IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000129

First-tier Tribunal Nos: PA/50906/2022
IA/02608/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

31st of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

Y.S.R.
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Gayle, counsel instructed by Elder Rahimi
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 27 October 2023

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 is a citizen of Iran whose date of birth is recorded as 16 September 1981. On 18 April 2019 he made application for international protection as a refugee. On 21 February 2022 the Respondent refused the application and so he appealed to the First-tier Tribunal.

2. The Appellant's case was that he was involved in anti-regime activities whilst in Iran with

the aim of using social media to publicise human rights abuses. Following a raid at his home some of his material and his laptop were found putting him at such risk that he left Iran. Additionally, the Appellant claimed to be a Christian.

3. On 19 October 2022, Judge G Clarke, sitting at Hatton Cross heard the appeal. In a decision dated 5 December 2022, running to 133 paragraphs the appeal was dismissed.

4. Not content with that decision by Application dated 19 January 2023 the Appellant sought permission to appeal to the Upper Tribunal. Whilst the application for permission to the First-tier Tribunal was refused, Upper Tribunal Judge Norton-Taylor, on a renewed application, granted permission on the basis that it was arguable that the cumulative effect of the errors contended for meant that the decision could not stand.

5. There are two grounds. In summary the first contends that findings were made by the judge based upon erroneous translation of blog posts; erroneously stating that the Appellant was saying that the blogs were only “samples”, as opposed to evidence of his being at risk. The second ground contains within it a series of more general flaws contended for in the analysis of the evidence by Judge Clarke below.

6. In dealing with this appeal Judge Clarke chose to separate out the Appellant’s claim to be a Christian from his claim to have been engaged in antiregime activities and then made some rather damning credibility findings. He found that the Appellant was only able to provide basic details of his “new” faith; was only able to refer to one of the Ten Commandments; wrongly named the place of Jesus’ birth; was vague about the resurrection; had not read the bible since arrival in England; and did not attend church in the United Kingdom. In the alternative because the Appellant had said that he did not practise his faith openly he would not be at risk on return.

7. Mr Gayle pointed out that the Appellant, though having asserted in interview that he was a Christian, did not rely upon that contention as a basis for seeking international protection. Support for that can be found at question 153 of his record of interview of 26 July 2021 where the Appellant is recorded as questioning why he was being asked questions about his conversion to Christianity when his claim was in reliance upon his political activities. On the other hand it is of note, as Ms Ahmed pointed out, that the judge dealt with the Appellant’s conversion and made findings was not a basis of challenge in the grounds of appeal nor would it seem was any objection taken by Mr Gayle to this matter being considered by Judge Clarke since at paragraph 61 of his decision Judge Clarke noted that Mr Gayle, who appeared below, “accepted in submissions that this aspect of the Appellant’s claim was not the strongest.”

8. Mr Gayle was right not to object to the “Christianity issue” being scrutinised. That the Appellant advanced his case on one basis did not mean that his credibility overall could not be more generally tested by reference to other contentions made by him. Credibility in relation to one issue can inform credibility in relation to another aspect of the claim. Of course, where a judge finds that an

Appellant is unreliable in one aspect of the claim it does not mean that they are unreliable with respect to another. Even if the judge were to find that an Appellant had lied, he/she would be obliged at least to ask why that person had done so and recognise that just because they had lied with respect to one part of their claim does not mean that they had lied about everything else: R v Lucas [1981] QB 720.

9. Whilst criticism might have been made of Judge Clarke for not having stood back and taken an holistic view of the evidence as a whole in determining credibility rather than, on one view, treat the matter before him as if there were two separate appeals, he did remind himself, at paragraph 46 that each part of the evidence should be looked at separately and given such weight as it merits. He also reminded himself that he was to consider all the evidence in the round (see paragraphs 52 and 75).

10. Against those observations, relevant to eventual determination as to whether any errors of law made by the judge were material to the eventual outcome, I turn to the "translation issue".

11. In support of his claim to have come to the interest of the Iranian authorities the Appellant's case was that he had written three reports which highlighted injustices in Iran. That is clear from paragraph 10 of his witness statement of 6 May 2022. According to his witness statemen he also wrote blogposts. He submitted three blogposts to the Respondent which he had had translated by "Yes Translation Ltd". The Respondent at paragraphs 33 to 39 of the Refusal Letter pointed to various issues which arose from the translations, amongst them being that the Appellant's name did not appear but rather another name (similar to the Appellant's but beginning with a different sounding letter); that the company which undertook the translation had ceased trading; and the translation had not been dated or signed by an accredited translator.

12. In response to the criticisms made by the Respondent the Appellant obtained a retranslation from another company, Associated (Faris) Translators Ltd. Their translation did show the Appellant's name correctly pronounceable in transliteration.

13. The complaint made in the grounds is one of unfairness. Judge Clarke holds against the Appellant the fact that he obtained a retranslation on the basis that in so doing his claim was undermined, stating at paragraph 66: *"The fact that the Appellant has obtained a second translation of the documents he originally submitted with his claim following criticisms of those documents by the Respondent undermines, in my view, the weight I can attach to these documents."*

14. It is clear that the Judge accepts the criticism made by the Respondent of the first translation accepting that the document has the wrong name without, in my judgment, adequately explaining why the second translation from a company which the Respondent approves is to carry less weight. Further Judge Clarke went on to say that there was no certified translation in the Respondent's bundle (see paragraph 69). Then at paragraph 72 says: *"The Appellant goes on to allege that the name on the blogs was a mistranslation. If that were the case, I would have*

expected to see something to that effect from the company who have now provided a certified "retranslation" of the documents. The absence of such a statement from the translation company does not advance the Appellant's case."

15. Judge Clarke appears to me to have been quite right in saying that there was no certified translation in the Respondent's bundle. However, there was one; it is that it was in the Appellant's bundle and, as this was what is commonly described as a "CCD case", the "certified translation" which Judge Clake was looking for but apparently missed can be found at page 27 of 327 in the stitched bundle.

16. I raised with the parties during their submission that what appears at paragraph 72 of Judge Clarke's Decision makes little sense. By setting out their version it was implicit that in Associated (Faris) Translators Ltd's view the first translation was incorrect; it would have made more sense if the judge had commented that he might have expected something from the first company admitting their error but as they had ceased trading that would not have been possible so that the point taken by Ms Ahmed that there was nothing from the first company is easily explained.

17. In summary the Appellant was criticised by the Respondent for reliance upon a translation which contained errors, which he then sought to remedy and in so doing adversely affected his credibility. In my view that was unfair. The Appellant was not responsible for the errors in translation. His then solicitors might be criticised for using the translation firm they did and not noticing the obvious error, if only the name, but reading the decision of Judge Clarke I am not entirely clear whether he actually saw the retranslation having apparently only looked in the Respondent's bundle.

18. I turn then to other points taken in the grounds. It was the Appellant's case before Judge Clarke that the documents supplied to the Respondent were samples of the sort of blogs which placed him at risk. At paragraph 71 of his decision Judge Clarke said, *"From what I can see, the Appellant has never made the case before his Witness Statement that the blogs he was relying upon were only "samples" and not evidence that he was alleging supported his claim".*

19. Mr Gayle submitted to me that implicit in that observation was Judge Clarke saying that these were not the documents leading to his arrest. In answering question 88 in interview, having been asked whether he ever published his work on line and if so was it still active, the Appellant is recorded as having said*, "My records and articles were not on the web log I do have a web log but it has been shut down by the authorities but I have given and spoken about evidence of work log being shut down but no evidence of the writing they are two separate things."*

20. Ms Ahmed took me to paragraphs 63 and 64 of Judge Clarke's decision where the Judge states (which was not challenged in the grounds) *"Specifically, the Appellant claims that he operated a blog against the Iranian authorities while he was living in Iran. His evidence, as clarified in Paragraph 14 of his Witness Statement is that the Iranian authorities found his blog but his 9 reports against the regime had not been uploaded onto the blog. In Paragraph 14 he*

states, "...We hadn't put our nine reports on my blog but when my home was raided, the authorities found all of the reports we had written.

21. Ms Ahmed invited me to find that whilst the Appellant may not have uploaded his material, he was still in possession of some of it and had failed to make clear when making application to the Respondent that what were being produced were not blogs already posted on the web log that had been shut down.

22. Looking again at the Refusal Letter I can readily understand why Judge Clarke was of the view that the documents submitted in translation were not samples; the Respondent did not read them as that, *but* and it is a big "but", there is an element of ambiguity and in condescending to the Reasons for Refusal Letter the Appellant sought to deal with that ambiguity which Judge Clarke has held against him. The issue for me in considering challenges to a finding of fact is whether the finding, in this case that the statement was the first time that the Appellant had said these were samples, was open to him. In my view it was. There is a further question which arises however and that is one of fairness. It is one thing to criticise a witness for changing their story or contradicting themselves it is quite another to criticise them for clarifying an ambiguity.

23. At paragraph 12 of the Grounds criticism is made of paragraph 74 of the decision where Judge Clarke makes the observation that the Appellant, an educated man, would leave his laptop in his apartment when going on a business trip. Ms Ahmed accepted that this was factually incorrect. In answer to question 107 in interview, the Appellant had clearly stated that he had gone to a funeral. Whilst someone might be expected to take their laptop to a business meeting, taking a laptop to a funeral might well be viewed differently. That said Ms Ahmed invited me to look to the broader point namely that the Judge took the view that the Appellant would not have been expected to leave his laptop at home. Given that the finding was made on a false premise, in my view the finding amounts to an error of law because it is not supported by the evidence.

24. At paragraphs 17 to 19 of the Grounds criticism is made of Judge Clarke for giving weight to the absence of summonses having been produced when a letter from his parents had. Ms Ahmed submitted that this was a finding open to the Judge. I agree that it was open to the Judge to attach weight to the absence of summonses. However, the further point taken in the grounds is with merit. Whilst the weight given to the letter from the Appellant's parents might have been significantly reduced, it is not clear what weight, if any, was given to it though it does appear that the Judge simply dismissed it as lacking any credibility against the backdrop of the summonses not being supplied. A judge should be very cautious indeed about attaching no weight to a document, but Judge Clarke did provide a reason for rejecting the letter and that was open to him.

25. At paragraph 20 of the Grounds Judge Clarke is criticised for finding an inconsistency where none lay with reference made to paragraphs 83 and 84. It was part of the Appellant's evidence that his maternal cousin had seen the raid from the stairwell but in cross examination when asked how she knew what was taken she had said that when authorities broke the door down she went inside.

26. In support of his contention that there was no inconsistency in the Appellant's evidence, Mr Gayle took me to question 108 of the Appellant's Record of Interview where the Appellant is recorded as saying: "*My maternal uncle lived across my house and he informed me he told me that plain clothes official had broken the door to my apartment and entered my apartment and he reported that officers were searching the house and asking about me from other neighbours in the block*".

27. Mr Gayle submitted that this was not *"necessarily"* inconsistent if the cousin followed the Authorities into the apartment.

28. Against that Ms Ahmed pointed to paragraph 84 of the Determination in which Judge Clarke clarifies matters in saying*, "On the one hand, he claims that his cousin was standing in the hall or staircase and yet when cross examined on how she knew what had been taken from her position outside the flat, his evidence changed to her being able to walk into the flat. This inconsistency undermines the Appellant's credibility. I further find it incredible that the IRGC would simply let a neighbour wander into the property and witness what they were removing from the flat".*

29. The grounds do not challenge the Appellant having said that his cousin was able to walk into the flat. The finding was open to the Judge. I agree with the point taken in the grounds that minor discrepancies should not deflect a judge, but this was not the only adverse finding. The judge looked to the totality of the evidence.

30. At paragraph 85 the judge holds as incredible that whilst the Appellant's apartment was raided on 6 October 2018 it was not until 19 November 2018 that he and his daughter left, being able to hide during that period. This is a clear factual error. In answer to question 101 in interview the Appellant is recorded as saying that his house was raided on 6 November 2018 not October. Ms Ahmed suggested that the error was without substance because the more general point was that it was not credible that the Appellant would have been able to hide for any period of length without detection. I do not agree. The length of time is relevant to the reasonableness lying behind the finding. This is an error of law. It is not supported by the evidence.

31. Other points in the grounds were not expanded upon by Mr Gayle, the principal one being the adverse finding by Judge Clarke based upon his lack of engagement in sur place activities in the United Kingdom. Mr Gayle was right not to expand on that point. It was without merit. It was clearly a point open to the Judge.

32. Ms Ahmed sought to persuade me that the translation error was not material in the face of other adverse credibility findings. In other words there was so much found by the judge to demonstrate why the appeal was dismissed that the decision should stand. One point she took me to was in relation to paragraph 21 of the Grounds and the Appellant's ability to leave Iran illegally. She took me to paragraph 89 in which the judge found it lacking in credibility that the Appellant left of a mule having paid an agent $40,000. That was not a point taken by the Appellant though as Ms Ahmed raised it, I should say that I might have found such a finding irrational. The payment of $40,000 does not lead inexorably to a

person not seeking to find a way across a border without detention, to be met on the other side and not have to do so on foot. Rather more by way of explanation might have been required but for the avoidance of doubt my observations on this point do not affect my overall reasoning.

33. I have reminded myself of the guidance of McCombe LJ in VW (Sri Lanka) [2013] EWCA Civ 522 in which he said:

> *"Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact."*

34. I have also taken on board Ms Ahmed's more general point that a judge does not need to spell out every bit of reasoning. That is trite law. What I have to do in this matter is to decide whether the decision can stand in the light of the errors found and in the light of their cumulative effect.

35. I am persuaded that to let this decision stand would understandably leave the right-minded observer to think there had been an injustice. There is a cumulative effect of the errors. I have decided to set the decision of the First tier Tribunal aside to be remade in the First-tier Tribunal.

Decision

36. The appeal to the Upper Tribunal is allowed. The decision of the First tier Tribunal dated 5 December 2022 is set aside save that the findings at paragraph 54 to 61 inclusive shall be preserved.

37. The adverse findings concerning the Appellant's conversion to Christianity shall stand. They were not challenged in the grounds and so there is no reason the interfere with them.

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 October 2023