IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000813

First-tier Tribunal No: PA/10374/2019

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 13 March 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

RK (KYRGYZSTAN)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P. Richardson, Counsel, instructed by Sterling Lawyers Ltd
For the Respondent: Ms A. Everett, Senior Home Office Presenting Officer

Heard at Field House on 22 December 2022

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. By a decision promulgated on 6 July 2021, First-tier Tribunal Judge L Shand QC (as she then was) ("the judge") dismissed an appeal brought by the appellant, a citizen of Kyrgyzstan born in 1985, against a decision of the Secretary of State dated 14 October 2019 to refuse his asylum and humanitarian protection claim. The appellant now appeals to this tribunal against the decision of the judge with the permission of Upper Tribunal Judge Grubb.

2. The judge allowed the appeal on the grounds of Article 8 of the European Convention on Human Rights ("the ECHR") solely on account of ongoing proceedings in the Family Court in this jurisdiction concerning the appellant's contact with his children, and custody arrangements with his wife, from whom he is separated. There has been no challenge by the Secretary of State to that aspect of the judge's decision.

3. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

Factual background

4. The judge had to decide whether the appellant would be persecuted in Kyrgyzstan on account of his claimed conversion, in 2015, to Christianity. He claimed asylum on 2 January 2018, having entered the UK on a visitor's visa on 25 November 2017.

5. In her careful and detailed decision, the judge accepted the appellant's claim to have converted to Christianity (para. 44) but rejected his claims to have been assaulted repeatedly by members of his family and his wife's family on account of his conversion. She also rejected his case that he had been falsely imprisoned on the basis of fabricated evidence and charges at the instigation of his uncle, also as a result of his conversion (paras 45 to 62, and 67 and following). She did accept that the appellant had encountered some "opposition" from his wife's family (para. 67) but concluded that such treatment did not amount to persecution (para. 70).

Grounds of appeal and submissions

6. The appellant's case before the Upper Tribunal is that the judge erred by failing properly to consider the general societal risk he claims to face in Kyrgyzstan, along with Christian converts generally, on account of having converted from Islam, the majority religion. He also contends that the judge was wrong to dismiss his appeal under Article 8 insofar as it relied upon paragraph 276ADE(1)(vi) of the Immigration Rules ("very significant obstacles" to integration).

7. At the heart of both grounds of appeal lies a challenge to the judge's analysis of a report from Dr Rano Turaeva-Hoehne, an Associated Researcher with the Max Planck Institute for Social Anthropology in Halle, Germany, dated 29 January 2020 ("the Turaeva-Hoehne Report"), and the background materials available to her concerning Christians in Kyrgyzstan. The judge analysed the report's conclusions at paras 62 to 65 and 69, and some of the source materials it relied upon. Those materials included reports by the Barnabas Fund, a Christian charity that works with persecuted Christians, which had been included in the appellant's Consolidated Bundle. The judge distinguished the appellant's circumstances from those of the Christian converts who were said to have suffered mistreatment and persecution in those materials.

8. Mr Richardson submits that the judge failed to address the prospective risk of the appellant in any form. Her analysis, he submits, improperly focused

exclusively on the appellant's claimed past persecution, while omitting to address the prospective persecution upon which the entirety of his case was founded. The central question before the judge was whether the appellant would be at a real risk of being persecuted upon his return, yet the judge failed to address that question. Had the judge considered that question, Mr Richardson submits, she would necessarily have had to allow the appeal. Further, the judge failed to address the principle in *HJ (Iran)* [2010] UKSC 31.

9. Ms Everett submits that the judge properly directed herself and reached findings of fact which have been largely unchallenged. When viewed through the lens of the background materials, those findings entitled her to conclude that the appellant would not be persecuted in Kyrgyzstan and that he would not face very significant obstacles to his integration. She relied on the Secretary of State's rule 24 response dated 28 October 2022.

The law

10. An appeal lies to the Upper Tribunal on the basis that a decision of the First-tier Tribunal involved the making of an error of law. An "error of law" has a number of different facets. A summary may be found in *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 at para. 9.

Issues for resolution

11. In light of her finding of fact that the appellant had converted to Christianity, the essential question is whether the background materials that were before the judge, including the Turaeva-Hoehne Report, were capable of meriting the conclusion that Christians in Kyrgyzstan face such general levels of societal discrimination and persecution, that the appellant's return to the country would be capable of placing him at a real risk of being persecuted on account of his religion, for the purposes of the 1951 Refugee Convention.

Judge's findings concerning the appellant's prospective risk open to her

12. There is no country guidance concerning Christians in Kyrgyzstan. It was therefore for the appellant to demonstrate to the lower standard (that is, a reasonable likelihood) that he was at risk of being persecuted by reference to his own past experiences in the country, and the background materials he relied upon before the judge concerning Christians generally. The appellant, of course, sought to discharge that burden through his reliance on the Turaeva-Hoehne Report, and the other background materials in the Consolidated Bundle, as well as through his own evidence.

13. There has been no challenge to the judge's findings that the appellant had not been assaulted as he claimed, nor that he had not been placed in pre-charge detention on trumped up evidence on account of his faith at the instigation of an uncle. At their highest, the judge's findings were that the appellant had been "mistreated" by his wife's family, and that he had not experienced general societal persecution in the past. Those findings are not dispositive of the absence of any prospective future risk from society generally, but they form part of the broader evidential landscape concerning such prospective risk, when considered in the round.

14. It was against the background of her rejection of many aspects of the appellant's case on credibility grounds that the judge turned to the background materials concerning the risk faced by Christians generally, in light of the Turaeva-Hoehne Report, and the other materials. In our judgment, it is plain that

the judge had the appellant's prospective future risk as a Christian firmly in mind when addressing those materials. By this stage in her decision, she had already rejected much of the appellant's narrative on the basis of its inconsistencies and its embellishment (see paras 50 to 62), while reaching strong findings that the appellant's conversion was genuine (para. 44: "*there are substantial grounds for thinking that the appellant has adopted Christianity as his religion*"). The Turaeva-Hoehne Report went to the appellant's prospective risk and had not been relied upon by the appellant in order to establish the credibility of his claimed past mistreatment (see, e.g., paras 13 to 16 of the appellant's skeleton argument before the First-tier Tribunal); this is not a case where the judge failed to consider the evidence in the round. In any event, as set out below, the judge distinguished the appellant's circumstances from those of the individuals recorded in the background materials.

15. The judge's discussion of the background materials concerning the risks faced by Christians in Kyrgyzstan at para. 63 and following must, therefore, have been conducted with a view to examining his prospective future risk. It would not be necessary to engage with those materials if the judge did not have the appellant's claimed risk on return firmly in mind.

16. In our judgment, the judge carefully considered both the operative reasoning of the Turaeva-Hoehne Report and the background materials upon which it was based, which were included in the Consolidated Bundle. We have considered those materials ourselves. The conclusions of the Turaeva-Hoehne report, and the judge's analysis, were largely based on articles which were at pages 109 to 111, and 117 to 119 of the Consolidated Bundle, from the Barnabas Fund, *Global Christian News*, and www.persecution.org ("International Christian Concern"). The judge identified that two of the articles concerned the same incident involving a young man being beaten by three Muslims. The other, in *Global Christian News*, concerned the beating of a female Christian convert who was a young mother. The judge concluded her analysis of the articles in these terms, in the final sentence of para. 65:

> "The situation of the man… or the woman who had opposed her husband's wishes are not analogous to those of the appellant".

17. The above sentence demonstrates that the judge's analysis of the background materials was with a view to considering whether the appellant would face treatment of the sort experienced by the people in the articles upon his return. There is no merit to Mr Richardson's submissions that the judge failed to address the appellant's prospective future risk.

18. The next issue is whether, in reaching her findings concerning the absence of a prospective future risk to the appellant, the judge fell into error. Mr Richardson submitted that the Barnabas Fund article purported to give a generalised picture of Christian converts in Kyrgyzstan, and that the judge failed to engage with that aspect of it. It was that aspect of this article, he submitted, that the expert report based its primary conclusions on. There is no merit to this submission. While we accept that the Barnabas Fund article does indeed make generalised assertions, the judge was right to focus on the core incident which lay at its heart, in order to examine whether such a generalised proposition was justified, alongside her own findings of fact concerning the appellant's own claimed past persecution.

19. As well as having rejected the appellant's claimed persecution narrative on (unchallenged) credibility grounds, and having distinguished the appellant's circumstances from those of the Christians who had been persecuted in the

reports that were before her, the judge proceeded to analyse the impact of those aspects of the appellant's case that she had accepted. For example, at para. 66 the judge examined the appellant's claim to have experienced unspecified "problems" that the nursery attended by his eldest son. The "problems" started two months after the child had started attending the nursery, and the appellant and his family decided to move cities, moving to the city where his parents lived. As the judge observed, the appellant did not claim that his family suffered any other problems following that move, and in his oral evidence he confirmed that his case was not that his parents had made any threats against him.

20. Drawing this analysis together, we find that the judge considered the appellant's prospective risk upon his return to Kyrgyzstan in light of his evidence and the background materials. Having done so, she distinguished his circumstances from the examples given in the background materials, and legitimately found (on the basis of those materials) that he was not at a real risk of being persecuted or being exposed to serious harm or intense suffering simply on account of being a Christian in Kyrgyzstan. Those were findings that were open to the judge on the evidence that was before her. This is not to say that Christians in Kyrgyzstan do not ever face being persecuted for their faith, but simply that the materials before the judge did not merit that conclusion in relation to this appellant.

No *HJ (Iran)* error in the judge's reasoning

21. We can deal with Mr Richardson's submissions pursuant to the principle in *HJ (Iran)* briefly. While we accept that the judge did not address whether the appellant would be required to suppress any outward manifestation of his faith in order to avoid being persecuted, Mr Richardson confirmed that it was not part of his case that he would have to do so. We note that there was a reference to *HJ (Iran)* at para. 27 of the appellant's skeleton argument before the First-tier Tribunal, but there is no reference to any evidence of any such outward manifestation of faith in the judge's decision, which is detailed and set out his evidence at considerable length. In any event, we have not been taken to any evidence of the appellant's outward manifestation of his faith in this country (or in Kyrgyzstan) to demonstrate that the judge erred in this respect. At the date of the hearing before the judge in May 2021, he had not attended church in London for some time. He appears to have stopped attending in January or February 2020 (see para. 40), which was before the Covid-19 "lockdown". The main reason for him not attending church was, he said, because he had been focussing on the Family Court proceedings. A letter from his pastor that was before the judge confirmed that he did not attend church midweek groups. There was simply no evidence of the appellant manifesting his faith other than through past church attendance. Accordingly, there was no error on account of the judge not addressing *HJ (Iran)*.

Judge entitled to reject appellant's "very significant obstacles" case

22. The appellant's Article 8 challenge stands or falls with our analysis of his prospective risk as a Christian. For the reasons we have set out above, the judge was entitled to conclude that the materials before her did not merit the conclusion that the appellant would be persecuted on account of his faith. Further, her findings that the appellant had managed to move house several times, sell property for a profit, and not encounter debilitating bureaucratic difficulties in seeking to obtain a *propiska* (see para. 69), were all open to her. Those findings, along with the judge's remaining analysis, entitled her to conclude that the appellant would not encounter very significant obstacles to his

integration upon his return to Kyrgyzstan for the purposes of paragraph 276ADE(1)(vi).

23. We therefore dismiss this appeal.

Anonymity

24. The judge made an order for anonymity which we maintain primarily on account of the concurrent proceedings involving the appellant's children before the Family Court.

Notice of Decision

The decision of Judge Shand KC did not involve the making of an error of law.

The appeal is dismissed.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 March 2023