IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos:
UI-2022-003899 & UI-2022-004293
First-tier Tribunal Nos: IA/08771/2021 & PA/53189/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 January 2023

Before

UPPER TRIBUNAL JUDGE GILL

Between

S F
(ANONYMITY ORDER MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr T Hodson of Elder Rahimi Solicitors.
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 15 December 2022

Anonymity
I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.
I make this order because this is a protection claim.
The parties at liberty to apply to discharge this order, with reasons.

Decision and Directions

1. The appellant appeals against a decision of Judge of the First-tier Tribunal G A Black who, in a decision promulgated on 11 July 2022 following a hearing on 6 July 2022, dismissed his appeal on asylum, humanitarian protection and human rights grounds against a decision of the respondent of 17 June 2021 to refuse his protection claim and human rights claims.

2. It was agreed before the judge that, if the appellant was found credible, he would face a real risk of persecution from the Iranian State on the grounds of political opinion (para 18 of the judge's decision).

3. The judge made an adverse credibility assessment and found that the appellant's evidence was not credible. She rejected the entire factual basis of his protection claim.

4. There are stated to be seven grounds of appeal, although at least one ground (ground 1) raises more than one point or issue or ground.

The basis of the appellant's asylum claim

5. The judge explained the basis of the appellant's asylum claim at para 9 to 15 as follows:

> "9. The appellant claimed that in October 2017 he worked for Sepah (Aka Revolutionary Guards) who owned a hospital for dentistry, where his wife worked, and his role was as the manager of the refurbishment of clinics. The appellant faced large losses due to rising costs and currency depreciation. He was persuaded by the Director of Finance, [CT], to participate in a scheme involving the purchase of gold coins for future sale and profit to cover the appellant's losses on contract. He was given cheques drawn against the hospital account and he purchased 8000 gold coins in March 2018 which he collected from the bank and stored at his home in a safe.
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> 10. In June the government announced that hoarding of gold coins was disrupting the economy and those involved would face punishment and liability to execution. The appellant returned the coins to [CT].
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> 11. On 23 July 2018 the CMO at the hospital accused him of embezzlement. He was contacted by the Iranian Intelligence Service on 25th July and interrogated for 2-3 hours and accused of profiteering, sabotage of the economy, and financing of foreign enemies working to overthrow the regime, linked to [NZ].
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> 12. The appellant was served with a summons to attend the Tehran Court, given to the janitor of his apartment in August 2018. Arrangements were made for the appellant and his wife to go into hiding and to leave the country. The agent provided false passports with visas to Dubai and thereafter they switched to use their genuine passports to enter the UK. They claimed asylum on arrival on 2.9.2018.
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> 13. They learned that their apartment in Iran had been raided and all their possessions were confiscated on 5th September 2018.

> 14. The appellant arranged with his brother in law, Dr F-S, to participate in a televised an *[sic]* interview by Dr Nourizadeh, a well know *[sic]* Iranian dissident on his TV channel Iran-e–Fard. The appellant was not identified and the interviews were about the gold coin scam that the appellant had been lured into by a corrupt Revolutionary guard. These interviews were broadcast on 25th September and 1 October 2018.
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> 15. The appellant produced documents including an arrest warrant dated 27th August 2018 which he claimed had been shown to his Mother and brother – the original of which was brought to the UK by a friend in November 2021."

The judge's decision

6. The judge found, inter alia, that there were inconsistencies in the appellant's interview "*as set out in the refusal letter*"; that those inconsistencies were material; and that the appellant had failed to failed to provide any reasonable explanation for them (para 22 of the judge's decision). She also found that various aspects of the appellant's account of events were implausible; for example, his evidence that the Iranian authorities handed a summons to the janitor of the apartment where the appellant had resided, as a result of which she said she placed little weight on the "summons" (para 26). At para 26, she also said that she placed little weight on the document purporting to be an arrest warrant which the appellant said had been shown to his brother because she considered that it was not plausible that the Iranian security would pursue suspects in this manner and there was no supporting evidence to show that such procedures were adopted by the security forces.

7. The judge took into account the failure of the appellant to obtain documents to support various aspects of his account; for example, at para 25, that he had failed to obtain from his bank receipts for the two claimed transactions.

8. The judge noted that the appellant still has family living in Iran which (she said) led her to infer that his parents and siblings were safe and had not been subject to adverse interest from the Iranian authorities (para 28).

9. The judge rejected the appellant's evidence that he had participated in a television interview because: (i) he had not mentioned the interview at his substantive interview; (ii) she placed little weight on the evidence of Dr F-S because he had no direct knowledge of the appellant's claims as to events in Iran although "*it was not hard to see what [Dr F-S] would wish to provide support for his family*"; and (iii) there was no oral evidence from Dr Nourizadeh and the explanation given in this regard, that he was a very busy man, was not credible.

10. The above is merely a summary. The judge's reasons are given at paras 21-31 which read:

> "Findings of fact and conclusions
>
> 21. Having considered all of the evidence in the round I conclude that the appellant has failed to show that he faces any risk on return on protection or human rights grounds based on political opinion.
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> 22. I find that there were inconsistencies in the account given by the appellant in his interview as set out in the refusal letter cited above at paragraph 20. I find that those inconsistencies are material and that the appellant has failed to provide any reasonable explanation for them. I find that both the

information given in the visa application form dated 2017 as to his and his wife's occupations was entirely inconsistent with that claimed in the screening and substantive interviews. The appellant and his wife were not required to provide detailed information as to their place of work or employers but simply their occupations. The appellant's wife stated in her screening interview that she was in teaching whereas he claimed that she was working as a dental assistant, and she now states she was working as a senior advisor in a dentistry hospital. The explanation given for why she failed to mention this employment in her screening interview is not reasonable in light of the fact that this was an important detail material to the claim. Similarly, the appellant stated in his visa application that he worked as a car dealer which is inconsistent with his claim to be a project manager. I find that the appellant has not provided any independent evidence to show that he had sufficient experience to be able to project manage and/or physically work on the refurbishment of new dentistry clinics in the hospital nor has he provided any reliable independent evidence that he entered into a contract for this work and any reliable evidence of terms and conditions agreed. It is entirely reasonable that he would be able to produce some form of contract even of a tendering contract and his failure to do so causes me to doubt the credibility of his claim**. I find that in interview his answers were vague (Q72) and in evidence he failed to address this issue satisfactorily.** It is not credible that a person with no experience of project managing a specialist refurbishment would be taken on to do such a major project. In oral evidence the appellant confirmed that he had no experience. **The appellant was asked numerous questions in interview about his role and any contract for which his answers were vague.** Further I do not accept his evidence that he did have a contract for tendering. He has not produced any material to show that he was so contracted and it is reasonable that he would be able to do so in the circumstances. Further evidence has been produced and I find that the appellant's wife was working part time as a senior advisor at a clinic in dentistry as shown in documentary evidence at A/B 116-130 and that she has been employed in dental health and hygiene. I accept that the hospital was owned by Sepah.

23. I place little weight on the letter from [Dr F-S] as to the role of the appellant winning the tender as this is based on information provided to him and is entirely self serving. I similarly place little weight on the letter from [Dr R] which was purportedly obtained for the purpose of a visa application. There is no independent confirmation of [Dr R's] role or that the letter is authentic, and as such I find it to be self serving. Further reference is made to a contract but as stated above there is no document provided and further more *[sic]* I found that *[sic]* appellant's evidence on this issue to be lacking in credibility. His oral evidence was totally inconsistent as to whether or not he had a contract and eventually stating that it was a "tendering contract".

24. I find that the appellant's wife's evidence that she had a friendship with (NZ) and in respect of other issues to be lacking in credibility. **I find her evidence as to the core claim to be vague and generalised** and she was in the main relying on what she had been told by the appellant, because of her highly sensitive nature. I do accept that sadly she suffered from a miscarriage. There is no independent evidence to be able to verify that the person in communication is in fact [NZ] and or that she or her sister have been involved in social media communication with the appellant's wife. I am satisfied that this is material that has been contrived in order to bolster the claim. I am fortified in this view by the fact that there had been

no contact made with [NZ] or request to her to attend as a witness in support. Given the appellant's fears on return it is simply not credible that the appellant or his wife would not have approached [NZ] for help. Even if the sister of [NZ] is followed on Instagram by the appellant's wife this is not evidence to show that they are friends or otherwise connected. I find it lacking in credibility that the appellant's wife would not wish to "impose" on her by giving her an account of their situation. It may well be the Dr F-S has a connection with [NZ] but this takes the matter no further.

25. I find that the appellant was not involved in any scam as claimed. He has not provided any reliable supporting evidence, for example to show that he held 8000 gold coins as claimed, any receipts for the two transactions at the bank as claimed and or any independent confirmation of the practices used in Iran at banks. It is entirely reasonable to expect the appellant to have obtained documents in particular from the bank, to show that he was involved in the transactions resulting in a scam which I regard as central to the claim. There is no independent evidence of the procedures at banks for recording transactions as claimed in evidence.

26. I place little weight on the "summons" which purports to be an original document, but which has not been authenticated. I find it implausible that such a document would be handed to the janitor of the apartment where an accused person resides. There is no background material to support that such procedures exist in Iran. Further there is no reliable evidence from the friend who it is claimed brought to *[sic]* document into the UK in November 2021 and or why it was not produced sooner. I have concerns as to the authenticity of this document. For the same reasons I place little weight on the document purporting to be an arrest warrant which was shown to the appellant's brother and photographed. It is not plausible that the Iranian security would pursue suspects in this manner and there is no supporting evidence to show that such procedures are adopted by the security forces.

27. I have considered all of the evidence in the context of the background material as cited in the [appellant's skeleton argument] which fails to show external consistency of the claim. The material relied on is very general in nature, for example an article confirming that the Revolutionary Guards control up to one third of the Iranian economy and the financial crisis in Iran leading to the purchase of gold coins.

28. I find that the appellant was not interrogated by the Security forces in Tehran. His evidence was inconsistent as to the length of time he claimed to have been interrogated – for 24 hours as stated in interview and 2-3 hours in his witness statement. His response in cross examination was to express incredulity that it was not possible to be interrogated for 24 hours, and thereafter to provide no explanation for why there was a mistake. It is not credible that he would be released without any charge in light of the allegations against him. His evidence that he was required to attend a police station was inconsistent as identified in the refusal letter. I find that he has family still living in Iran including his parents and brother and sisters from which I infer that they are safe and have not been subject to adverse interest from the authorities.

29. I find that the appellant has not shown that he participated in a TV interview in relation to the gold coin scam. The appellant made no reference to this interview in his substantive interview, in which the significant aspects of his claim are set out, and his failure to do so causes be [sic] to be concerned as to the credibility of his claim. I reject the submission that his failure to

> mention this shows that he has not sought to bolster his claim. Had this been a significant and genuine event I am satisfied that the appellant would have mentioned it in his interview. The evidence of the screen shots relied on fails to identify the appellant as a participant in the programme. I place little weight on the evidence of Dr F-S in this regard. It is not hard to see why he would wish to provide support for his family, but he has no direct knowledge of the appellant's claims as to events in Iran. There was no oral evidence from the interviewer and the reason given was because he was busy. I find it incredible that no attempt would be made to request this witness to attend court given he is claimed to be a well known dissident and friend of Dr F-S. The reason given was that he was a very busy man, yet I find it inconceivable that given the appellant's fears on return that he would not be contacted. The appellant did not claim that the authorities in Iran would be adversely interested in him because of the programme nor that they would have viewed it.
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> 30. The appellant claimed that he left Iran using a false passport and entered Dubai. There is no supporting evidence of this at all and I find it implausible that the couple would be able to leave the country with a passport with only a photograph on it. The appellant's evidence as to the destruction of the documents was not consistent.
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> 31. I follow the approach in Tanver Ahmed [sic] as to the documentary evidence produced as a part of all the evidence relied on. I place little weight on the documentary evidence. It was submitted that there was a wealth of material to support the claim, *[sic]* however, whilst there some documentary evidence, I am unable to find that it supports the core of the claim in any material way. Having regard to all of the evidence which I find is not internally or externally inconsistent. I conclude that the appellant's claim is not credible and that he faces no real risk on return to Iran on protection and human rights grounds."
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> (my emphasis)

ASSESSMENT

11. I have carefully considered the grounds and submissions. I shall only deal with those grounds that are set out below. In view of my decision in relation to the grounds dealt with below, I consider it unnecessary for me to deal with the remaining grounds and submissions.

Ground 1

12. It is clear that ground 1 does not advance a single ground but several grounds. I deal with these to the extent that I consider necessary.

13. Paras 10 to 12 of the grounds contend that the judge misapprehended or overlooked relevant evidence when she stated at para 22 of her decision that the evidence given by the appellant's wife about her occupations in Iran was inconsistent. The grounds refer to paras 17 and 60 of the witness statement of the appellant's wife where she had said that she resigned from her position as a senior advisor in the Sepah (Revolutionary Guards) dental hospital/clinic in June 2018, from which it follows (the grounds contend) that, on her evidence, she was not employed at the dental hospital when she claimed asylum in the United Kingdom on 2

September 2018, whereas she was still employed in a teaching capacity in other institutions.

14. I agree that the judge did misapprehend the evidence of the appellant's wife, as contended at paras 10-12 of the grounds.

15. Paras 13-14 of the grounds contend that the judge misapprehended the evidence when she drew an adverse credibility inference from the fact that the appellant had stated in his 2017 visa application form that he worked as a car dealer but did not mention his claim to have worked as a "project manager". The grounds contend that the evidence was that the appellant was not employed on the refurbishment project at the time of his 2017 visa application which (the grounds contend) amounts to a *"complete explanation"* of why that work was not mentioned in the 2017 visa application form.

16. I agree that the judge did misapprehend the evidence of the appellant in this regard, for the reasons given at paras 13-14 of the grounds.

17. Para 19 of the grounds contends that the judge overlooked relevant evidence when she took into account against the appellant at paras 22 and 23 that he had failed to produce the contact for his work without good reason, in that, she failed to consider his evidence at question 86 of his interview (RB/82) that the contract was amongst the documents that were taken from his house by the Iranian authorities when they raided it on 5 September 2018.

18. I agree that the judge did overlook relevant evidence, as contended at para 19 of the grounds.

19. It is unnecessary for me to consider the remainder of of ground 1 for the reasons given at para 36 below.

Ground 2

20. At para 29, the judge said that she placed little weight on the evidence of Dr F-S. She went on to say that "*It is not hard to see why he would wish to provide support for his family, but he has no direct knowledge of the appellant's claims as to events in Iran*."

21. However, I agree with para 32 of the grounds that Dr F-S set out in some detail in his letter of support how he had arranged with Dr Nourizadeh for the satellite/internet TV interviews to be held with the appellant regarding the scam involving the gold coins. Accordingly, his evidence that he was involved in the arrangements made for the interviews between Dr Norizadeh and the appellant to take place was capable of providing some support for material aspects of the appellant's account, i.e. that the interviews took place.

22. Dr F-S also gave evidence in his letter of support that NZ was a friend of his sister-in-law and that the two had met when the uncle of his sister-in-law was visiting the United Kingdom. He also said that NZ was once his patient. This evidence was capable of providing support for another aspect of the appellant's evidence.

23. For the reasons given above, it was incumbent upon the judge to engage with the evidence of Dr. F-S, especially given that he (Dr F-S) gave oral evidence at the hearing and he was cross-examined. She failed to engage at all with the evidence he gave concerning how he had arranged the interviews and she failed to engage properly with the evidence he gave about NZ.

24. Ground 2 is therefore established.

Ground 4

25. Ground 4 is that the judge erred by failing to particularise why she found (paras 22 and 24) that the appellant's evidence and that of his wife was “vague”. Put another way, ground 4 is that the judge gave inadequate reasons for finding that the evidence of the appellant and his wife was vague.

26. I entirely agree. It is self-evident from paras 22 and 24 of the judge's decision that she failed to explain why she found the appellant's and his wife's evidence was vague.

27. Ground 4 is therefore established.

Ground 6

28. Ground 6 is that the judge erred at para 26 when she rejected the credibility of the appellant's evidence that the summons was handed to the janitor of the apartment block where he had lived on the basis that his evidence was implausible.

29. Relying upon para 56 of the grounds, Mr Hodson made an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to admit objective evidence to establish that the judge had erred in finding the appellant's evidence as implausible.

30. At the hearing, I decided to hear Mr Hodson’s submissions on his application to admit fresh evidence *de bene esse*.

31. Having heard his submissions and Mr Melvin's submissions in reply, I have decided to grant permission to admit the further evidence. My reasons are as follows: Firstly, the refusal letter did not take issue with the credibility of appellant’s evidence that the summons was handed to the janitor. It follows that the appellant and his representatives could not have foreseen that the judge would or might take this issue. The evidence that is now relied upon does show that if the intended recipient of a summons is not present, the summons can be handed to, for example, neighbours. Secondly, it is trite that judges have long been cautioned against assessing credibility on the basis that the evidence given is implausible. The purpose for which the fresh evidence is sought to be admitted is to establish that the *approach* that the judge took in the instant case, of assessing credibility by considering plausibility, did amount to an error of law, as opposed to it being fresh evidence in support solely of the appellant's underlying factual account.

32. In these circumstances, I am satisfied that the judge did err in law when she rejected the credibility of the appellant's evidence that the summons was handed to the janitor on the basis that this was implausible.

33. The same reasoning applies in relation to the judge's rejection (at para 26) of the credibility of the appellant's evidence that the arrest warrant was shown to his brother.

34. Ground 6 is therefore established.

35. For the reasons given above, I do not agree with the submission of Mr Melvin that the judge was entitled to place little weight on the evidence of Dr Nourizadeh and place weight on the fact that the appellant had not produced the contract. I do not agree with his submission that the grounds otherwise amounted to no more than an attempt to re-argue the case and an attempt to rely impermissibly upon fresh post-hearing evidence.

36. The accumulation of the errors I have dealt with above is sufficient to satisfy me that the judge materially erred in law in her assessment of credibility. I therefore concluded that it is unnecessary for me to deal with the remainder of ground 1 or the remainder of the numbered grounds.

37. For all of the above reasons, I set aside the decision of the judge in its entirety.

38. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

> "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

39. In my judgment, this case falls within para 7.2 (b).

40. This appeal is therefore remitted to the First-tier Tribunal for a fresh hearing on the merits by a judge other than Judge of the First-tier Tribunal G A Black.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside. This appeal is remitted to the First-tier Tribunal for a fresh hearing on the merits by a judge other than Judge of the First-tier Tribunal G A Black.

Signed: Upper Tribunal Judge Gill Date: 8 Jan 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as

follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**
3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent' is that appearing on the covering letter or covering email**