IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001851
First-tier Tribunal No: PA/52165/2020
LP/00306/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 10 March 2023

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

H K S A
(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Bazini instructed by Kidd Rapinet Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 26 January 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Jordan who was born on 15 October 1981. He arrived in the UK as a visitor on 5 April 2019.

2. On 24 June 2019, the appellant claimed asylum. The basis of the appellant's claim was that he had converted from Islam to the Baha'i faith and his family had threatened, and used, violence against him including one incident in which he was shot and another incident when his daughter was scolded by boiling water. He claimed his wife and children had been kidnapped and had been detained by his family. He claimed that he had sought assistance from the police and,

although individuals were arrested, they were released without charge. The appellant claimed this was because his father was a friend of a senior security person. The appellant claimed that he was at risk of being killed if he returned to Jordan and the police would not provide protection.

3. On 26 October 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

4. The appellant appealed to the First-tier Tribunal. In a decision dated 2 December 2021, Judge Mathews dismissed the appellant's appeal.

5. The appellant sought permission to appeal to the Upper Tribunal. On 19 January 2022 the First-tier Tribunal (Judge R A Pickering) granted permission to appeal.

6. The appeal was listed for hearing at the Cardiff CJC on 26 January 2023. The appellant was represented by Mr Bazini and the respondent by Ms Rushforth. I heard oral submissions from both representatives.

The Judge's Decision

7. I begin with a summary of Judge Mathews' decision.

8. First, the Judge Mathews accepted, as had the Secretary of State, that the appellant had converted to the Baha'i faith (see [37]).

9. Second, the judge accepted that it was "plausible…that a convert could experience adverse interest of the type" claimed by the appellant based upon the US State Department on "International Religious Freedom: Jordan" (2020) and other background evidence to which the judge was referred (see [19]).

10. Third, the judge accepted that the appellant had "experienced several physical and violent confrontations with family members" but was not satisfied that the appellant had been shot in the leg as he claimed (see [25]).

11. Fourth, the judge did not accept that the appellant's family had operated the "control and restriction" upon his wife and children as he claimed (see [34]).

12. Fifth, the judge was not satisfied that the appellant's family had (when his father was alive but he was now dead) influence over the police and that they were unwilling or unable to provide protection (see [30]-[31]).

13. Sixth, the judge concluded that the appellant's delay of 2 ½ months in claiming asylum in the UK undermined the reliability of his claim (see [36]).

14. As a result, at [37]-[43] the judge concluded that, even though the appellant had "experienced hostility and on some occasions physical violence from his family, in particular his siblings", the police had been willing, and were able, to provide "effective assistance" and would do so in the future (see [37] and [38]). The appellant had not established a well-founded fear of persecution for a Convention reason or his claim to humanitarian protection or under Art 3 of the ECHR.

15. The judge also dismissed the appeal under Art 8 of the ECHR (see [48]-[57]).

The Submissions

16. Mr Bazini relied upon the Grounds which he expanded upon in his oral submissions. His submissions challenged the judge's adverse findings in the international protection claim.

17. First, Mr Bazini submitted that the judge had failed to make clear findings on all the evidence. He submitted that the judge had accepted that the appellant had experienced some assaults and threats but not that he had been shot. It was not clear, he submitted, precisely which of the incidents the judge accepted. He drew my attention to the appellant's witness statement dated 28 September 2020 (at D8-12) where the appellant described an extreme incident including the deliberate scolding of his daughter by hot water. The judge characterised this as the daughter being "accidentally burned" (see[14(ii)]) but that was not the appellant's evidence. There were, he submitted, further incidents. By failing to make clear findings, the judge failed properly to consider the future risk to the appellant and, additionally, what was required to provide 'effective protection'.

18. Second, the judge failed to give adequate reasons why he did not accept the appellant's evidence that he had been shot. The judge failed properly to consider the appellant's explanation when, in effect, applying the approach in TK (Burundi) v SSHD [2009] EWCA Civ 40.

19. Third, in relation to 'sufficiency of protection', the judge's finding was not sustainable. The judge failed properly to consider what the police actually did, including whether they questioned (even if arrested) the individuals. The finding that the appellant's father had no influence was not sufficiently reasoned given the judge's acceptance of the appellant's account in general. Further, the judge failed properly to consider the background evidence of the attitudes to those of the Baha'i faith in Jordan.

20. Fourth, the judge irrationally reached conclusions in relation to the claimed kidnapping of the appellant's wife and children by his family based upon the fact that he had been able to contact them.

21. Fifth, the judge's reasoning in relation to the relevance of delay in claiming asylum in the UK was flawed. He erred in saying (at [16]) that the delay "inevitably" impacted on all areas of factual findings. Any impact was not "inevitable" but was only potentially damaging applying JT (Cameroon) v SSHD [2008] EWCA Civ 878.

22. Ms Rushforth submitted that the judge's findings were adequate and sustainable.

23. First, Ms Rushforth submitted the judge made adequate findings on the incidents alleged which were, apart from the shooting incident, in the appellant's favour, The latter adverse finding was, she submitted, properly open to the judge for the reasons he gave applying TK (Burundi).

24. Second, in any event, the judge made sustainable findings on 'sufficiency of protection' from the Jordanian authorities. The appellant's father was now dead and there was no evidence that the appellant's brothers would have the same influence. In any event, the judge was entitled to observe that practical difficulties may hinder what could be done and to find, on the background evidence, that the authorities would be willing to protect a Baha'i convert.

25. Third, the judge's findings in relation to the claimed kidnap were properly open to him for the reasons he gave.

26. Fourth, the judge's finding and conclusions on the issue of delay was consistent with s.8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

27. Finally, and in any event, Ms Rushforth submitted that the judge's finding on the option of 'internal relocation' in [41] had not been challenged.

Discussion

28. I am grateful to both representatives for their clear and concise submissions. In the result, whilst I do not accept all of Mr Bazini's submissions, I do accept a number of them such that I am satisfied that the judge's decision cannot stand.

29. At its heart, Mr Bazini's submissions are a challenge to the judge's reasoning and whether he made adequate findings.

30. In Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) (Haddon-Cave J and UTJ Coker) the judicial headnote summarises the position as follows:

> "It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost."

31. The findings and reasons must not only be adequate in that sense but the reasons must also be sustainable as not being Wednesbury unreasonable or irrational.

32. In this appeal, two principal issues were: (1) whether the appellant had established his account and so was at real risk from his family on return; and (2) if he was, whether he could obtain a 'sufficiency of protection' from the Jordanian authorities, essentially the police.

33. In relation to 'sufficiency of protection' by the authorities, the Court of Appeal in Bagdanavicius and another v SSHD [2003} EWCA Civ 1605 summarised the legal position derived from the leading case of Horvath v SSHD [2001] AC 489 as follows at [55] per Auld LJ:

> "*Asylum claims*
>
> 2) An asylum seeker who claims to be in fear of persecution is entitled to asylum if he can show a well-founded fear of persecution for a Refugee Convention reason *and* that there would be insufficiency of state protection to meet it; *Horvath.*
>
> ….;
>
> 4) Sufficiency of state protection, whether from state agents or non-state actors, means 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 for asylum has a well-founded fear; *Osman, Horvath, Dhima.*

5) The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event; *Horvath; Banomova. McPherson* and *Kinuthia*.

6) Notwithstanding systemic 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; *Osman.*

Article 3 claims

7) The same principles apply to claims in removal cases of risk of exposure to Article 3 ill-treatment in the receiving state, and are, in general, unaffected by the approach of the Strasbourg Court in *Soering*; which, on its facts, was, not only a state-agency case at the highest institutional level, but also an unusual and exceptional case on its facts; *Dhima, Krepel* and *Ullah.*

8) The basis of an article 3 entitlement in a removal case is that the claimant, if sent to the country in question, would be at risk *there* of Article 3 ill-treatment.

….

12) An assessment of the threshold of risk appropriate in the circumstances to engage Article 3 necessarily involves an assessment of the sufficiency of state protection to meet the threat of which there is a such risk - one cannot be considered without the other whether or not the exercise is regarded as “holistic” or to be conducted in two stages; *Dhima, Krepel, Svazas*.

13) Sufficiency of state protection is not a guarantee of protection from Article 3 ill-treatment any more than it is a guarantee of protection from an otherwise well-founded fear of persecution in asylum cases - nor, if and to the extent that there is any difference, is it eradication or removal of risk of exposure to Article 3 ill-treatment; *Dhima; McPherson; Krepel*.

14) 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 a reasonable provision in the circumstances; *Osman.*

15) Notwithstanding such systemic sufficiency of state protection in the receiving state, a claimant may still be able to establish an Article 3 claim if he can show that the authorities there know or ought to know of particular circumstances likely to expose him to risk of Article 3 ill-treatment; *Osman*.

> ...."

34. I agree with Mr Bazini's submission that the judge could only properly assess the issue of 'sufficiency of protection' if he made adequate and sustainable findings about the risk to the appellant on return. The former can only be assessed with specific reference to the latter (see points 4, 6, 12 and 14-15). In my judgement, the judge failed to reach adequate findings in order to do so.

35. The judge accepted that the appellant's account of ill-treatment by his family was consistent with the background evidence, namely the US Dept of State Report which stated:

> "converts from Islam to Christianity reported continued social ostracism, threats, and physical and verbal abuse, including beatings, insults, and intimidation, from family members, neighbors, and community or tribal members." (p.12)

36. The Report also referred to :

> "persistent threats of violence from family members protecting traditional honour." (pp.12-13)

37. There was also reference in an Immigration and Refugee Board of Canada report on religious converts to honour killings of family members who changed religion.

38. These were documents relied upon by the appellant in a skeleton argument before the judge (see para 23).

39. The appellant's account was, therefore, plausible. The appellant gave evidence about a number of incidents including incidents of very serious harm if accepted (see para 10 of the witness statement). I agree with Mr Bazini that the judge failed to indicate which of the incidents he actually accepted. What he said in para 25 the appellant – "experienced several physical and violent confrontations" – that does not give a clear indication of what he accepted, apart from plainly not accepting the appellant was shot. In reaching the latter finding, the judge was entitled to take into account the absence of supporting evidence (medical report etc) if only from the UK applying TK(Burundi). However, the lack of clarity as to the rest of the appellant's account remains.

40. There is a further difficulty with the judge's findings in relation to what he does and does not accept happened. In his discussion on 'delay' in claiming asylum, the judge concluded that the delay, presumably applying s.8 of the 2004 Act, "inevitably impact[ed] on all areas of factual finding". I do not accept that the judge misdirected himself as Mr Bazini submitted because the 'delay' should only "potentially" be damaging of the appellant's credibility following JT (Cameroon). Clearly what the judge was saying was that, once s.8 applied, it applied to all aspects of his fact finding. The judge, of course, accepted some at least of the appellant's case despite as he put it in para 36:

> "I find that his delay in seeking protection undermines the reliability of his assertion to have been in need of such protection."

41. However, the judge does not, in my view, explain why this leads to differential acceptance and rejected of aspects of the appellant's account all of which stand together as a single account of why he said he was "in need of…protection".

42. Linked to these aspects of the judge's fact-findings, the judge gave no explanation why he characterised the scolding of the appellant's daughter as "accidental" when the only evidence in the case, from the appellant, was that it was done deliberately by his family.

43. Further, the judge offered no adequate explanation (at para 32) why he rejected the appellant's evidence that his father was able to influence the police activity through a powerful friend. The judge appears to speculate that the absence of police action, following an arrest, could be explained by practical difficulties (see para 29) but there was no evidential basis for asserting there were practical difficulties once the police knew which of the appellant's family was involved and, in some instances, had arrested them.

44. Also, the judge's reasoning in relation to the kidnap incident is unsustainable. He appears to base it on the fact that the appellant was able to see his wife before leaving Jordan and to contact his wife from the UK. However, the judge does not grapple with the appellant's account that his wife and children were not isolated but merely forced to live with his family (see, e.g. para 22 of the appellant's witness statement).

45. Consequently, to this extent I accept Mr Bazini's submissions and the judge's adverse finding on risk on return cannot stand.

46. As I have indicated, in the light of the need to assess the 'sufficiency of protection' by reference to the risk that the appellant would be exposed to on return, the conclusion in relation to that also cannot stand. I would add that, even if the judge was entitled to take the view that the influence of the appellant's father has gone following his death, I agree that the judge has not properly considered the background evidence concerning the Jordanian authorities approach (including societal responses) to converts to the Baha'i faith. There was, as Mr Bazini submitted, rather more background material than the judge referred to. And I am far from satisfied the reference to the US State Department Report, which the judge does not set out, provides an adequate basis for his finding in para 31 that the police would be willing to provide the required level of protection.

47. For these reasons, I am satisfied that the judge erred in law in finding that the appellant had not established his asylum claim based upon a real risk of persecution by his family and a sufficiency of protection from the police. I do not accept Ms Rushforth's submission that, in effect, none of this is material as the judge found the appellant could internally relocate at para 41. That finding related only to the *reasonableness* of relocating. It pays no regard to any risk which the appellant might face in Jordan because of the judge's adverse findings on that issue. Given the latter finding is not sustainable for the reasons I have given, the fact that the appellant could reasonably relocate does not negate any claim he might have to be a refugee under the 1951 Convention.

Decision

48. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

49. None of the judge's factual findings in relation to the asylum appeal cannot stand and none are preserved. In the light of the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal to remake the international protection claim afresh.

50. The Art 8 decision and findings were not challenged. Those stand subject to any new circumstances relied upon before the First-tier Tribunal.

51. The appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Mathews on that basis.

Andrew Grubb

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 February 2023