Upper Tribunal
(Immigration and Asylum Chamber)Appeal Number: PA/13959/2018 (V)

THE IMMIGRATION ACTS

Heard remotely from Field House	**Decision & Reasons Promulgated**
On 11 March 2021	**On 01 April 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

S Z
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:
For the appellant: Ms K Renshaw, Counsel, instructed by Barnes Harrild Dyer
For the respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Wolfson ("the judge"), promulgated on 23 March 2020, by which she dismissed the appellant's appeal against the refusals of his protection and human rights claims.

2. The appellant, a citizen of Iran, arrived in United Kingdom in July 2000. His original asylum claim was refused by the respondent and then dismissed on appeal in March 2001. That claim had been based on his assertion that he was a Zoroastrian. A subsequent claim, this time on the basis that he had converted to Christianity, was refused and a further appeal dismissed in January 2005. In April 2010 the appellant was granted indefinite leave to remain on an exceptional basis outside of the Immigration Rules. In September 2017 he was convicted of grievous bodily harm and sentenced to 40 months' imprisonment. Once deportation action was initiated, the appellant put forward another protection and human rights claim, re-asserting that he was a Christian convert and would be at risk on return to Iran.

3. A deportation order was made against the appellant on 27 November 2018. By a decision of the same date, the respondent refused the appellant's protection and human rights claims. In doing so, she issued a certificate pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002. She rejected the appellant's claim to be a Christian convert, concluded that there was no risk on return, and went on to conclude that the appellant could not succeed with reference to Articles 3 (in respect of a hernia condition) or 8 ECHR.

The decision of the First-tier Tribunal

4. The appellant was not represented at the hearing before the judge. Oral evidence was given. The judge did not expressly state that she was treating the appellant as a vulnerable witness under the Joint Presidential Guidance Note No.2 of 2010. At [59] the section 72 certificate was upheld. For reasons set out at [61]-[68], the judge did not accept that the appellant was a genuine Christian convert, or that he would practice Christianity on return to Iran.

5. At [68] the judge stated an alternative finding, namely that even if the appellant did practice Christianity on return to Iran, "he would be likely to do so in a way which is consistent with that of the rest of this family and that any such practice would be ad hoc and discreet."

6. In respect of claimed activities in the United Kingdom, the judge did not accept that any such involvement (if it had occurred at all) was such that it

would have come to the attention of the Iranian authorities, or would do so on return (see [70]).

7. Applying the relevant country guidance decision of PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC) ("PS"), the judge concluded that in light of her primary finding that the appellant was not a genuine Christian convert, he would not be at risk on return, would willingly renounce his claim to Christianity, and would not be at risk of prolonged questioning (see [71]-[74]).

8. Articles 8 and 3 are considered at [80]-[92]. The judge concluded that the appellant could not succeed by reference either to the relevant Rules or section 117C of the 2002 Act. Whilst the appellant has given oral evidence that he suffered from mental health problems and has made suicide attempts, the judge was not satisfied that, taken as a whole, the evidence indicated that there were significant difficulties in this regard. Further, the judge concluded that there would be adequate treatment available in Iran.

9. The appeal was accordingly dismissed on all grounds.

The grounds of appeal and grant of permission

10. Three grounds of appeal were put forward, which can be summarised as follows. The first asserts that the judge's findings on the claimed conversion to Christianity are unclear, with particular reference to [65] and [68]. Second, it is said that the judge failed to take factors into account when considering whether the appellant would be subjected to prolonged questioning on return. Third, it is said that the judge failed to have regard to the appellant's mental health problems and/or alcohol dependency when assessing credibility. The appellant should have been treated as a vulnerable witness, but was not.

11. The upholding of the section 72 certificate was not challenged.

12. Permission to appeal was granted on all grounds by the First-tier Tribunal on 5 November 2020.

13. Following the grant of permission, the respondent filed and served a rule 24 response, dated 13 November 2020.

14. Ms Renfrew provided a skeleton argument in advance of the hearing.

15. Evidence was provided by the appellant's solicitors which indicated that he had attempted suicide in June 2020.

The hearing

16. Ms Renfrew relied on the grounds of appeal and her skeleton argument. In respect of ground 1, she submitted that the judge's findings were unclear. The alternative finding that the appellant would act discreetly was unsustainable. The judge had failed to address the "why" question with reference to HJ (Iran) [2010] UKSC 31. On ground 2, it was pointed out that the factors relating to prolonged questioning as stated by the Tribunal in PS were not exhaustive. In this case, the judge should have taken account of the appellant's particular circumstances, including: his mental health; his alcoholism; the fact that his brother was a Christian, as were other members of his family; that the appellant had been away from the Iran for a long time; that he had been attending churches in the United Kingdom; and his criminal history.

17. In respect of ground 3, the judge should have treated the appellant as a vulnerable witness based on his oral evidence. This was the case notwithstanding what the judge said at [88] and [91] and in the absence of a witness statement or other evidence post-dating the hearing which indicated that the appellant had not been able to properly put forward his case before the judge. The fact that the appellant was unrepresented was a relevant factor.

18. Mr Melvin relied on the rule 24 response. He submitted that the judge's findings on the conversion issue were sustainable. He submitted that there was a lack of evidence to support the appellant's contention that other factors relating to the possibility of prolonged questioning on return. It was of note that the Tribunal in PS did not consider any of these proposed factors to be significant. He also referred me to [150]-[151] of PS, submitting that the facts there were fairly similar to those in the present case. There was a lack of any real evidence as to the appellant's family members in Iran. In respect of the brother, Mr Melvin referred me to [33] of the judge's decision. On the vulnerable witness issue, Mr Melvin submitted that the evidence before the judge simply did not support the contention that she erred by failing to treat the appellant as such.

19. In reply, Ms Renfrew re-emphasised a number of points made previously.

20. At the end of the hearing I reserved my decision.

Decision on error of law

21. I conclude that there are no errors of law in the judge's decision such that my discretion should be exercised by setting her decision aside.

22. The reasons provided by the judge at [61]-[68] for rejecting the central plank of the appellant's protection claim are sound. The grounds simply do not identify an error of law in so far as the reasons stated deal with the evidence to which the judge properly directed herself.

23. That the judge went on to state an alternative finding at [68] does not render the primary findings and reasons in support thereof unsustainable in any material way. That finding was, as stated in express terms, in the alternative to what preceded it.

24. In respect of any risk on return by virtue of a conversion to Christianity, the judge properly directed herself to PS. On the basis of her sustainable findings that the appellant was not a genuine convert and would not continue to practice Christianity in Iran, the judge was entitled to conclude that he would not be at risk on return on the basis of being a Christian (or for that matter having to conceal that faith in order to avoid persecution).

25. The "why" question arising from [3](ii) of the headnote to PS did not, on the judge's primary findings, have any relevance to the appellant's case.

26. Even if it did, it is apparent from [33] of the judge's decision that, on the appellant's evidence, only one brother was a "Christian believer" and he had never had any difficulties with the authorities. That the brother was not allowed to attend a church in Iran did not necessarily mean that he had wanted to, or that any self-denial was motivated in part by a fear of the consequences of doing so.

27. Turning to ground 2 and the issue of questioning on return, I conclude that the judge once again correctly directed herself to PS. She was entitled to find that in light of her primary findings, the appellant would, if required, renounce his claimed Christianity.

28. The judge deals adequately at [74] with the relevant factors stated by the Tribunal in PS in respect of whether an individual was at risk of being subjected to prolonged questioning. Plainly, none of the stated factors applied to the appellant.

29. There are two difficulties with the appellant's argument that the judge failed to take certain additional factors into account. First, none of them were deemed worthy of setting out by the Tribunal in PS itself. It is of course the case that the list provided is said to be non-exhaustive. However, factors such as a lengthy period abroad in the United Kingdom and interaction with churches abroad and/or being baptised would arise in a relatively regular basis in protection claims. By definition, returnees will have come from the United Kingdom and, where found not to be a genuine convert, will commonly have attended churches or other such activities. In my judgment, if additional factors are to be relied on to supplement those set out in PS, evidence will need to be adduced to support the argument.

30. In my judgment, it is of note that the appellant in PS has attended a church in the United Kingdom and had in fact been baptised. The Tribunal found that the Iranian authorities would become aware of these matters. Notwithstanding that, it was concluded that the appellant would not be at risk of ill-treatment for any reason. Further, I have not been referred to any evidence before the judge which indicated that those returning from

the United Kingdom and/or those who had attended church and/or been baptised here would, for those reasons alone, be subjected to prolonged questioning.

31. In light of the foregoing, I conclude that the judge did not materially erred by failing to expressly consider these proposed factors.

32. In respect of the appellant's criminal history, again, I have not been referred to any evidence before the judge indicating that this might have constituted a relevant factor which might have led to prolonged questioning. I conclude that the judge did not materially err by failing to expressly consider this proposed factor either.

33. There is nothing in the assertion that the judge should have taken account of the appellant's brother as a relevant factor. On the appellant's own evidence, that brother had not come to the adverse attention of the authorities. Further, and in any event, I have not been referred to any evidence before the judge indicating that the Christian beliefs of a family member who had not themselves been of adverse interest previously, might constitute a relevant factor. The judge did not materially err in law by failing to expressly consider this proposed factor.

34. It is difficult to see that there was any material evidence before the judge relating to claimed alcoholism. In oral evidence, the appellant had stated that he had not drunk any since the New Year (the hearing was 4 February 2020) although I note that at [91] the judge referred to the appellant attending "recovery sessions". In any event, I have not been referred to any evidence indicating that the Iranian authorities would take a sufficiently adverse view of problems with alcohol such as to warrant prolonged questioning on return. The judge did not materially err in law by failing to expressly consider this factor.

35. Finally, there is the question of the appellant's mental health. I will deal with this matter in detail, below. For present purposes, I conclude that, on the evidence before the judge, she did not commit any material error of law by failing to regard any claimed mental health problems as constituting a factor relevant to prolonged questioning.

36. I turn now to the final ground of challenge. I have no reason to doubt that the appellant made a suicide attempt in June 2020. I accept that such an event could in principle be capable of constituting evidence relevant to the establishment of an error of law in a decision promulgated some months previously. However, the primary focus must be on the evidence which was before the judge. I have carefully considered that evidence. It is clear that the judge did not leave any relevant evidence out of account when addressing the question of the appellant's mental health. With reference to what she said at [88] and [91], it was open to her to conclude that he was not, *at least at that time*, suffering from relevant mental health problems such that they might have constituted a relevant factor on the prolonged questioning issue or requiring the judge to treat him as a

vulnerable witness within the meaning of the Joint Presidential Guidance Note No.2 of 2010.

37. The judge was entitled to take account of the fact that much of the documentary evidence made no reference to mental health problems at all, whilst another source confirmed only that the appellant had been referred to a primary care mental health practitioner. There was no indication in any of the documentary evidence that the appellant had suicidal ideation. In these circumstances, and given the overall findings made by the judge, she was entitled to in effect conclude that the appellant was not then suffering from relevant mental health problems, notwithstanding the oral evidence.

38. I also take account of the fact that vulnerability does not of itself render adverse findings made by a judge susceptible to challenge on appeal (see SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC)). In this regard, and as I pointed out at the hearing, there has been no evidence from the appellant or any other source following the judge's decision to indicate that there had been difficulties in giving evidence at the hearing or that the appellant's ability to present his case has been prejudiced in any other way. In the circumstances of this case, I do not accept that the incident in June 2020 goes to disclose an error of law on the judge's part.

39. All-told, I conclude that the judge did not err in law by failing to expressly treat the appellant as a vulnerable witness.

40. The fact that the appellant was unrepresented was not, of itself, sufficient to show that the judge materially erred in law.

41. In light of all of my conclusions, the appellant's appeal must fail.

42. I add a final observation. It is open to the appellant to make further representations to the respondent in the light of what may be changed circumstances as regards his mental health. That is entirely a matter for the appellant and his legal representatives.

Anonymity

43. I maintain the anonymity direction made by the First-tier Tribunal.

Notice of Decision

44. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

45. The appellant's appeal is dismissed.

46. The decision of the First-tier Tribunal shall stand.

Signed: H Norton-Taylor Date: 24 March 2021

Upper Tribunal Judge Norton-Taylor