Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12951/2018

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reasons Promulgated**
On: 7 January 2020	**On: 14 January 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SS
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In Person
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born on 9 May 1981. He has been given permission to appeal against the decision of First-tier Tribunal Judge Trevaskis dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant married his wife, S, in India in a traditional Muslim marriage, on 9 August 2009. On 1 December 2010 he came to the UK with a visa valid until 30 January 2012 and was granted further periods of leave as a Tier 2 migrant until 14 March 2019, returning to India for a few days in

September/October 2012. On 10 March 2017 he made an asylum claim, as a result of which his leave was curtailed. His claim was refused on 19 September 2017.

3. The appellant's asylum claim was made on the basis that he feared being arrested and prosecuted under section 498A of the Indian Penal Code on false charges laid by his former wife and her family in revenge for him refusing to bring her to the UK to join him and divorcing her by Talaq pronouncement. The appellant divorced his wife by pronouncing Talaq on 2 March 2012 following harassment from her and her family. After the divorce, his ex-wife posted propaganda against him on social media and her brothers called him and threatened him, telling him to return to India and reconcile with her. He also received threats from S's father's friend in the UK and he made a formal complaint to the police in the UK. In 2012 he returned to India for his father's funeral but was unable to attend due to his ex-wife's harassment. In 2012 his ex-wife submitted an FIR against him and filed court proceedings against him and his mother under section 489A of the Indian Penal Code, claiming that he had subjected her to cruelty. On 5 December 2012 his mother and sister were arrested. His sister was released as she was pregnant, but his mother remained in custody until she was bailed on her second attempt. She lost her job as a superintendent in the magistrates' court in the meantime due to her arrest. An arrest warrant was issued for the appellant's arrest and he was denied renewal of his passport as a result. There was a "lookout circular" issued to all international airports in India and he would be arrested on return. He would not receive a fair trial because S's father was politically well-connected and influential. His extradition to India had also been requested of the UK government.

4. In the decision refusing the appellant's claim, the respondent declined to accord weight to the numerous documents he had produced in support of his claim and did not accept that his ex-wife had influence over his passport renewal or other matters. The respondent considered in any event that the appellant's fear related to prosecution and not persecution and considered that the appellant could return to India and fight his case through the correct legal channels. The respondent considered that the appellant's fear of his ex-wife's brothers was speculative and that in any event there was sufficiency of protection available to him from the Indian authorities and that he could also relocate to another part of India. The respondent did not accept that the appellant was at risk in India and considered that his removal would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard on 5 September 2019 before First-tier Tribunal Judge Trevaskis, following several adjournments granted to obtain further documentary evidence from India. The appellant gave evidence before the judge, referring to the arrest warrant issued against him in India and the resulting refusal by the Indian High Commission to renew his passport, to his ex-wife's father being a close aide to the Minister for Minorities Mr Farouk, to a recording of a Skype conversation involving him, his uncle, his father-in-law, his ex-wife and the rural and circle

inspectors where he was told to return to India and resume his marriage and to his last contact with his ex-wife and father-in-law being in 2014.

6. Judge Trevaskis accorded weight to the documentary evidence relating to the court proceedings in India and accepted that such proceedings had been instigated against the appellant, although he noted that they had been stayed, that the arrest warrant had been stayed and that the extradition application had not been granted. He considered that the background country evidence showed that there was due process of law in India and that the judiciary in India acknowledged the abuse of the legislation under which charges had been brought against the appellant. The judge concluded that the appellant would be able to return to India and defend the proceedings with the assistance of the lawyer already instructed by his family. The judge did not accept that the evidence demonstrated that the appellant's ex-wife's family had political influence through Mr Farooq which would enable them to manipulate the judicial process. The judge accorded no weight to the Skype transcript as it was only a small excerpt of the conversation and was incomprehensible. He concluded that the appellant's fear did not amount to a fear of persecution within the meaning of the Refugee Convention and rejected his claim that he would not receive a fair trial. He did not accept that the appellant was at risk on return to India and considered that his removal would not breach his human rights under Article 3 or 8 of the ECHR. He accordingly dismissed the appeal on all grounds.

7. The appellant sought permission to appeal on the grounds that the judge had failed to consider the country expert report which had been produced for the hearing; that the judge had failed to provide reasons why he rejected the appellant's explanation for the delay in claiming asylum and why he found the appellant's evidence about the political influence of his ex-wife's family to be incredible; that the judge's assessment of credibility was erroneous and incomplete; that the judge failed to assess all the evidence in regard to fair trials and police corruption; and that there had been an inadequate assessment of internal relocation.

8. Permission to appeal to the Upper Tribunal was refused in the First-tier Tribunal but was subsequently granted by the Upper Tribunal with particular reference to the assessment of the expert evidence.

9. At the hearing, the appellant was unrepresented and appeared in person. Accordingly, Mr Avery made his submissions first. He submitted that the "expert report" referred to in the grounds was a report from a practising lawyer in India who may well be an expert on the law but did not have expertise on the facts of the case and provided no reasons for the conclusions reached on the political influence of the appellant's ex-wife's family. The judge was clearly alive to the evidence as he referred to it in his decision and the fact that he did not make specific findings on the report was immaterial as it did not take the case any further. The appellant, in response, relied on the expert's explanation as to the abuse of section 498A of the Indian Penal Code and submitted that the judge had failed to address that. He submitted further that the judge had

failed to consider his evidence such as the Skype transcript which showed the conversation with police officers and confirmed that the purpose of the lodging of the case against him had been to make him return to India and compromise with his ex-wife. The judge failed to consider that his ex-wife had influenced the regional passport office so that they refused to renew his passport. The judge was wrong to say that this was a matter of prosecution and not persecution.

Discussion and conclusions

10. Although permission was granted on all grounds it is plain that the main challenge considered to be arguable was the judge's assessment of the expert report. Indeed, that was the main issue argued in the appellant's renewed grounds. Having read the "expert report", to be found at page 13 of the appellant's court bundle, I find myself in agreement with Judge Shaerf in his decision refusing permission in the First-tier Tribunal and with Mr Avery's submissions. It is the case that the judge did not make specific findings on the report, but I agree with Mr Avery that that was clearly evidence he considered and took into account in making his overall findings, as he summarised the conclusions of the report at [40] and referred to the submissions of both parties in that regard at [51] and [54]. As Judge Shaerf found, and for the reasons he gave, the report was not one which would properly be considered as a country expert report. Furthermore, as Mr Avery submitted, the author's expertise lies in matters not in dispute and is of little or no assistance in assessing the factual basis of the appellant's claim.

11. As a practising lawyer in India, the expert is clearly in a position to explain how section 498A of the Indian Penal Code is misused. However, that was not a matter in dispute and Judge Trevaskis did not find otherwise. He accepted that the appellant was the subject of proceedings filed under section 498A and at [67] he referred to the evidence produced by the respondent showing that the abuse of the legislation was in fact acknowledged by the judiciary in India. Indeed, paragraph 53 of the refusal decision refers to the Indian Supreme Court re-evaluating how they dealt with 498A cases, given the trend in abusing that provision. However, in so far as the appellant was claiming that his ex-wife's family would be able to manipulate the judicial process and succeed in making a false claim against him, the "expert" does not explain how he was in a position to provide an expert opinion on the matter and provided no explanation for the opinion given at paragraph 4 and no identification of the source of the information provided. The manner in which the report is expressed (I refer by way of example to paragraphs 1.03, 3.01 and 4) suggests that the opinion is far from objective and relies upon the account provided by the appellant. Accordingly I am in agreement with Mr Avery that the "expert report" takes matters no further for the appellant and that any omission by the judge in specifically addressing the report in his findings is immaterial. There is simply no merit in this ground of challenge.

12. As for the other grounds, it seems to me that the judge gave full consideration to all the evidence and made properly reasoned

findings on the evidence. Contrary to the appellant's submission before me, the judge specifically considered the Skype transcripts, at [69] of his decision. Having read the transcripts myself, I find no error in his findings at [69] and conclude that he was perfectly entitled to accord the limited weight that he did to that evidence for the reasons given. At [66] the judge considered the documentary evidence relating to the criminal proceedings in India and the application for extradition, noting that the proceedings had been stayed and that, in relation to the proposed extradition, there had been no further evidence from the Indian authorities to substantiate the basis of the charges against the appellant since a request was made by the Home Office in July 2017. The judge considered the evidence in the context of the background country information and relevant country guidance and provided full and proper reasons for concluding that it did not support the appellant's claim that he would not receive a fair trial in India. The judge gave consideration to the appellant's account of the political influence of his ex-wife's family but was entitled to conclude that that was not supported by any reliable evidence. He was perfectly entitled to reject the account for the reasons properly given.

13. Accordingly it seems to me that the judge gave detailed consideration to all relevant matters, he fully engaged with the documentary evidence and country evidence and he provided clear and cogent reasons for reaching the conclusions that he did. He was fully entitled to reach the conclusions that he did on risk on return to India and to dismiss the appeal on the basis that he did. He did not make any errors of law in doing so.

DECISION

14. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed

Upper Tribunal Judge Kebede Dated: 7 January 2020