Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/13657/2016**

THE IMMIGRATION ACTS

Heard at Newport	**Decision & Reasons Promulgated**
On 25 July 2018	**On 08 October 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR HASSAN SORIYA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Manley, Fountain Solicitors
For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iran. On 6 August 2015 he made a human rights application for leave to remain on the basis of his family and private life in the UK. The respondent refused this application on 6 May 2016. On page 3 of the Reasons for Refusal Letter the respondent wrote: "It is accepted that you meet the requirements of para 276ADE(1)(i)", which is the suitability requirement. The appellant appealed. At his hearing he gave evidence, as did several witnesses on his behalf. The evidence of the witnesses was concerned solely with his private and family life ties in the UK, particularly with Ms Ireland. It was his relationship with her that had led the Upper Tribunal in 2012 to allow his appeal on family life grounds. In a decision sent on 31 May 2017 Judge Troup of the First-tier

Tribunal (FtT) dismissed his appeal. Noting that since 2012 the appellant and Ms Ireland no longer live together, the judge concluded at paragraph 56 that:

> "56. From the evidence before me, I find that the Appellant and Mrs Ireland have been in a stable relationship for about ten years since 2007, but there is no intention to develop it into anything more than the arrangement of mutual convenience I have found above. I go on to find from the evidence of Mrs Ireland in particular that the couple do not intend to cohabit, let alone marry or to have children (if that were possible). I find therefore that the relationship between the Appellant and Mrs Ireland cannot be categorised as *'family life'* in the ordinary meaning of the phrase, namely:
>
> > *'A primary social group consisting of parents and their offspring, the principal function of which is provision for its members' (Collins Dictionary, 9th edition).*"

At paragraphs 59–61 the judge stated:

> "59. As for private life and paragraph 276 ADE(1) of the Immigration Rules, the Appellant does not meet the suitability requirements of sub-paragraph (i) which in turn refers to *'the suitability – leave to remain'* provisions at S-LTR 1.5 which provides that:
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> > *'The presence of the applicant in the UK is not conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law."*
>
> This Appellant was sentenced in 2010 to 26 weeks' imprisonment, albeit suspended, and his presence in the UK is not therefore conducive to the public good.
>
> 60. In any event the Appellant does not meet the requirements of sub-paragraphs (iii)–(v).
>
> Sub-paragraph (vi) relates to an applicant who is:
>
> > *"… aged 18 years or above, has lived continuously in the UK for less than twenty years … but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."*
>
> 61. The Appellant says, in terms, that his religion and political views would result in persecution in the event of his return to Iran. I note however that his application for asylum in the UK was refused and his appeal dismissed in 2001/02 and no further claim

> has been brought since. I find therefore, for the reasons submitted by the Respondent, that there are no very significant obstacles to reintegration in Iran and consequently I dismiss the appeal on private life grounds."

2. It can immediately be seen that the judge overlooked that the respondent had been satisfied that the appellant met the suitability requirement. Since there was no exceptional circumstance justifying the judge to go behind that concession, this was a clear error: see **Kalidas (Agreed facts – best practice)** [2012] UKUT 00327 (IAC**)**. Both representatives were in agreement on this matter. The matter they disagreed over concerned whether it was material.

3. Mr Manley submitted that the judge's error was material because it necessarily impacted on the judge's treatment of the appellant's case, in particular the appellant's private life circumstances under the Rules and also outside of the Rules. The judge made no separate assessment once he decided on the appellant's position as regards suitability. The judge also erred in failing to deal with issues the appellant had raised about risk on return arising from the fact that he was an atheist. Mr Howells submitted to opposite effect.

4. I am not persuaded that the judge's error as regards the suitability requirements of the Rules (overlooking that the respondent had found them met) gave rise to a material error. First of all, the judge did not say that the (inadvertent) decision he made in paragraph 59 – that the appellant did not meet the suitability requirements - entailed that he could not meet the substantive requirements of paragraph 276ADE: he expressly stated at paragraph 60 that *in any event* the appellant did not meet the requirements of subparagraphs (iii)–(v). Second, the judge addressed these substantive requirements and reached distinct conclusions on them. Third, the reasons given or alluded to by the judge did not relate to lack of suitability. Mr Manley submits that the judge's reasons for finding the appellant failed to meet the requirements of paragraph 276ADE(1)(iii)–(v) are cursory and this is a result of the adverse finding on suitability, but there is nothing stated by the judge to suggest that his findings on these substantive requirements were driven by his adverse finding on suitability. Nor do I accept that they were cursory since as set out in paragraph 62 they were cross-referenced to the respondent's reasons ("I find therefore, for the reasons submitted by the respondent, that there are no very significant obstacles to the reintegration in Iran and consequently I dismiss the appeal on private life grounds"). At an abstract level, failure by a judge to rely on the respondent's reasons without any separate analysis of why they were afforded weight can give rise to error, but the appellant's grounds before the Upper Tribunal do not challenge the respondent's reasons on this basis; they are confined to an adequacy challenge.

5. The submissions made on behalf of the appellant at the hearing before Judge Troup did raise one issue at paragraph 45, concerning risk on return:

> "45. As for private life, there is *'global awareness'* of the situation in Iran and if a citizen of that country is to do the slightest thing wrong it will lead to execution. He is an atheist, does not believe the word of the Prophet and abhors the regime in Iran, thus making return impossible."

But the judge dealt with this in paragraph 61. (I consider the judge's treatment about risk on return separately below.) Further, it is readily apparent from the appellant's grounds of appeal to the FtT and from the witnesses called and submissions made, that the appellant's principal basis for appealing was because he considered he had a family life relationship (still) with Ms Ireland. The only point he raised regarding very significant obstacles concerned risk on return.

6. Turning to the judge's treatment of the risk on return issue, I have already noted that the judge addressed it. Mr Manley submits that the judge's reasoning for doing so was flawed because he essentially did no more than rely on the dismissal of his asylum appeal in June 2002, whereas the appellant was now saying he was an atheist. I do not consider this submission identifies an error of law on the part of the judge for several reasons: (i) on **Devaseelan** principles the judge was entitled to treat the adverse findings made on the appellant's asylum claim in 2002 as a starting point; (ii) the appellant did not seek in the intervening years to make further representations in relation to risk on return; (iii) the application he made for leave to remain in 2015 was confined to family and private life grounds and made no reference to risk on return; (iv) his grounds of appeal against this refusal made no mention of risk on return; (v) in response to directions that he produce evidence in support of his appeal prior to the hearing the appellant sent no evidence relating to risk on return and his witnesses spoke solely about his circumstances in the UK. Against that background I consider that the judge did not err in confining his assessment to noting that the appellant's asylum appeal was dismissed in 2002 "and no further claim has been brought since". At the abstract level, I would accept that the concept of "very significant obstacles to reintegration" can encompass risk on return factors; that might be considered a matter of common sense if not also ordinary meaning. Risk on return is clearly a serious type of difficulty. The problem in the appellant's case is that on the judge's findings there was no evidential basis to substantiate his claim that he would be at risk on return.

7. The grounds do not as such impugn the judge's findings as regards the appellant's Article 8 circumstances outside the Rules, but it is entirely clear that in light of the judge's findings on paragraph 276ADE(1)(i)–(iii) that he could not establish compelling circumstances. Indeed, by virtue of S117B of the NIAA 2002 the judge was obliged to attach little weight to the appellant's private life ties which has been established whilst his immigration status was precarious. In addition, the appellant had a criminal history as a sex offender and a poor record of compliance with reporting conditions.

8. For the above reasons I conclude that whilst the judge erred in law in respect of the appellant's position under paragraph 276ADE(1)(i), his decision contained no material error. Accordingly it must stand.

No anonymity direction is made.

Signed: Date: 3 OCTOBER 2018

Dr H H Storey
Judge of the Upper Tribunal