leading to the judge's conclusion that the appellant was not reliable.

15. Paragraph 26 is another example of a finding of fact properly open to the judge. It may be a simple point. It may be that it did not feature largely in the judge's overall assessment. It remains, however, sustainable. The appellant said he always used a particular bus-stop to travel from his home to work but could not identify the name of the road.

16. I move on to paragraph 28. The passage records a number of answers provided by the appellant in his interview relating to his claim that the police maintain a continuing interest in him. In summary, it is apparent that the appellant failed to provide any coherent answers to the questions asked of him. The questioning then moved to asking the appellant why his mother had failed to contact him since August 2017. The suggestion was that she had been arrested by the police in their efforts to locate the appellant. It was a matter for the judge to determine whether she accepted this as a plausible or credible explanation for the appellant's failure to remain in contact with his mother. It cannot conceivably be suggested that, as a matter of law, the judge was required to accept that the appellant had established either a continuing interest on the part of the police in the appellant or that the circumstances in India were sufficient to explain the cessation of contact between mother and son.

17. Paragraph 29 of the determination records the obvious. The appellant has never been arrested or detained by the police. There is no warrant in existence for his arrest. He has never been charged. He has been in the United Kingdom for the past nine years. The First-tier Tribunal Judge did not find it credible that the police would maintain a sufficient interest in the appellant to attend at his home and arrest his mother. I venture to suggest there may be many other judges who would have reached a similar conclusion. That apart, Judge Mace was undoubtedly entitled to do so.

18. Passing on to paragraph 32, the judge found a discrepancy between the appellant's claim about the injuries he sustained in January 2010. At one stage he claimed that his eye injury had been caused when he was hit by a tennis ball. At another, that he lost his sight when he was attacked. It is not suggested that the appellant did not provide two inconsistent versions of events. The judge was entitled to treat them as undermining his overall credibility.

19. It was in these circumstances that the judge made what amounts to a series of concluding comments in which she rejected his claim to have been more involved with the business than was consistent with his earlier statements that he had helped out and had worked part-time. She rejected his claim that, after such a long period of absence, the criminals would maintain an interest in him or could rationally believe he continued to work for a rival criminal. The judge recorded the appellant evading answers to questions directed to why he would be of interest, rather than his uncle. She rejected his claim that the police now maintained any current interest in him.

20. I am satisfied that these findings of fact were properly open to the judge.

21. In paragraph 35, the judge focused upon the delay in making the claim for asylum. The appellant had provided a thoroughly implausible explanation that, whilst living in the United Kingdom for a period of eight years, he had never heard about asylum or read a newspaper or watched television. The judge rejected the possibility that the delay was explicable by reason of his mental health.

22. The appellant's mental health should properly be treated, as the judge did, as a separate area of consideration. The appellant had been under the care of the Community Mental Health team from January 2017 to August 2018 when he was discharged. It was noted that he was experiencing the symptoms of PTSD in March 2017. He had no current suicidal ideation, intent or plans when assessed in November 2018. The judge noted a report of Dr

Singh dated 28 March 2017 in which the appellant was described as experiencing severe depressive symptoms. This predated, by almost 18 months, his discharge from the local Community Mental Health team.

23. For the purposes of the litigation, he was seen by Dr Dhumad who prepared a report dated 11 January 2019. This is summarised in paragraph 15 of the determination. Dr Dhumad based his report upon the account provided by the appellant which the judge rejected as not being credible. She analysed the report in paragraph 37 of the determination, having accepted the diagnosis of mental health issues emanating from a variety of medical sources. She accepted the appellant suffered a serious sexual assault but rejected that it was perpetrated by the criminals for the reason she had already given. The judge considered the support mechanisms available to the appellant on return to India. She noted that his uncle remains in India. By rejecting the appellant's claim that he is unable to establish contact with his mother, she implicitly found that he was either in contact with her or able to be in contact with her and, therefore, that she was able to offer him support.

24. The judge then turned to the availability of treatment including the provision of antidepressant drugs. With these mechanisms in mind, the judge reached a sustainable conclusion that assistance and treatment available on return established there was no real likelihood of a violation of his Article 3 rights.

25. For good measure, the judge recorded that the private life that the appellant has established since his arrival in the United Kingdom did not prevent his removal as a violation of his Article 8 rights.

26. I am satisfied that the First-tier Tribunal Judge had proper regard to the evidence that was before her and reached sustainable conclusions on each of the issues that she was required to address. I am satisfied that the determination discloses no material error of law and that the grounds of appeal seeking to challenge those findings failed to establish any such error.

DECISION

(i) The First-tier Tribunal Judge made no error of law.

(ii) Her determination of the appeal shall stand.

ANDREW JORDAN
DEPUTY UPPER TRIBUNAL JUDGE
20 May 2019