IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001916
First-tier Tribunal No: PA/52480/2020
IA/02290/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 February 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

BS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Greer instructed by Bright & Day, Solicitors.
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 27 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge O'Hanlon ('the Judge') promulgated following a hearing , Bradford on 8 April 2021, in which the Judge dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is a citizen of Tunisia born on 9 September 1985.
3. Having considered the documents and oral evidence the Judge sets out his findings of fact from [31] of the decision under challenge.
4. At [36] the Judge records that the Secretary of Stated accepted the appellant's account of his relationship with a woman, 'M', and the assault and threats received from M's brothers, leaving the issues to be determined whether or not there was an adequacy of State protection in the event of his return to Tunisia and also whether or not internal relocation would be reasonable.
5. In relation to the question of sufficiency of protection; the Judge did not have the benefit of being assisted by a Presenting Officer as one had not been provided to represent the Secretary of State's interests at the appeal hearing, although the Judge was able to ascertain the Secretary of State's position from the refusal letter, and able to consider the country material.
6. The Secretary of State was of the view that the appellant had failed to demonstrate that the authorities in Tunisia will be unwilling or unable to offer protection if he sought it. The appellant had stated that following an assault by M's brother on 9 October 2018 he reported the matter to the police, for which a copy of a police report had been provided. The appellant also stated in his evidence that threats had been made to his mother and father on 15 October 2018 by M's brothers and against the appellant at his place of work which were, again, reported to the police.
7. There was no challenge before the Judge that, as set out in the US State Department 2018 Human Rights report, there is a functioning police service in Tunisia. Mr Greer who also appeared before the Judge submitted that, notwithstanding, the police force is corrupt and M's uncle is a member of the police/Ministry of the Interior which it was suggested may be why no action was being taken against M's brothers as a result of the assault and threats upon the appellant and his family.
8. The Judge does not dispute the existence of corruption within the police force but does not find that this in itself shows that of sufficiency protection would not be available [40].
9. At [41] the Judge considers the claim on the basis that state protection may not be available if M's uncle is a member of the police/Ministry of the Interior. The Judge records the appellant's account in relation to his uncle's role in his interview and replies to questions asked during the hearing, following which the Judge writes at [47]:

> 47. I found the Appellant's evidence regarding the issue of whether M had an uncle who was a member of the police/Ministry of the Interior to be both vague and lacking in credibility. In his witness statement the Appellant made a clear and unequivocal assertion that M's uncle was a police officer within the police station where the Appellant had made his complaint of the assault upon him. The Appellant denied at the hearing that this was the case and his evidence was that M's relative was employed by the Ministry of the Interior. The circumstances of the Appellant's claimed knowledge of M's uncle being a police officer/Ministry of the Interior are vague. The Appellant's evidence at the hearing was that a friend suggested that the complaint made by the Appellant may not have been pursued because M had a family member who was a police officer. On the basis of the Appellant's evidence investigations were made by his family and friends and found that this was the case. However, the Appellant's evidence overall is vague as to whether or not M's

> uncle was a member of the police or the Ministry of the Interior and the Appellant maintains that he has no knowledge of the role of M's uncle. Whilst I accept, as was submitted by the Appellant's Representative, that the Appellant is attempting to obtain this information at a distance, the lack of any knowledge on the part of the Appellant as to the role of M's uncle and a clear discrepancy between the Appellant's evidence at the hearing and the contents of his witness statement are matters that I do not feel I can ignore in considering the credibility of the Appellant's account in this respect. I am not satisfied, to the requisite standard of proof, that M has an uncle who is either a police officer or who is employed by the Ministry of the Interior. It follows from that finding that I do not find that M has a relative who would be capable of exercising influence over the Tunisian authorities so that State protection to the appropriate level would not be available to the Appellant if he sought it. The House of Lords decision in Horvath [2000] UKHL 37 provided that the standard of protection required is not a standard which eliminates all risk amounting to a guarantee of protection but rather a practical standard which takes account of the duty a State owes to its own nationals.

10. The Judge goes on to note the fact the appellant had sufficient confidence in the authorities to make two reports to the police in relation to the incidents of 9 and 13 October 2018 but had stated in his evidence that the police had never escalated his complaint and investigated further. At [48] the Judge writes "*No evidence has been put before me in support of the Appellant's contention that the police had not acted upon his complaint..... No evidence has been be put before me to indicate what, if any, investigations have been made by or on behalf of the Appellant as to the outcome of his complaint to support his contention that the police had never escalated or investigated his complaint further*".
11. The Judge concludes at [49] that there is a sufficiency of protection to the Horvath standard available to the appellant in Tunisia.
12. The Judge goes on to consider the issue of internal relocation noting the argument on the appellant's behalf that it would be unreasonable due to corruption within Tunisia, meaning there will be no guarantee of the appellant's safety and that he will be unable to find employment in the absence of family support. The Judge noted the respondent's position in the refusal letter that the appellant could relocate to Tunis, 43 miles away from his home area with a substantial population, or to another named town.
13. The Judge records at [53] asking the appellant how M's family would know if he was to be returned to Tunisia to which his explanation was described as being "somewhat vague". The Judge continued in the same paragraph "*I found the Appellant's evidence in relation to the possibility of M's family knowing of his return to Tunisia to be vague and speculative. For the reasons previously stated, I am not satisfied to the requisite standard of proof that M has an uncle or other family member who is employed by the Ministry of the Interior. I do not therefore find that M has a family member who would be in a position such influence as to be able to search the Tunisian authorities' records or systems in an attempt to locate the Appellant. There is no evidence whatsoever before me to suggest that M's brothers have either the power or influence to locate the Appellant throughout Tunisia".*
14. The Judge draws together his thoughts in relation to the reasonableness of relocation at [54] where he writes:

> 54. So far as the question of the reasonableness of the Appellant's possible relocation to another area of Tunisia is concerned, there has been no evidence put before me as to any medical conditions being suffered by the Appellant. The Appellant speaks Arabic, the language of Tunisia. The Appellant has been educated to High School level and, according to the certificate of employment

> produced by the Appellant, has experience of employment as a production manager. Although it is suggested by the skeleton argument that the Appellant will be unlikely to find employment in the absence of family support, whilst it may be the case that the Appellant would not have family support in an area such as Tunis where he may relocate, the Appellant's evidence has been that he is [in] contact with his family and the Appellant would not therefore be entirely without family support, albeit I accept on the basis of the Appellant's evidence that his father had died since the Appellant left Tunisia. Having considered all the evidence before me in the round, I am satisfied that the Appellant would not face a real risk of serious harm if he were to relocate to a different part of Tunisia other than his home area of Menzel Bourguiba and that he could reasonably be expected to stay in Tunis, Sousse or another part of Tunisia away from the Appellant's home area. I find that the Appellant could reasonably be expected to stay in another part of Tunisia and that he has the necessary knowledge of the culture, opportunities as a whole and education to give him an ability to gain lawful employment.

15. On the basis of the findings the appeal was dismissed.
16. The appellant sought permission to appeal, in grounds he drafted himself, which assert *inter alia*:

    Ground 1: the Judge had failed to consider material facts when making findings with respect to whether the Appellant and his family had escalated their complaints arguing that the Judge's finding at [48] that there being no evidence to support the contention the police had not acted failed to consider the appellant's evidence at [8] of his witness statement in which the appellant claims his father made an official complaint to another police station to investigate why the police were doing nothing about the case that they made no enquiries or arrests, as a result of which his father went to the attorney general to make a further complaint for which the appellant claims documents were provided. The Ground asserts that whist the Judge doubted the appellant's evidence in relation to some aspects of the evidence it is argued the Judge failed to consider the evidence or to give reasons why the appellant's evidence with respect to how matters were escalated was not accepted.

    Ground 2: asserts the Judge failed to consider risk to the appellant on the accepted facts, arguing that even if it was accepted that any influence of M's uncle was disregarded, it was accepted the appellant had been attacked as a result of the relationship with M, that the police took no action, which the appellant submitted this was suggestive that M's family have power and influence as claimed and that therefore the risk remains. The appellant also submits that the relationship with M will be adversely viewed by society and bring shame on his family.

    Ground 3: asserts the Judge's approach to credibility is flawed in failing to give the appellant the benefit of the doubt in relation to the position of M's uncle, misunderstanding the evidence, and giving undue weight to alleged discrepancies.

17. Permission to appeal was granted by another judge of the First-tier Tribunal on 1 July 2021.

Discussion

18. The Judge was not required to set out each and every aspect of the evidence in the determination. Just because the judge does not mention one aspect of the evidence does not mean it was not taken into account or incorporated within the holistic assessment required before the decision is made.
19. The appellant's ground suggesting the Judge erred in not giving him the benefit of the doubt has no arguable merit. In KS (benefit of doubt) [2014] UKUT 00552 it was held:

> *(1) In assessing the credibility of an asylum claim, the benefit of the doubt ("TBOD"), as discussed in paragraphs 203 and 204 of the 1979 UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, is not to be regarded as a rule of law. It is a general guideline, expressed in the Handbook in defeasible and contingent terms.*
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> *(2) Although the Handbook confines TBOD to the end point of a credibility assessment ("After the applicant has made a genuine effort to substantiate his story": paragraph 203), TBOD is not, in fact, so limited. Its potential to be used at earlier stages is not, however, to be understood as requiring TBOD to be given to each and every item of evidence, in isolation. What is involved is simply no more than an acceptance that in respect of every asserted fact when there is doubt, the lower standard entails that it should not be rejected and should rather continue to be kept in mind as a possibility at least until the end when the question of risk is posed in relation to the evidence in the round.*
>
> *(3) Correctly viewed, therefore, TBOD adds nothing of substance to the lower standard of proof, which as construed by the Court of Appeal in Karanakaran v Secretary of State for the Home Department [2000] 3 All ER 449, affords a "positive role for uncertainty".*
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> *(4) The proposition in paragraph 219 of the Handbook, that when assessing the evidence of minors there may need to be a "liberal application of the benefit of the doubt" is also not to be regarded as a rule of law or, indeed, a statement of universal application. As a reminder about what the examiner should bear in mind at the end point of an assessment of credibility, the proposition adds nothing of substance to the lower standard of proof. If, for example, an applicant possesses the same maturity as an adult, it may not be appropriate to resort to a liberal application of TBOD.*
>
> *(5) Article 4(5) of the Qualification Directive is confined to setting out the conditions under which there will be no need for corroboration or "confirmation" of evidence. Although (unlike the Handbook) Article 4(5) does set out conditions that are rules of law, properly read, it is not to be compared with the scope of TBOD as described above.*

20. It is not laid out the Judge erred in a manner in which the evidence was assessed. It is clear the Judge took care in considering the material upon which it was found weight could be given and how the individual elements of the appeal interlinked to enable the Judge to arrive at a final conclusion. If the grounds are arguing that notwithstanding the lack of credibility and confusion the Judge should have accepted the appellant's evidence has been determinative or given it greater weight than it merited in the view of the Judge, that will be an argument totally without merit. The Judge was entitled to give

the clear discrepancies in the evidence proper regard and attached weight to the same that has not been shown to be irrational or unreasonable. It is not made out the Judge did not understand the appeal, or the evidence relied upon in support of the appellant's claims. The fact the appellant disagrees with the Judge's decision does not mean any of these events occurred.

21. Even if an initial complaint had been made, which the Judge accepts, and the family made further enquiries to ascertain why it appeared no action had been taken against the appellants assailants, that does not mean there is no sufficiency of protection available. There are many reasons why police forces, even in the UK, receive complaints that do not result in arrests or criminal proceedings.
22. The Judge clearly considered the decision in Horvath v Secretary States for the Home Department [2000] UKHL 37, which remains the leading authority in the UK on state protection. In his judgment Lord Hope said that the paramount aim of the Refugee Convention was to be found in the principle of surrogacy (ergo a lack of protection in one's own state called for surrogate protection from the international community). Lord Hope said that the standard of protection to be applied is "not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard which takes account of the duty which the state owes its nationals...It is axiomatic that we live in an imperfect world. Certain levels of ill-treatment may still appear even if steps to prevent this are taken by the state...".
23. Lord Craig endorsed the formulation of Stuart Smith LJ in the court below on the level of protection required and said "In my judgment there must be in force in the country in question a criminal law which makes violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes. There must be a reasonable willingness by the law enforcement agencies, that is the police and courts, to detect prosecute and punish offenders". However, in relation to unwillingness, he pointed out that inefficiency and incompetence by the police and law enforcement officials are not the same as unwillingness; there may be various sound reasons why criminals are not brought to justice; and the corruption, sympathy and weakness of some individuals in the system of justice does not mean that the state is unwilling to afford protection.
24. Lord Clyde drew on the reasoning of the European Court in Osman (see below) and said "there must be in place a system of domestic protection and machinery for the detection, persecution and punishment of actions contrary to the purposes which the Convention requires to have protected. More importantly there must be an ability and a readiness to operate that machinery. But precisely where the line is drawn beyond that generality is necessarily a matter for the circumstances of each particular case."
25. Mr Greer was asked at the start of his submissions to the Upper Tribunal whether he was arguing that there was no effective police force in Tunisia as being one affected by systemic failings such that there was no general sufficiency of protection, or whether the argument was that as a result of the appellant's particular circumstances whatever existed the system would not protect him. A case relevant to this argument is Osman V UK (1998) 29EHRR 245, a human rights appeal, in which the European Court of Human Rights recognised that account should be taken of operational responsibilities and constraints on the provision of police protection and accordingly the obligation to protect must not be so interpreted as to impose an impossible or disproportionate burden upon the authorities. Notwithstanding

systematic sufficiency of state protection in the receiving state, a claimant may still have a well founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear but are unlikely to provide the additional protection his particular circumstances reasonably require. Where the risk falls to be judged by the sufficiency of state protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm but according to whether it is reasonable provision in the circumstances.

26. The Judge's finding regarding the lack of credibility in the appellant's claim regarding his uncle's status as a sustainable finding. It was accepted before the Upper Tribunal that the evidence at the date of the hearing was difficult to reconcile and the Judge was clearly entitled to make the finding he did at [47] in relation to the uncle's status. That finding is material not only to the appellants claim the police did not investigate but also to the issue of whether, if the appellant is returned to another part of Tunisia, M's family will be able to find him. The Judge's findings that it had not been established that they could is a finding within the range of those available to the Judge on the evidence.
27. The appellant claimed he up fears the actions of nonstate agents, namely M's family. In R (Bagdanavicius) [2005] UKHL 38 the House of Lords found that in a non state agency case, the expelling state will not be in breach of its Article 3 obligations unless, on return, the deportee will be exposed to a real risk of proscribed ill treatment from which the receiving state does not provide a reasonable level of protection. Harm inflicted by non state agents would not constitute Article 3 ill treatment unless, in addition, the state has failed to provide reasonable protection. The House of Lords noted HLR v France in which it was said that "It must be shown that the risk is real and that the authorities of the receiving state are not able to obviate the risk by providing appropriate protection" and pointed out that the original judgement in that case had been in French and obviate was the translation adopted for the verb "obvier"-whereas a more accurate translation was actually "to take precautions against".
28. It was not shown before the Judge that sufficiency of state protection, whether from state agents or non state agents, meaning a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill treatment of which the claimant has a well founded fear, is not available to the appellant in Tunisia. The Judge's finding that such willingness and ability exists, based on the country material, is a finding within the range of those reasonably available to the Judge on the evidence.
29. In assessing the effectiveness of the system found by the Judge to exist, it is not enough for the appellant to claim it is not effective as it did not prevent the assault upon him. That is not the correct legal test.
30. The Judge accepted that the appellant had been attacked in the past. Whilst the state protection available from the police in Tunisia did not prevent that attack there was no reason they should have been aware, or fixed with such knowledge, of what may have developed. The test is not an absolute deterrent to criminal acts. The appellant reported the assault to the police but confirmed he did not tell the police the full truth of the matter or why he had been assaulted. There was therefore nothing on the evidence to suggest that the police should assume there was any reason why he would be attacked in the future. In any event, the Judge's findings are that the appellant can internally relocate and that M's family would not know he had returned.
31. The Judge's overall conclusion therefore that there is available in Tunisia a sufficiency of protection, that the appellant had not established he would not be

able to benefit from such protection, that the appellant's uncle did not have the status it was claimed he had, that the appellant had not established that the police would not assist him based on any personal circumstances if he required their assistance, and that there is a reasonable internal flight option available to him within Tunisia. Having considered the submissions made and the evidence I find these are sustainable findings within the range of those reasonably available to the Judge on the evidence.

32. The submission by Ms Young that, when considered, the appellant's grounds are in reality no more than disagreement with the findings of the Judge, with no real substance, has merit when the determination and evidence is considered as a whole.
33. I find no legal error material to the decision to dismiss the appeal made out sufficient to warrant the Upper Tribunal interfering any further in this appeal.

Notice of Decision

34. No legal error material to the decision to dismiss the appeal has been made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 January 2023