



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00448/2017

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport
On: 25 August 2017

Decision & Reasons Promulgated
On: 18 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

AOAF
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms S Alban, Fountain solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Order Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008

1. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This order applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. This is an appeal against the decision of First-tier Tribunal Judge Richards-Clarke in which she dismissed the appeal of the Appellant, a citizen of Jordan, against the Secretary of State's decision to refuse asylum and issue removal directions.
3. The application under appeal was refused on 21 December 2016. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Richards-Clarke on 16 February 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Pullig on 30 March 2017 in the following terms

The grounds seeking permission complain that the judge had misdirected herself in relation to Country Guidance in that at paragraph 24 she refers to a case without identifying it. That paragraph appears to refer to converts. There is no Country Guidance case for Jordan. The grounds then refer to the judge setting out the guidance in HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31. It appears she did so in relation to the concept of living discreetly. However, the appellant is not gay but having been born Muslim rejects that faith. His credibility was accepted by the respondent. His case is that he is compelled to speak out. In these respects, the grounds are sustainable. The grounds also complain about the judge's findings on sufficiency of protection and prison conditions. I do not find those grounds arguable. The last ground complains about the judge's inadequate reasoning in respect of Article 8. I find the judge fails to address adequately the issue of very significant obstacles.

For the reasons given above I find that the Judge's decision is vitiated by material error of law and I grant permission.

4. By a rule 24 response dated 20 April 2017 the Respondent opposed the appeal arguing that the Judge directed herself appropriately and gave adequate and well-reasoned findings.
5. At the hearing before me Mr McVeety appeared to represent the Secretary of State and Ms Alban represented the Appellant.

Background

6. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant is a citizen of Jordan of Palestinian descent born in Kuwait on 12 November 1970. He spent the first 23 of his life in Kuwait before moving to Jordan for 3 years to go to college. He then lived in the United States for 9 years before returning to Jordan in September 2008 where he remained, for the most part, until coming to the United Kingdom.

7. The Appellant's credibility was not challenged by the Respondent. His account is given in detail in two statements comprising some 13 pages of the Appellant's bundle and in addition he gave oral evidence at the First-tier Tribunal hearing. It is a complex account in which he claims to have been mistreated by the families of his first and second wife. His second wife's family arranged by him to be kidnapped and seriously assaulted. The perpetrators of this action were prosecuted by the authorities but the Appellant was pressurised to drop charges and although he did they were nevertheless convicted and sentenced to a term of imprisonment. However, the perpetrators were let out on bail pending appeal. Through this the authorities afforded the Appellant limited protection but nevertheless advised him to leave the country in order to be safe. The Appellant did so but, having left he was prosecuted in his absence on fabricated charges and sentenced to a term of imprisonment. Although the Appellant says that he should have good prospects on appeal against conviction due to his absence his lawyer advises (see first statement paragraph 33) that it will be difficult for him to appeal because he did not attend the trial). The Appellant claims that the attacks on him were motivated by his lack of adherence to Islam, about which he was open within his family, and that prison conditions in Jordan would breach his protected Article 3 rights. He also claims to have established a private life in the United Kingdom and that he would not be able to reintegrate into Jordanian society due to his lack of religious belief.

Submissions

8. For the Appellant Ms Alban referred to her skeleton argument. She said that the unidentified Country Guidance case referred to in the statement of reasons was not HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31 because that was not a 'conversion' case. He may be perceived to be a convert if he is critical of Islam. The Judge has not properly considered the risk. The Appellant's account was accepted as credible. He spoke out and he was attacked. His witness statement gives cull details. The Appellant did not hide his beliefs. The Judge was wrong to suggest that he espoused his beliefs privately and cautiously. That was not the evidence. He was critical of religion. There is no adequate finding on sufficiency of protection. The Appellant was harassed and threatened. There was no finding on whether prison conditions breached Article 3. The actors of persecution will know where he is. There is also the question of past persecution. So far as Article 8 is concerned the Appellant gave evidence of his private life in the UK and the reasons why he will face substantial difficulties in reintegration. This was not properly considered.

9. For the Respondent Mr McVeety said that the Appellant's account was accepted as credible. He has had an issue with non-state actors. When he complained the Jordanian authorities prosecuted the individuals involved. They were found guilty. There were not released early, they appealed the decision. The First-tier tribunal Judge applied the Horvath test. The Appellant was hung by his own account. The state charged and convicted the family members who mistreated him. The state helped. The state does not have to offer 100% protection, no state can. So far as the Country Guidance case is concerned the Judge was referring to HJ (Iran). The issue of concern was the Appellant's lack of belief. He is not an evangelising atheist. He discussed issues with his family. He is no major advocate of atheism. The Appellant has been charged with an offence and he has good grounds for appeal. He says that he will get the conviction set aside. The harm meted out to the Appellant was a criminal act, not persecution. It is not supported or condoned by the state. The perpetrators were convicted and they appealed. People who appeal get released. That is not evidence of insufficiency of protection.

10. For the Appellant Ms Alban responded to say that the Appellant's statement shows that the police told him to leave Jordan to protect himself. He was threatened by the family and their friends to drop the charges. There is no sufficiency of protection. The family are still free and threatening his family. He was not given protection. It was not simply a criminal act it happened because of his religion or his lack of it. He had to lie in court to say he was Muslim. Speaking out against Islam is regarded as apostasy.

11. I reserved my decision.

Discussion

12. The immediate difficulty apparent from reading the decision and statement of reasons prepared by the First-tier Tribunal Judge is that there is almost no detail given of the basis of the Appellant's claim. At paragraph 7 the Judge refers to "the salient parts of the Appellant's evidence" in five short sentences subdivided into four paragraphs. It is not clear if the Judge is referring to his oral evidence or if she is summarising his witness statements as well. The Appellant made two witness statements, the first dated 5 June 2015 is the most detailed, the second dated 3 February 2017 is described as a 'statement in reply' and is the only statement referred to by the Judge. The 'salient parts of the Appellant's evidence' are anything but comprehensive and the impression given by the statement of reasons is that the Judge has not considered the detailed written statement at all.

13. The Judge goes on at paragraph 23 to summarise the Appellant's claim when making her findings. It is a very brief summary that misses many of the pertinent facts of the Appellant's account. The cumulative effect of these two paragraphs (17 and 23) is that it is impossible from the statement of reasons to get a clear idea of the nature of the Appellant's claim. It is necessary to refer to his two witness statements and the statement made by his father (pages 77-80 of the Appellant's bundle) to understand the facts relied upon.

14. The difficulties continue with the findings in respect of the Refugee Convention claim. These are restricted to some very brief sentences in paragraphs 24 (to which I will return), 25 and 26. Paragraph 25 states

"...the evidence before me supports a finding that the Jordanian authorities are able to offer the Appellant protection".

Paragraph 26 says even less finding that there is no likelihood that the Appellant will suffer harm

"...for the reasons above".

There is no analysis of the Appellant's account against the law and the objective evidence and indeed no objective evidence is referred to at any point in the findings despite there being a wealth of objective evidence and country information contained in both the Appellant's bundle and the Respondent's refusal letter.

15. So far as the remaining paragraphs of the statement of reasons is concerned there is again an absence of analysis. Paragraph 28 referring to Article 2 is otiose. Paragraph 29 refers only to the Appellant's mental health difficulties when it was an integral part of his claim that he would be imprisoned on a return to Jordan and that prison conditions breach Article 3. Paragraph 30 deals with Article 8 and the claim that the Appellant would face substantial obstacles on reintegration without any analysis of his private life in the UK or reference to his life history or the time spent outside Jordan. Indeed, it is factually incorrect stating that he was born in Jordan where the accepted evidence is that he was born in Kuwait and spent the first 23 years of his life there. This adds to the impression, referred to earlier, that the Judge has not considered the Appellant's first and detailed witness statement.

16. In short there are significant shortcomings in this decision and statement of reasons that lead to the inevitable conclusion, even before considering the grounds of appeal that it should not be relied upon. The Judge

appears to have failed to take into account or made mistakes as to material facts which in accordance with the principles expounded R (Iran) v SSHD [2005] EWCA Civ 982 would amount to a material error of law.

Error of law

17. Turning to the grounds of appeal the first error of law asserted is that the Judge misdirected herself in law by referring to a Country Guidance case without identifying it. It is said, in the skeleton argument, that there is no Jordanian Country guidance case relating to converts and that no Country Guidance case was referred to or relied upon by either party. In submissions Ms Alban adds that HJ (Iran) is not a 'conversion' case so could not be what the Judge was referring to. Of course, HJ (Iran) is a Supreme Court decision, not a Country Guidance case.
18. In my judgment this is a disingenuous argument. Firstly, whereas the statement of reasons is deficient in many ways as discussed above and the identification of HJ (Iran) comes after the reference to the 'the Country Guidance case', it is nevertheless clear that HJ (Iran) is the case being referred to. The fact that HJ (Iran) involved different countries (Iran and Cameroon) and a different issue (homosexuality) does not make its principles any the less relevant. HJ (Iran) is continuing guidance for the principle that a person should not be required to hide their sexual identity or their committed beliefs in order to avoid persecution. There is no error of law here.
19. The second error asserted is that there was material misdirection in relation to HJ (Iran). It is said that the Judge was wrong to say that the Appellant behaved privately and cautiously with respect his belief and that his evidence was that he had not behaved privately and cautiously.
20. There is substance in this assertion. As referred to above there is no analysis of the Appellant's evidence against the HJ (Iran) principles and there appears to be no consideration of the facts put forward in his detailed statement and accepted as credible by the Respondent. The Appellant says, for example, in his second statement

" If I was to return to Jordan I would be unable to keep my own beliefs private as I am so passionate it would not be long before people found out".

Such a situation goes to the root of HJ (Iran) and at the very least needs to be considered. In my judgment there is a material error of law in that the Judge has not addressed the accepted facts to the law.

21. The third ground is that the Judge failed to make adequate finding in relation to sufficiency of protection. This is detailed at paragraphs 8 and 9 of the skeleton. It is said that the Judge found that on the Appellant's own account appropriate action was taken by the authorities supporting a finding that the authorities could offer sufficiency of protection. The complaint is that according to the Appellant's account the Jordanian authorities action had been totally inadequate His kidnappers had not served their sentence and were currently free.
22. In my judgment this is a further example of the facts not being fully considered. It is certainly the case that the Appellant complained to the authorities of a criminal act and that the perpetrators were charged and convicted before a court of law and sentenced to a term of imprisonment. It would be perverse of the Judge to find anything other than that this constituted sufficiency of protection. The fact that the perpetrators appealed and were released pending appeal does not alter that inevitable conclusion. This is what happens in countries where the rule of law is followed and respected.
23. However, the Judge does not go on to consider the facts as put forward by the Appellant. Specifically, the Judge fails to address the appellant's claim that he was advised by the authorities to leave the country for his own protection, that his father has been threatened since he left (see the father's statement), that fabricated charges have been laid against him and that pressure was put upon him to drop charges and that he was advised that this was the only safe course to adopt. In my judgment the Judge has failed to take account of material facts in reaching her conclusion.
24. The fourth ground is the assertion that the Judge failed to make findings as to whether prison conditions in Jordan would be a breach of Article 3. This ground is clearly made out. The prison conditions in Jordan were the basis of the Article 3 claim and are not referred to at all in the decision. Objective evidence of the prison conditions is included in the Appellant's bundle (US state Department Report at page 182). There is no analysis in the statement of reasons. This is a further error of law.

25. The final ground of appeal is that there was inadequate reasoning in relation to Article 8. It is said that there would be significant obstacles to the Appellant's reintegration in Jordan if he had to return. This is again clearly made out for the reason given above. The Appellant is a 46-year-old Jordanian citizen who has lived in Jordan for only a relatively short period of his life. The Judge starts from the false premise that he is Jordanian born and that the only other country he has lived in is the USA. It is at least arguable that a full analysis of the facts may have led to a different conclusion.
26. My conclusion from all of the above is that the decision of the First-tier Tribunal contains errors of law material to the decision to dismiss the appeal.

Summary

27. The decision of the First-tier Tribunal involved the making of a material error of law.
28. I allow the Appellant's appeal. The error of law is such that I am satisfied that the Appellant's appeal has not been fully considered by the First-tier Tribunal and as such the appropriate course in accordance with the President's guidance is to remit the matter to the First-tier Tribunal for hearing de novo.

Signed:

Date: 29 September 2017

A handwritten signature in black ink, appearing to read 'John Phillips', written in a cursive style.

**J F W Phillips
Deputy Judge of the Upper Tribunal**