



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004521

First-tier Tribunal Nos: HU/00681/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 September 2024

Before

UPPER TRIBUNAL JUDGE OWENS
DEPUTY UPPER TRIBUNAL JUDGE MURRAY

Between

The Secretary of State for the Home Department

Appellant

and

Abbas Rahmani
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Miss Rushforth, Senior Presenting Officer

For the Respondent: Miss Turnbull, Counsel instructed by Barnes, Harrild and Dyer Solicitors

Heard at Cardiff Civil Justice Centre on 12 July 2024

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge CH O'Rourke ("the judge") dated 13 April 2023 allowing his appeal against a decision of the Secretary of State dated 16 November 2021 refusing Mr Rahmani's human rights claim and maintaining a deportation order.

Background

2. Mr Rahmani is a citizen of Iran who entered the UK in 2009 aged 15. He was granted leave to remain but an application to extend that leave was refused in 2013. Following his conviction for a number of offences, a deportation order was made in respect of him in April 2015. In January 2021 he applied for a revocation of his deportation order after he applied for a contact order in respect of his British citizen daughter. Mr Rahmani claimed that he had a genuine and subsisting relationship with his daughter and that it would be unduly harsh for

the child to remain in the UK without him or that there are very compelling circumstances over and above the Exceptions at 117C(5). He also asserts that it will be a breach of Article 3 ECHR to return him to Iran on the basis of his ill health.

3. The respondent's position was that there would be no risk to Mr Rahmani if he were returned to Iran. He separated from his daughter's mother when she was pregnant with his child. Despite the contact order, Mr Rahmani does not have a genuine and subsisting relationship with his daughter. There is a strong public interest in maintaining the deportation order. Mr Rahmani is not receiving any medical treatment. Little weight should be given to the expert evidence. Mr Rahmani would be able to access medical treatment in Iran.

The Decision of the First-tier Tribunal

4. Mr Rahmani gave oral evidence and adduced supporting medical evidence from Dr Wolton and Professor Roberts.
5. The judge found that Mr Rahmani does not have a genuine and subsisting parental relationship with his daughter and in any event that his deportation would not be unduly harsh on the child. The judge found took the principles of Devaseelan as his starting point in respect of Mr Rahmani's asserted anti-government activities in Iran, finding that there was insufficient evidence to demonstrate that he had participated in such activities as claimed, that any injuries sustained by Mr Rahmani were due to mistreatment by his father. He found that Mr Rahmani was not fleeing persecution.
6. The judge then found that there were very compelling circumstances over the exceptions which outweighed the public interest in deportation because there is a real risk that Article 3 ECHR would be breached if Mr Rahmani were removed to Iran. The judge accepted the expert evidence in relation to the risk that Mr Rahmani would commit suicide. The judge also found in the alternative that Mr Rahmani was likely to suffer a "serious, rapid and irreversible decline in his state of mental health resulting in intense suffering falling short of suicide". This is because the prospect of re-establishing contact with his daughter in the UK is a protective factor, access to treatment in Iran would be unlikely, there would be a risk of social ostracization there, he has educational and linguistic difficulties and there would be access to drugs all of which would contribute to the spiral of decline in his mental health leading to suicide or intense suffering. The appeal was allowed pursuant to Articles 3 and 8 ECHR.

The Grounds of Appeal

Ground 1

7. Failure to give adequate reasons on a material matter - Article 3 ECHR

The judge misdirected himself to the wrong test by finding that Mr Rahmani would not have access to the same standard of treatment as he has in the UK. The relevant test is set out in AM (Zimbabwe) [2020] UKSC 17. There should either be an absence of appropriate treatment in the receiving country or lack of access to such treatment. There is no consideration as to the treatment that would be available and accessible to Mr Rahmani in Iran. The judge has not had regard to the mental healthcare that is available as set out in the CPIN. There is no finding that the appellant's Article 3 ECHR rights would be breached on return to Iran.

Ground 2

8. Failing to give adequate reasons for findings on a material matter – Article 8 ECHR

The error in relation to Article 3 ECHR infected the judge's consideration of "very compelling circumstances". The judge has failed to consider that the appellant has siblings in Iran. There is no finding that they would not support him or assist him to find work. The judge failed to take into account that that the appellant's formative years were spent in Iran. The judge's finding that the appellant would have ready access to drugs was not supported by the evidence. The judge failed to give adequate reasons for finding that there would be a breach of Article 8 ECHR on return to Iran.

The Rule 24 Response

9. There was no rule 24 response although Mr Rahmani served a rule 15(2A) notice.

Documentation

10. We checked that both parties had sight of the relevant documentation. This included the grounds of appeal, the grant of permission, the decision of the judge, the original respondent's bundle and appellant's bundle as well as the skeleton argument.

Submissions

11. Both parties made legal submissions which we will refer to in the discussion of the grounds below.

Ground 1

12. We are satisfied that the judge directed herself to the correct legal tests. At [6] the judge referred to AM. At [8] the judge referred to MY(suicide risk after Paposhvilli) [2021] UKUT 00232(IAC) and quoted the authority at length. It is trite that an experienced judge from an expert Tribunal who has directed themselves properly will apply the direction to the facts of the case.

13. Ms Rushforth submitted that it cannot be inferred from the judge's findings that the judge had the correct test in mind. The judge failed properly to deal with why medical treatment for Mr Rahmani's mental health treatment would not be available or accessible to him. The test was not referred to in conclusive terms.

14. The judge had sight of the "sea" of evidence before him. Mr Rahmani's evidence was that as a child he was subject to significant domestic violence from his father resulting in serious injuries. He also had a long and difficult journey to the UK at the age of 15. He has attempted suicide in the UK and has self-harmed by cutting himself. He has been hospitalised on several occasions. He takes mirtazapine and sertraline. He has used heroin and cocaine in the UK. He believes that he would self-harm if returned to Iran. In particular the most protective factor he has is the hope that he will be able to establish contact with his British citizen daughter and if he is removed this factor will be removed.

15. The judge considered the expert evidence. At [11] the judge considered the evidence of Dr Rahimi a country expert. The expert opinion was that Mr Rahmani's poor mental health and lack of Farsi would label him as an outsider

worsening his employment prospects and therefore worsening his mental health. There is a social stigma against needing or receiving care. Mental health treatment provision is very poor in Iran and unavailable outside major cities. At [19] the judge found that much of Dr Rahimi's evidence was self-evident. The judge specifically referred to the CPIN on healthcare noting that the range of institutions that offer a variety of mental health treatments were all in Tehran. At this juncture we note that we are satisfied that contrary to the grounds the judge did consider the CPIN evidence.

16. The judge stated:

"I am therefore perfectly willing to accept Dr Rahimi's research indicating that the appellant if he were to live with a sibling in the Kurdish area of Iran (which would seem at least initially the only feasible option for him), would not be able to access appropriate treatment. I accept also, that he may face some stigma".

17. There is no challenge by the Secretary of State to the report of Dr Rahimi or his opinion.

18. At [12] the judge considered the report from Dr Wolton, an Advanced Registrar in Forensic Psychiatry who had access to Mr Rahmani's medical records both from his GP and from the prison. The judge summarised the report. Dr Wolton's opinion was that Mr Rahmani has emotionally unstable personality disorder and that his low mood and repeated self-harm relates to this disorder. The main function of the anti-depressant medication is to improve his sleep and to some extent his low mood. He cannot cope with external stressors. The possibility of future involvement with his daughter is a significant "protective factor" against self-harm. The current risk of parasuicidal acts is high, but the risk of completed suicide is relatively low. That latter risk would increase to moderate, if deported to Iran due to the removal of any possibility of involvement with his daughter. His prison records recorded an attempt to hang himself in 2015. The report set out several incidents of Mr Rahmani self-harming over the years and multiple involvements with emergency services. Any return to opiate or alcohol abuse would increase the risk of self-harm.

19. At [19(iii)] the judge said:

"Dr Wolton's report is thorough and dispassionate and I give it due weight. I will consider its consequences for this appeal in my consideration of the "very compelling circumstances issue below".

20. The Secretary of State does not challenge the expert evidence, nor the weight that the judge attributed to the report.

21. Finally at [13] the judge considered the report from Professor Roberts, a pathologist who detailed multiple scars, a deformed nose and bone swellings. At [19(ii)] the judge rejected the criticisms of the respondent finding that the expert was not entirely reliant on what he was told by Mr Rahmani because he had physical evidence before him and applied the Istanbul Protocol. The judge found that the bulk of the large number of injuries were inflicted by the Mr Rahmani's father.

22. The Secretary of State does not challenge the judge's findings in this respect.

23. At [21(i)] the judge found that Mr Rahmani's Article 3 ECHR rights would be breached by deportation to Iran on the basis that all of the evidence indicates that there is a real chance of the appellant committing suicide if he is deported.

This is because he has attempted suicide on at least one or more occasions, in addition to multiple events of self-harming.

24. This finding has not been challenged in the grounds. We infer from the judge's finding that the judge was satisfied that the treatment that Mr Rahmani would suffer (that is a completed act of suicide) would meet the threshold of severity, that there would be a casual link between the act of removal and that because of the judge's finding that treatment for mental health would not be available in the appellant's home area that the state would not have effective mechanisms to reduce the risk of suicide. We can see no error in this approach.
25. The judge's reasons for finding that treatment for mental health will not be available to the appellant are tolerably clear and grounded in the evidence before him - including the country expert report and the CPIN. The Secretary of State's grounds are not made out. A decision does not need to be expressed perfectly.
26. The judge considered whether there would be likely to be a serious, rapid and irreversible decline in his state of mental health resulting in intense suffering short of suicide in the alternative to this finding.

Ground 2

27. Having found that the judge's findings on Article 3 ECHR are sustainable and adequately reasoned, we are satisfied that the judge's approach to Article 8 ECHR is also sustainable and adequately reasoned. The real risk of suicide is manifestly a very compelling circumstance.
28. The judge in analysing whether there were very compelling circumstances took into account not only the likely risk of suicide, but other factors including social ostracization due to both his mental health and his 13 years in the UK since the age of 15 having distanced himself from Iranian culture and his educational and linguistic difficulties.
29. The judge also manifestly had in mind in his consideration of the "very compelling circumstances" test that the appellant had siblings in Iran with whom he could possibly live at paragraphs 19(e) and 21(iii)(a) of the decision. It was open to him to find that he had no way of knowing on the evidence before him whether this factor would be sufficient to ameliorate his mental health condition, without sustained medical intervention, which was very likely to be unavailable.
30. To the extent that the reference to Mr Rahmani's ability to have ready access drugs is an error because this finding was unsupported by the evidence, we are satisfied that the error is immaterial to the outcome of the appeal because it is clear to us given the unchallenged findings on the risk of suicide and other factors referred to by the judge at [21(iii)(c)] that it is clear on the materials before the judge that any rational tribunal must have come to the same conclusion.

Notice of Decision

1. The making of the decision of the First-tier Tribunal did not involve the making of an error of law.
2. The Secretary of State's appeal is dismissed.

3. The original decision of First-tier Tribunal O'Rourke allowing the appeal on Article 3 ECHR grounds and on Article 8 ECHR grounds is upheld.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 September 2024