



Case No: UI-2021-000156

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No: PA/01275/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 September 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

JORGE EDUARDO ROCHA ALDANA
(Anonymity order not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Dunne of the Immigration Advice Centre (IAS), Manchester

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 22 August 2023

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside, in a decision issued on 3 July 2023, of the decision of First-tier Tribunal Judge Davies.

2. The appellant is a citizen of Nicaragua born on 4 December 1982. He arrived in the UK on 23 October 2019 with his wife, Bielka Lisseth Zeledon Rodriguez and two children, Beckham Amaury Rocha Zeledon and Jorge Amaury Rocha Zeledon, all of whom are citizens of Nicaragua. His wife was born on 30 June 1984 and his two children on 11 March 2005 and 13 April 2007 respectively. The appellant claimed asylum on arrival, with his wife and children as his dependants.

3. The appellant's claim was based on his fear of persecution by the Nicaraguan security forces, police and paramilitary due to his political activities, namely his attendance at demonstrations opposing the Nicaraguan government. He claimed that he attended several political demonstrations in Nicaragua, the first of which took place on 19 April 2018 and was in protest of government plans to reduce social security. The appellant claimed to have been stopped at a road block on 20 December 2018 and to have been confronted by individuals from the paramilitary. He claimed that he was able to avoid being harmed as the high command of the paramilitary, Lalo Saso, recognised him and instructed that he be released. He claimed that after this incident he noticed that his family was under surveillance by the authorities and he claimed further that some time between December 2018 and March 2019 his wife and children were targeted by the paramilitary who threatened them with guns. The appellant claimed that he and his family then relocated to Matiguas where he received verbal threats from local people who knew, through the Citizen Power Council (CPC), of his affiliation with government opposition and he received anonymous text messages threatening him and his family. They then decided to leave Nicaragua and travel to the UK.

4. The respondent refused the appellant's claim in a decision dated 23 January 2020. In that decision the respondent noted that, on his own account, the appellant did not have a prominent political profile and considered that he had failed to substantiate his personal motivations for attending the protest of 19 April 2018. The respondent considered that the appellant's account of the incident when he claimed to have been stopped at a road block was inconsistent with the country information of the modus operandi of the paramilitary and their treatment of political protestors and did not accept that he had been identified and targeted or been placed under surveillance as he claimed. Neither was his account of his wife and children being targeted by the paramilitary accepted by the respondent, nor his account of threats by locals in Matiguas and of receiving anonymous threats from the government. The respondent considered that the appellant's ability to remain in Nicaragua until October 2019 without coming to serious harm, and the fact that he and his family were able to obtain official travel documents and be permitted to leave the country without problems, was inconsistent with his claim that he had been identified and targeted and was under continual surveillance. The respondent, in conclusion, did not accept that the appellant was involved in political activity and did not accept that he had come to the adverse attention of the Nicaraguan authorities. The respondent considered that the appellant had not satisfied the first step of HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 and concluded that he would not be at risk on return to Nicaragua. The respondent considered further that the appellant's removal to Nicaragua would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard by on 23 February 2021 by First-tier Tribunal Judge Davies. Both the appellant and his wife gave oral evidence before the judge. The judge noted from the country information that there were large-scale demonstrations and protests in 2018 which had erupted because of deep-rooted grievances among the population with the decline in living standards, and that there was high participation in those demonstrations by the

population as a whole rather than being confined to political activists with the opposition. The judge accepted that significant human rights abuses continued to be prevalent after 2018 and that people of adverse interest to the Nicaraguan authorities for their involvement in the protests or falling within a category of interest to the authorities would be likely to have an objectively well-founded fear of persecution in Nicaragua. The judge did not, however, accept that the appellant fell within such a category. The judge noted that the appellant had no previous experience of, or involvement in, any political activity or protest and that he was not a supporter of or linked to any political party. He accepted that the appellant and his wife attended at least one demonstration from April 2018, but he noted that the appellant did not play any role other than attending. The judge accepted that the appellant may well have been stopped at a roadblock like many of his fellow citizens were on a regular basis, but he did not accept that he was targeted. The judge rejected the appellant's account of having been recognised by a high ranking commander who ordered his release, he rejected his account of having been kept under surveillance, he rejected his account of his wife and children being targeted when they were travelling in a taxi and he rejected his account of receiving verbal threats from local people after moving to Matiguas and regular threats from the government. The judge did not accept that the appellant was targeted by the government and militia as someone active against the government and did not accept that he would be at any risk on return to Nicaragua. He accordingly dismissed the appeal in a decision promulgated on 12 March 2021.

6. The appellant sought, and was granted, permission to appeal to the Upper Tribunal on the grounds that the judge had materially erred in law by failing to engage in an assessment of his case in accordance with HJ (Iran) and by making irrational findings regarding his wife's evidence. The respondent conceded the first ground but did not accept the second ground and the matter then came before me, on 6 June 2023, to determine the error of law issue in the second ground.

7. In a decision promulgated on 3 July 2023 I upheld Judge Davies' decision in relation to his assessment of the evidence but otherwise set his decision, as follows:

"10. The assertion made by the appellant in that second ground, and by Ms Dunne in her submissions, was that the judge had made irrational findings about the appellant's wife's credibility. However, as Mr Bates submitted, irrationality is a high threshold to meet in order to establish a material error of law and I have to agree with Mr Bates that the threshold has not been met.

11. The first challenge in relation to the judge's findings on the appellant's wife's credibility was that it was irrational of the judge, having accepted appellant's evidence at [43] that he and his wife had attended a number of demonstrations, to then criticise the appellant's wife for her account of having attended demonstrations. However that is not what the judge did. The judge found, at [43], that the appellant and his wife had attended some demonstrations in Nicaragua. At [40] to [42] he explained why he accepted that evidence from the appellant. It is relevant to note that that was in fact the extent of his positive credibility findings about the evidence from either the appellant or his wife. His conclusion at [54] did not contradict that finding and did not reject the appellant's wife's claim to have attended some demonstrations. The conclusion was simply that she was not a reliable witness in general and in particular that her account of being shot at by paramilitaries when in a taxi with her children was both internally inconsistent and inconsistent with the appellant's account. As for the second point made in relation to threatening text messages, it seems to me that there may have been a typing error at [54] by including the word "not" when referring to text messages mentioned by the appellant at his interview. In any event, the point made by the judge at [54] was that the appellant's wife was unable to provide details of incidents mentioned by the appellant and that the details she did provide were inconsistent with

those given by him. It was entirely open to the judge, in the circumstances, to make such adverse findings and I find nothing contradictory or irrational in his approach.

12. Indeed, the judge's assessment of the account given by the appellant and his wife was a detailed and careful one which was undertaken with full regard to the background evidence and country reports. The judge identified various inconsistencies in the appellant's evidence, both internally and when considered in the context of the country situation as a whole. The judge provided cogent reasons for rejecting the account given by the appellant of incidents suggesting that he had been specifically targeted by the government and paramilitaries. The grounds, quite rightly, make no challenge to those findings. In the circumstances, and as I indicated to Ms Dunne, the grounds do not identify any errors of law in the judge's credibility assessment and findings of fact and I uphold his decision in that regard.

13. It is conceded by the respondent, however, that the judge failed to conduct a proper assessment of risk on return in line with the HJ (Iran) principles, on the basis of his accepted findings about the appellant's involvement in the 2018 political protests in Nicaragua. I asked the parties why I could not simply re-make the decision by undertaking that assessment myself on the basis of the evidence already before me and with any further submissions the parties wished to make. Mr Bates was content for me to do that. However he had no objection to Ms Dunne's request for a resumed hearing where the appellant could provide further oral evidence with the assistance of an interpreter.

14. Although I did not consider that a further hearing was necessary, I conceded to Ms Dunne's request, in the interests of justice. Accordingly, I set aside the judge's decision on the limited basis stated above, so that the decision can be re-made by undertaking a full assessment of risk on return following the HJ (Iran) principles. As I advised Ms Dunne, the judge's findings of fact are otherwise preserved.

15. The case will therefore be listed for a resumed hearing in the Upper Tribunal for the decision to be re-made in regard to risk on return to the appellant and his family, on a date to be notified to the parties."

8. Directions were made for the appellant to file and serve any further evidence upon which he intended to rely, in an indexed, consolidated bundle including the evidence which was also before the First-tier Tribunal, together with any relevant application under Rule 15(2A) of the Procedure Rules, and for both parties to file and serve skeleton arguments in relation to the risk on return to Nicaragua, following the principles in HJ (Iran).

9. The respondent filed a skeleton argument on 18 August 2023, noting that no further evidence had been received for the appellant. Links were provided to country information upon which the respondent was relying. On 21 August 2023, the day before the hearing, the appellant's representatives filed a further statement for the appellant, dated 18 August 2023, and the appellant's appeal bundle that had been before the First-tier Tribunal.

Resumed Hearing

10. The matter came before me for a resumed hearing on 22 August 2023. The appellant gave his evidence through an interpreter.

11. The appellant adopted his statement as his further evidence before the Tribunal. In that statement he confirmed that if he returned to Nicaragua he would rejoin demonstrations against the government. He stated that those demonstrations were organised by the Union Nacional Azul y Blanca (National Union of Blue and White), a

movement which was against the government and which wanted to force President Ortega out of power, and which started in 2018. He stated that the reason he wanted to rejoin the demonstrations, after having previously stopped attending them when threats were made to his family, was because his mother had died in May 2022 after attending a demonstration which the government had attacked with tear gas and smoke bombs leading to her having breathing difficulties and being hospitalised and eventually dying. The appellant stated that if his mother had lost her life fighting against the government, then he could do that too.

12. Mr Tan did not cross-examine the appellant.

13. Both parties made submissions.

14. Mr Tan referred to the lack of recent background evidence showing how returnees to Nicaragua were treated or how the State treated those with little or no profile and he submitted that there was therefore nothing to suggest that a person of the appellant's profile would be targeted by the authorities. Mr Tan relied on the preserved findings of Judge Davies rejecting the appellant's claim to have been targeted previously. As for the appellant's evidence in his current witness statement, Mr Tan submitted that the account of his mother having died after attending a protest in Nicaragua was not worthy of weight. Likewise his claim that he would rejoin demonstrations in Nicaragua was of no weight as he had not shown any interest or involvement in protests against the government, or demonstrated any political opinion, whilst he had been in the UK, either through attending demonstrations here or through social media. Mr Tan submitted that the appellant could not succeed under the principles in HJ (Iran).

15. Ms Dunne explained that the error of law decision had only been received yesterday and, as such, no further skeleton argument had been produced. She was therefore relying on the skeleton argument and appeal bundle before the First-tier Tribunal. She referred to the country background evidence which indicated that a person did not need to be a high profile political activist to be at risk in Nicaragua and that merely attending demonstrations was sufficient to bring someone to the adverse attention of the authorities. Ms Dunne submitted that the appellant's intentions to fight the government in Nicaragua had been invigorated because of his mother having died after demonstrating. There could be numerous reasons for the appellant not having attended demonstrations in the UK and that should not be a reason to undermine his intentions to resume demonstrating if he returned to Nicaragua. The test in HJ (Iran) was met such that he would be at risk on return to Nicaragua.

Discussion

16. The starting point in re-making the decision in this appeal is the preserved findings of Judge Davies. The relevant findings are to be found from [39] to [43] and [68], and are, essentially, that the appellant and his wife had attended a number of demonstrations in 2018 but had not played any role other than attending, that they had not faced any significant difficulties during or after those demonstrations, that the appellant's account of being threatened and targeted was not a credible one, that he and his family had not been targeted by the government and militia as someone active against the government or otherwise, and that he was not generally a political activist.

17. No new evidence has been produced by the appellant, other than a further witness statement. The error of law decision, containing directions for the filing and service of

further evidence no later than 7 days prior to the resumed hearing, was promulgated and served on the appellant's solicitors on 3 July 2023. Although it is claimed that it was not received by the appellant's solicitors when initially sent out at that time and was only received upon further request yesterday, the Tribunal's records confirm that it was served on the solicitors at the same email address to which the Notice of Hearing was subsequently served (on 2 August 2023) and that it was also served on the appellant in person on 3 July 2023. Furthermore, the appellant's solicitors were aware from the hearing on 6 June 2023 that there was to be a resumed hearing to determine the issue of risk on return on HJ (Iran) principles and there had therefore been plenty of time to prepare a further bundle, if it was intended that one was to be prepared. In any event Ms Dunne did not raise the matter at the commencement of the hearing, did not request further time to produce additional evidence and indeed did not suggest that there had been an intention to file updated evidence. The situation, therefore, is that the appellant relies on the background evidence already considered and assessed by Judge Davies, with no further or more recent evidence other than his own witness statement.

18. Ms Dunne relied on the background evidence which had been before Judge Davies, in particular the UNHCR report of 3 September 2019 on the "Situation of human rights in Nicaragua" and the OHCHR report for 18 April to 18 August 2018 on the "Human rights violations and abuses in the context of protests in Nicaragua." She relied in particular on the reports at paragraphs 11, 23 and 41 of the UNHCR report which referred, at [11], to excessive force being used by the police against those attempting to demonstrate, the arbitrary arrests of persons protesting peacefully and the use of threats to discourage people; at [23] to police breaking into the homes of those participating in the 2018 protests and conducting searches without warrants and arresting people; and at [41] to disproportionate charges faced by people who had participated in the protests. She also relied on the references in the OHCHR report at page 55 of the bundle to people who had participated in demonstrations being forced to hide or leave Nicaragua.

19. However those reports referred to the situation in 2018 at the time of the demonstrations which it was accepted that the appellant and his wife had attended. Judge Davies had considered that evidence in detail and had accepted that there were human rights abuses prevalent at the time, but he found that it did not assist the appellant because his account of being threatened and targeted after his attendance at the demonstrations was not a genuine and credible one. He found, at [38], that the appellant did not fall into one of the groups that appeared, on the basis of that country evidence, to have excited the adverse attention of the Nicaraguan authorities. He found that the appellant's profile as a non-politically involved demonstrator was such that he was of no adverse interest to the Nicaraguan authorities at the time he left the country. All of those findings have been preserved and still stand.

20. The only issue now, in re-making the decision in this appeal, is whether the appellant would be at risk on return because of how he would conduct himself on return to Nicaragua, in terms of the principles in HJ (Iran). As Mr Tan submitted, there is no background country evidence to indicate that a person of the appellant's limited profile would be of adverse interest to the Nicaraguan authorities or would be targeted on return to that country. Neither is there evidence to show that the appellant had since become a politically involved person with genuine politically held beliefs that would lead him to conduct himself in a manner attracting the adverse attention of the Nicaraguan authorities. As Mr Tan submitted, there is no suggestion that the appellant has been involved in any criticism of the Nicaraguan authorities by way of attending demonstrations in the UK or expressing his beliefs through social media in the four

years since he left the country. The only suggestion that he would conduct himself in such a way is the appellant's own unsupported assertion in his statement that he would resume attending demonstrations. However, as Mr Tan submitted, such an assertion carries little weight when it is not supported by any credible explanation for such a renewed interest, given the absence of any ongoing political involvement or interest. The appellant's explanation is that his mother died after attending a demonstration in May 2022 and that if she could do that, then he could too, but there is no evidence to support such a claim, in terms of her attendance at a demonstration or having died thereafter, and indeed it is relevant to consider the claim as against his evidence in his previous statement of 6 March 2020 at [40], that his parents had not attended any of the earlier protests in 2018.

21. In the circumstances, I agree with Mr Tan that the appellant's claim as to how he would conduct himself on return to Nicaragua is not one which carries any weight. It seems to me that it is simply a self-serving assertion made by the appellant in order to fit himself within the HJ (Iran) principles, and is one which has no credible basis and is not founded on the evidence when considered as a whole. Other than his limited involvement in attending a few demonstrations some five years ago the appellant has not shown himself to be a person with an active interest in involvement in political activities. I agree with Mr Tan that, in the absence of any evidence to show that a person of the appellant's limited profile and limited political interest would come to the attention of, or be of adverse interest to the Nicaraguan authorities, he has failed to show that he would be at risk on return to Nicaragua. In the circumstances the appellant's appeal is dismissed.

Notice of Decision

22. The decision of the First-tier Tribunal having been set aside, the decision is re-made by dismissing the appellant's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 August 2023