



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: RP/00057/2019

THE IMMIGRATION ACTS

Heard at Field House
by Microsoft Teams
On 22 July 2021

Decision & Reasons Promulgated
On 04 August 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

N N (IRAN)
[ANONYMITY ORDER MADE]

Respondent

Representation:

For the appellant: Mr Esen Tufan, a Senior Home Office Presenting Officer
For the respondent: Mr Rajiv Sharma of Counsel, instructed by David Benson Solicitors

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of N N who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The Secretary of State appeals with permission from the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 15 May 2021 to revoke the claimant's protected refugee status with reference to Articles 1F(c) and 33(2) of the Refugee Convention 1951, and paragraph 339AC of the Immigration Rules HC 395 (as amended), following his conviction on 4 April 2019 for offences contrary to section 25A of the Immigration Act 1971. The claimant is a citizen of Iran.
2. On 19 February 2019, the Secretary of State wrote to the claimant notifying him that revocation of refugee status was being considered, with reference to section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended). The claimant did not respond.
3. On 15 May 2019 the Secretary of State decided to revoke the claimant's refugee status. She recorded at [37] of that letter that the claimant's indefinite leave to remain was unaffected and 'as such there is no negative impact on your family or private life as a result of this revocation decision' but that his indefinite leave to remain might be subject to future review.
4. On 11 September 2019, the claimant was served with a deportation order with reference to section 32 of the UK Borders Act 2007, and invited to make submissions in response to a One-Stop Notice. That order had the effect of terminating the claimant's indefinite leave to remain, but not that of his two former wives or the child of his second marriage, with whom the claimant is not permitted any kind of contact. The claimant's current partner is a British citizen with two adult sons in their 30s. There are therefore no relevant minor children.
5. **Mode of hearing.** The hearing today took place remotely by Microsoft Teams. There were no technical difficulties. I am satisfied that all parties were in a quiet and private place and that the hearing was completed fairly, with the cooperation of both representatives.

Background

6. The claimant's history in Iran is set out in the First-tier Tribunal decision. The claimant married his first, Ukrainian wife in April 2001, having met her in Iran, where she had come as a visitor, accompanying her mother, a designer working for the Iranian government. The couple's common language was German, and the claimant's wife converted to Islam in order to marry him.
7. The couple paid a people smuggler just over \$10,000 to bring them to the United Kingdom, arriving on 9 November 2001. They claimed asylum. On 6 June 2003, the claimant was granted indefinite leave to remain, following refugee recognition as the spouse of his Ukrainian wife. The marriage failed and was dissolved in 2003.
8. The claimant remarried, and with his second wife, he had a son, to whom he has no access. The couple separated in 2004 and that marriage was dissolved in 2009.

9. In 2004 or 2005, the claimant met his present long term partner. She had two adult sons, both in their 30s and not living at home. The claimant told the First-tier Tribunal that he is 'close' to those men. He also has a nephew, who lives in the United Kingdom with his wife: they have had nothing to do with the claimant since his imprisonment.
10. On 17 February 2017, the claimant was granted settlement and issued with a United Kingdom passport. In 2017, the claimant's younger brother died in Iran. The claimant thinks that the Iranian authorities poisoned his brother.
11. In the same year, the claimant says he received anonymous telephone calls requiring him to help organise a high price service for middle class Iranians, providing flights, documents and handlers to accompany them to travel to the United Kingdom on identity documents to which they were not entitled, and on arrival to claim asylum in their own names.
12. The claimant told the First-tier Judge that, contrary to the findings set out in the sentencing judge's remarks, he only received expenses for his involvement in the people trafficking conspiracy and made no profit. He did not intend to become involved again in such activities, even if there were threats to his family members again. He had learned his lesson and was remorseful.
13. The sentencing judge found that even if the initial impetus came from corrupt Iranian officials, the claimant and another Greek man had gone into independent, and very profitable, business for themselves and were not working under duress at the time of the index offences. People trafficking was a profitable business as each traveller paid between £8000 and £12000 to avoid the normal immigration restrictions. Not all of that fee was profit in the claimant's hands: he had expenses in providing this service to his clients.
14. The claimant pleaded guilty to a charge of facilitating asylum seekers into the United Kingdom for gain, contrary to section 25A of the Immigration Act 1971. The sentencing judge found the claimant's service to be 'well-planned, organised and sophisticated' and that he was in a leading role in the conspiracy.
15. On 16 August 2019, he was sentenced to 45 months' imprisonment, triggering the section 72(2) presumption that he has been convicted of a particularly serious crime and is a danger to the community of the United Kingdom.

First-tier Tribunal decision

16. The claimant appealed the May 2021 revocation decision to the First-tier Tribunal, which allowed his appeal, principally because the First-tier Judge found that his offence was not a 'particularly serious crime' for the purposes of Article 33(2) and the section 72 presumptions.

Error of law decision

17. On 26 April 2021, I set aside the First-tier Tribunal's decision. The decision in this appeal now falls to be remade in the Upper Tribunal.
18. The issue for the Tribunal is whether the appellant can rebut the presumption in section 72 of the Nationality, Immigration and Asylum Act 2002 (as amended).

Appellant's statement

19. The claimant relied on his witness statement of 11 November 2019, which set out his family history in Iran: his father and his middle brothers were executed in 2001, for which the appellant had to pay the cost to the state, and his younger brother was said to have been poisoned by the Iranian authorities in 2017. There was no updated statement or oral evidence from the claimant.
20. The November 2019 statement set out the torture and harassment the claimant experienced in Iran before leaving. He said he had suffered severe depression for 5 years between 2004 and 2009, for which he received treatment. He has severe arthritis which required a knee operation. He had asthma and diabetes, for which he needs medication.
21. In the Austrian prison, the claimant took cooking classes and learned German. He says he has deep remorse for his previous acts, and became involved only reluctantly, 'at a time that I was experiencing difficult problems in [my] life'.

OASys report: 7 February 2020

22. The claimant also produced a pre-discharge OASys assessment carried out on 7 February 2020 at HMP Maidstone, which was not available to the First-tier Judge. The OASys report sets out the history of the index offence, noting that the conspiracy as charged covered 31 May 2017 - 30 September 2017, but that there was evidence of other transactions from 28 May 2017 - 18 October 2017 when the claimant and his Greek co-conspirator were arrested in Austria for similar offences, and imprisoned there for two years, before being returned with the mobile phone evidence and prosecuted again in the United Kingdom.
23. In Iran, the claimant said he had a happy childhood, being brought up by both parents, but his father was killed by the Revolutionary Guard in 2001, his mother dying 40 days later. The claimant had four sisters and five brothers, but one brother was killed in 2017 by the Revolutionary Guard. In Iran, he worked in his family carpet business and family restaurant. The claimant is an educated man who studied for a degree in History while in Iran, and is fluent in English, German, Japanese and Farsi. When released from prison, the claimant hoped to return to Newcastle, where his current partner lives, and rejoin her. He had previously worked in Newcastle as a pizza chef but hoped now to use his many contacts to get a job as a head chef.

24. The claimant's account to the interviewing officer was that he had been forced to undertake this work by members of the Iranian Revolutionary Guard, who visited him in Newcastle, where he was living, and threatened to kill his brother if he did not cooperate. The interviewing officer did not accept that account and considered that the claimant's main motivation was financial gain.
25. Under *Criminogenic Needs Summary and Section Scores*, the matters considered to be linked to risk of reoffending were ETE (Education, Training and Employment), Finance, Lifestyle and Associates, Thinking and Behaviour, and Attitudes. Of these, only Education Training and Employment was considered to be a risk for reoffending and to need attention. The appellant was considered to present a low probability of re-offending (15% over two years, 12% for violent offences and 7% for non-violent offending).
26. The claimant's prison behaviour had been good, with a positive attitude, no evidence of offence-paralleling behaviour and maintaining prison employment. A number of awareness programmes were recommended for completion before release. Non-completion of those programmes, lack of or no employment, non-compliance with licence conditions and restrictions, or evidence of offence-related behaviour were considered to be factors which might inhibit lasting change.
27. The claimant was working on an increased awareness of his own actions and their impact on others, improvement of employment-related skills and the ability to work in a team. Work on increased budgeting skills had not started.

Submissions

28. For the Secretary of State, I have reviewed the written submissions received on 12 January 2021 for the error of law hearing. They do not assist me with the factual finding whether the claimant has rebutted the section 72 presumption.
29. In oral submissions, Mr Tufan reminded me that it was now accepted by Mr Sharma that the claimant had committed a particularly serious crime in the United Kingdom. The Austrian offence also engaged the section 72 presumption. The sentences imposed, 2 years in Austria and 45 months in the United Kingdom, reflected the seriousness of the offences. Mr Tufan agreed that rebuttal of the section 72 presumption was a question of fact, but relied on *MA (Pakistan) v Secretary of State for the Home Department* [2014] EWCA Civ 163 (05 February 2014).
30. The claimant had not been found to be a credible witness by the First-tier Judge: despite the findings on his criminal conviction, he continued to assert that he had made no profit from his people smuggling conspiracy. The claimant was not rehabilitated and any remorse expressed could carry no weight in circumstances where he continued to maintain that the offence to which he pleaded guilty was not as the sentencing judge had found it to be. Removal of protection should be upheld.
31. The claimant's Counsel, Ms Miranda Butler, provided a written submission for the hearing on 28 January 2021. The claimant accepted that whether or not it was

argued, the Upper Tribunal had a duty to consider the statutory presumptions in section 72 of the 2002 Act. The claimant had been convicted of an offence and sentenced to a period of imprisonment in excess of 2 years: the Tribunal was therefore obliged in law to consider section 72, but Ms Butler argued that on the evidence before the First-tier Tribunal, the claimant had rebutted the presumption.

32. In oral submissions for the claimant at the remaking hearing, Mr Sharma took me through the OASys report. He too accepted that the index offences, and by implication also the Austrian offences, engaged the section 72 presumptions. The claimant had pleaded guilty to the United Kingdom offences, although he continued to assert that he committed them under duress (which would have been a defence, had he advanced it successfully in the criminal proceedings).
33. Mr Sharma said that the question whether the section 72 presumptions had been rebutted was a question of fact for the Upper Tribunal on the evidence before me. No legal argument was necessary and none was offered to assist the Tribunal in deciding whether the presumption had been rebutted.

Analysis

34. Article 33(2) of the Refugee Convention provides that:

“Article 33 - PROHIBITION OF EXPULSION OR RETURN (“REFOULEMENT”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

35. Section 72, so far as relevant, provides that:

“72 Serious criminal

- (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
- (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is –
 - (a) convicted in the United Kingdom of an offence, and
 - (b) sentenced to a period of imprisonment of at least two years.
- (3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if –
 - (a) he is convicted outside the United Kingdom of an offence,

- (b) he is sentenced to a period of imprisonment of at least two years, and
- (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence. ...

(6)A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.”

36. This appellant was convicted in Austria of an offence similar to that of which he was convicted in the United Kingdom, and sentenced to 2 years imprisonment. He was then convicted of trafficking offences in the United Kingdom, and sentenced to almost 4 years’ imprisonment. Both section 72(2) and 72(3) apply to him and Mr Sharma accepts that the presumption has been raised that he is a danger to the community of the United Kingdom.
37. Mr Sharma is correct in identifying that the question whether the section 72 presumption has been rebutted by the claimant is one of fact for the Tribunal today. The claimant began his unlawful activity in May 2017, having been issued with a British passport enabling him to travel just three months earlier, in February 2017. He continued his illegal activity until October 2017, when he and his Greek co-conspirator were arrested in Austria.
38. The claimant was responsible for the collection and management of significant sums of money. The organisation, in which he was a leader, was sophisticated, effective, and resulted in an unknown number of middle class Iranians travelling to the United Kingdom via European Union destinations, making use of false European Union travel documents, and then claiming asylum in the United Kingdom. That is about as far from respecting the international protection given to him by the United Kingdom as it is possible to be. Whilst there is no evidence that any of those for whom the claimant arranged unlawful entry to the United Kingdom were a threat to the United Kingdom, either on health or terrorism grounds, the method
39. I have regard to the claimant’s continued refusal to acknowledge that he obtained any financial gain from his trafficking activity, and his assertion that he acted under duress from corrupt Iranian officials threatening his brother in Iran, which was rejected both by the sentencing judge and the person who prepared the OASys report in January 2021. The claimant’s account about how many of his brothers have died is different in what he told the OASys interviewer and what he says elsewhere.
40. The OASys report assesses the claimant’s offences as being financially motivated, and his likelihood of reoffending as being low, as long as he has employment and sufficient finance, which clearly he did not have before his imprisonment, despite his work as a pizza chef.
41. The burden on the claimant is to satisfy me that he will not return to the profitable people trafficking which he previously organised. The evidence before me consists of an assertion to that effect in November 2019 and another to the OASys interviewing officer. I have regard to the First-tier Judge’s assessment that the

claimant is not a reliable witness, even to the lower standard applicable in international protection appeals.

42. Taking all of the evidence before me, I am not satisfied that the claimant, on whom lies the burden of proof, has rebutted the section 72 presumptions.
43. The claimant's appeal is dismissed.

DECISION

44. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by dismissing the claimant's appeal.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 28 July 2021