

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number:** **RP/00139/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 7 January 2019** | **On 1 February 2019** |
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**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**sa**

(ANONYMITY DIRECTION made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A. Rehman, Solicitor

For the Respondent: Mr J. McGirr, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This appellant is a citizen of Iran, born in 1988. On 1 February 2016, in the Crown Court at Isleworth, he was convicted of an offence of attempted kidnapping for which he received a sentence of 18 months’ imprisonment on 4 March 2016. In 2007 and 2008 he committed a number of other, more minor, offences including aggravated vehicle taking, handling stolen goods and related offences of dishonesty, driving whilst disqualified and breach of a community order. On 5 December 2017 the respondent made a decision to revoke his refugee status, and to deport him because of his criminal offending, in particular the attempted kidnapping.
2. The further background to the appeal is that the appellant’s father was granted refugee status in 2004 on the basis of his political opinion and the severe ill-treatment that he had received at the hands of the Iranian authorities. He was naturalised as a British citizen on 17 March 2005.
3. In July 2004 the appellant was granted indefinite leave to enter the UK until May 2009 on “family reunion” grounds. He was granted indefinite leave to remain on 7 September 2010.
4. The appeal against the respondent’s decisions of 5 December 2017 came before First-tier Tribunal Judge Monson (“the FtJ”) at a hearing on 1 October 2018 following which he dismissed the human rights appeal, thus upholding the decision to cease his refugee status and to deport him to Iran.

*The FtJ’s decision*

1. The FtJ’s decision can be summarised as follows, although in certain respects some detail is necessary. He set out the appellant’s background and the circumstances in which he came to be granted refugee status. He detailed the procedural history of the appeal and the circumstances surrounding the appellant’s offending.
2. He referred to there having been an application for an adjournment prior to the hearing before him, by letter dated 26 September 2018. The basis of the adjournment application was that there were documents which the solicitors did not have, namely a copy of the appeal determination in respect of the appellant’s father, the OASys report and the pre-sentence report. That adjournment application was not dealt with by the Tribunal it would appear. The FtJ said that it was not clear when that letter was received by the Tribunal and stated that the solicitors had not followed directions given by the resident senior judge in relation to the process by which any applications to the Tribunal should be made.
3. The application for an adjournment was renewed at the hearing before the FtJ on the basis of the missing documents but also on the basis that on behalf of the respondent additional evidence was relied on, namely evidence of the appellant’s father’s immigration history, including recent travel history, and the appellant’s up-to-date PNC record showing the commission of recent offences.
4. The appellant did not attend the hearing before the FtJ and the appellant’s representative (Mr Rehman who also appeared before me) informed the FtJ that he was not sure as to why not. The FtJ was also told that no evidence had been filed in support of the appeal because the representatives did not have all the documents necessary to prepare a witness statement on his behalf.
5. The FtJ refused the application for an adjournment. He said that he considered that having regard to the procedural history the request for an adjournment on the basis of the absence of the three documents was made “far too late” and was “inherently unmeritorious”. He concluded that:

“The absence of these documents did not remotely begin to justify the total failure of the Appellant to file evidence in support of his Article 8 claim, including a witness statement from himself.”

1. Further, as had been pointed out in the course of argument, it was the appellant’s responsibility to produce the pre-sentence report and (if one existed) an OASys report and not the responsibility of the respondent. In addition, the representatives had not sought a direction at the case management hearing (on 31 May 2018) for the production of those documents. The direction made for the production of the appellant’s father’s appeal determination was directed to both parties not just to the respondent. The direction was not mandatory, only that the parties use their best endeavours.
2. Moreover, the determination in the appellant’s father’s appeal was, the FtJ said, “completely unnecessary for a fair disposal of this appeal” as there was no dispute between the parties as to the findings made in his case in favour of his father and it had never been the respondent’s case that his father should not have been recognised as a refugee.
3. He then recorded that he had informed the parties that he was satisfied “that it was in the interests of justice” to proceed with the appeal in the appellant’s absence (there having been no satisfactory explanation for his non-attendance) and that it was also in the interests of justice to proceed with the appeal on the available evidence, including the updated PNC record but excluding the evidence of his father’s recent travel history. He said that although the evidence of the recent convictions came as a surprise to the appellant’s representative, they would not have come as a surprise to the appellant, stating that the appellant “had no legitimate expectation that the Respondent would not put before the Tribunal evidence of his recent offending”.
4. He said that he was excluding the evidence of the recent travel history of the appellant’s father firstly because it was irrelevant to the issue of cessation of refugee status on the basis of the case now advanced by the respondent relying on *Secretary of State for the Home Department v Mosira* [2017] EWCA Civ 407. Secondly, its late production meant that the appellant had not had a reasonable opportunity to address its implications in his article 8 claim.
5. The FtJ then allowed a “short adjournment of 45 minutes” to allow the appellant’s representative time to prepare his submissions and also the opportunity to contact the appellant with a view to taking his instructions on the recent convictions. When the hearing resumed it was reported that the appellant’s representative had not been able to contact him. The FtJ then briefly summarised the parties’ submissions.
6. In his conclusions the FtJ agreed with the respondent’s (new) position in relation to the appellant’s refugee status relying on the decision in *Mosira*, to the effect that the appellant is not and never has been a refugee under Article 1A of the Refugee Convention. It had never been the appellant’s case that he had been recognised as a refugee under the Refugee Convention or that he was granted asylum under para 334 of the Immigration Rules. He also referred to the decision in *Dang (Refugee – query revocation – Article 3)* [2013] UKUT 00043 (IAC).
7. He thus concluded that there was no impediment arising under the Refugee Convention to the appellant’s proposed deportation to Iran, finding that “It is simply unnecessary to consider or apply Article 1C(5) of the Convention or paragraph 339A(v) to remove a status which the Appellant has never had”.
8. He further concluded that the appellant had no legitimate expectation that his status as a ‘refugee’ was permanent, having regard to what was decided in *Dang* and Articles 32(1) and 33(1) of the Refugee Convention. He was not granted refugee status on the basis of his own imputed political opinion and there is no real risk of his being persecuted for that reason now.
9. As regards the article 8 claim, he had not provided evidence to establish that he came within para 399(b) of the Rules. Any relationship with a partner had been formed at a time when he was in the UK unlawfully and his status was precarious. There was no evidence that it would be unduly harsh for his partner to live in Iran with him because of compelling circumstances over and above EX.2 of Appendix FM or that it would be unduly harsh for her to remain in the UK without him. As the decision letter highlighted, the appellant had not provided evidence of her immigration status, right of abode in the UK, or independent evidence of the length of their relationship or cohabitation.
10. As to his private life and para 399A, he had been lawfully resident in the UK for more than half his life and it was significant that he came to the UK as a 15 year old and had thus spent some of his formative years here. However, there was little sign of his having established positive integrative links during that time.
11. He referred to the appellant now working as a sales assistant which he described as a positive development. However, he had not kept his promise not to reoffend. He had been convicted on 21 November 2017 at West London Magistrates Court of using a vehicle uninsured and without a licence, committed on 2 November 2017. Also on 2 November 2017 he was in possession of Class A and B drugs and was convicted of those offences on 8 February 2018. On 26 June 2018 he was convicted at South London Magistrates Court of failing to comply with the requirements of a community order between 4 and 8 June 2018. He had also been arrested on 18 June 2018 for various driving offences, including driving whilst disqualified and taking a vehicle without consent.
12. The FtJ noted that the more recent offences were less serious than the offence which led to the decision to make a deportation order but he had not put forward independent evidence, such as from his probation officer, to support the claim that he is genuinely remorseful about the offence of attempted kidnapping or that he is no longer associating with a negative peer group and/or that his risk of reoffending was low.
13. He also concluded that the appellant had not made out a case that there would be very significant obstacles to his integration in Iran. His account of his lack of family ties to Iran was contradicted by the evidence that was given by his father in 1999 to the effect that his son (the appellant) was living with his estranged wife. His father had also said that he had a sister living in Iran. He further concluded that having arrived in the UK at the age of 15 and having joined his Iranian father in the UK the appellant would still be familiar with the culture and social norms of Iran and would not have lost his ability to speak Farsi.
14. The appellant had not made out a case that he suffered from any significant mental health issues. Even if he did suffer from depression, medical treatment would be available in Iran.
15. He thus concluded that the appellant had not shown that he qualifies for leave to remain under the Rules or that he satisfied Exceptions 1 or 2 under s.117C of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). He found that the article 8 claim was weak and the public interest should prevail in favour of deportation.

*The Grounds and Submissions*

1. The grounds of appeal in relation to the FtJ’s decision, to summarise, contend in ground 1 that the FtJ was wrong to refuse the adjournment, failing to identify whether the documents that the appellant sought to rely on were necessary or material. Rather, it is said that he relied on shortcomings in failing to produce the evidence earlier and the failure to provide a witness statement in support of the article 8 claim. He had also failed to apply the Tribunal guidance on case management hearings (is the evidence sought “necessary or material”). He had also failed to apply the guidance in *Nwaigwe (adjournment: fairness)* [2014] UKUT 00418 (IAC). In essence, the appellant was denied a fair hearing.
2. It is also argued in the grounds that the respondent’s changed position (with reference to *Mosira*) required the appellant and his representatives further time to address the issues. In addition, the FtJ had failed to make an assessment as to whether he could fairly and justly decide the appeal in the absence of the appellant.
3. Ground 2 asserts that the FtJ wrongly concluded that with reference to *Mosira* the appellant could not be considered a refugee. That ground also argues that the FtJ was wrong to decide as he did in relation to the refugee policy that applied at the time of the grant to the appellant (as a dependant), erroneously seeking to distinguish *Mosira* on that point.
4. Ground 3 contends that there was an erroneous reliance by the FtJ on the basis of the respondent’s decision not relied on by the respondent in that the decision was made on the basis of changed circumstances in Iran but the FtJ had decided the appeal on the basis that the appellant was not at risk because he had not been persecuted in the past. However, that was not the import of the decision letter or of the information provided to the UNHCR by the respondent, or the UNHCR’s response to the proposal to cease his refugee status.
5. Ground 4 (described as ground 5 in the written grounds) simply says that “The FTTJ has made no decision separately under Humanitarian protection policy. Further FTTJ’s decision on article 8 is not well reasoned.”
6. In his submissions Mr Rehman relied on the grounds, referring to various aspects of the FtJ’s decision. In response to my enquiry as to what would have been sought to have been achieved on behalf of the appellant by an adjournment, it was submitted that the decision letter either needed to have been amended and re-served.
7. In relation to what the FtJ said at [99] about the lack of evidence of remorse/risk of reoffending, the appellant should have been afforded the opportunity to provide evidence addressing the point. An OASys report should have been provided.
8. It was accepted that there was no witness statement from the appellant even now, although given that the initial issue was whether there was an error of law on the part of the FtJ, a witness statement was not necessary to establish that fact. Mr Rehman accepted that the FtJ was told that he was not sure why the appellant had not attended the hearing. It was submitted that no decision had been made on the written application for an adjournment dated 26 September which was faxed to the Tribunal.
9. As regards *Mosira*, the passage the FtJ relied on was *obiter* and the Court of Appeal had not heard full argument on the point.
10. In his submissions Mr McGirr said that the appellant was given the opportunity to attend the hearing and a 45 minute adjournment was given in order for further preparation on behalf of the appellant. The FtJ had considered the adjournment issue in terms of fairness.
11. As regards the *Mosira* point, it is true that the respondent’s stance changed but the appellant’s representative was given the opportunity to prepare and respond. If the appellant had failed to give instructions that was not the responsibility of the FtJ.
12. As to ground 3, there was a finding on humanitarian protection at [85]. As regards article 8, there was a full assessment at [86]-[103]. Any disadvantage to the appellant was his responsibility by having failed to provide evidence.
13. In reply, Mr Rehman submitted that the respondent’s new position on cessation of refugee status “affected the whole scenario”.

*Assessment*

1. The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (“the Procedure Rules”) provides as follows:

**“Overriding objective and parties’ obligation to co-operate with the Tribunal**

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

1. Rule 4(3)(h) of the Procedure Rules provides the power to adjourn a hearing.
2. In relation to holding a hearing in the absence of an appellant, the Procedure Rules state as follows:

**“Hearing in a party’s absence**

28. If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.”

1. In *SH (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 1284 it was said that the sole test in considering whether to grant an adjournment was fairness. *Nwaigwe* in the Upper Tribunal is to the same effect.
2. As regards the FtJ’s decision, although I consider that it would have been preferable for him to have referred to the Procedure Rules, even if not to any relevant authority, I reject the contention that his decision to refuse an adjournment was not based on the test of what fairness required. Naturally, what is fair depends on all the circumstances and it was not immaterial for the FtJ to consider the extent to which the appellant through his representatives had cooperated in the Tribunal’s determination of his appeal. It is notable that not only was there no evidence provided by the appellant in documentary form, as set out by the FtJ, but he did not attend the hearing and provided no explanation for not having done so.
3. In concrete terms one can clearly see that the FtJ’s focus was on the principal of fairness. At [55] he said that the adjournment request on the basis of the missing documents was “inherently unmeritorious” and that the absence of those documents did not remotely justify the total failure of the appellant to file evidence in support of his article 8 claim, including a witness statement from himself. At [58] he said that the production of the determination in his father’s appeal was “completely unnecessary for a fair disposal” of the appeal, for the reasons he explained.
4. At [59] he said that he informed the parties that it was “in the interests of justice” to proceed on the basis of the available evidence. He gave sound reasons for concluding that the evidence of the appellant’s recent convictions should be admitted but excluded other evidence that the respondent sought to adduce because, in part, the appellant had not had a reasonable opportunity to address that evidence.
5. The FtJ granted a short adjournment to allow time for further preparation on behalf of the appellant in the light of what was said to be the respondent’s altered position in relation to the cessation of refugee status, and for the appellant to be contacted. It is not apparent what submissions the appellant’s representative would have wanted to make in relation to the cessation point that he was prevented from making because the hearing was not adjourned.
6. The decision to proceed in the absence of the appellant was entirely fair and in accordance with rule 28 of the Procedure Rules. Even now no explanation has been put forward as to why the appellant did not attend the hearing.
7. As to the *Mosira* point, I do not in fact accept that the respondent’s decision letter bases cessation on changes of a fundamental and durable nature in Iran. At para 17 of the letter it states as follows:

“You were granted family reunion as a dependent child under 18 you are now 28 years old and an adult. This is considered to be a significant and durable change in your circumstances as you are now considered to be of an age when you can live an independent life.”

1. At para 20 it refers to his not having been of adverse interest to the authorities prior to his leaving Iran and had not been involved in political activities in the UK which would result in his having an adverse political profile in Iran.
2. The UNHCR letter dated 22 June 2017 seems to me to misunderstand the respondent’s position in relation to the appellant whereby the emphasis was not on the situation in Iran in terms of durable and fundamental changes, rather that the appellant’s personal circumstances had changed. For example, on page four of the letter it states in the penultimate paragraph that “…the HO maintain that the security landscape of Iran in respect of political affiliation has improved fundamentally and durably since the grant of [the appellant’s] refugee status” and on page six with reference to the country of origin information (“COI”) on Iran that “the above-mentioned COI indicates a lack of fundamental and durable change in Iran, contrary to the HO’s conclusions”.
3. Having said that, it does appear to me that the respondent’s decision was to some extent ambiguous. However, the suggestion in the grounds that the UNHCR letter supports the view that the way the FtJ characterised the respondent’s case at [82] of his decision was wrong, is itself misplaced. Furthermore, the way that the UNHCR interpreted the respondent’s case is not much to the point if the UNHCR misinterpreted it.
4. The FtJ considered what was said in *Mosira* and what it implied about the policy that applied between 2003 and 2007 in terms of the grant of refugee status to those applying for leave as a family member of a person granted refugee status. The FtJ however, said at [73] that he had looked at what was said on this issue in MacDonald’s Immigration Law & Practice, seventh edition at para 12.96 and one of the decisions in the footnotes, namely *A v Entry Clearance Officer, Pretoria (Somalia)* [2004] UKIAT 00031 (although the most recent edition is the ninth edition, published in 2014). Thus, he doubted whether the policy did in fact apply throughout that period.
5. He went on to say that it was assumed in the appellant’s favour that he, like Mosira, was admitted as a “refugee” pursuant to the 2003 policy, and that that must have been the assumption of the criminal casework team. However, he rejected any contention that the appellant had, or continued to have, any legitimate expectation that his status as a “refugee” was permanent. Referring to Articles 32(1) and 33(1) of the Refugee Convention and noting that *Dang* clarified that Article 33(1) (protection from refoulement), was forward looking, he concluded that the appellant had no such legitimate expectation (and given the basis upon which the appellant achieved status).
6. Nothing in the grounds or in the submissions on behalf of the appellant reveal any legal error in the FtJ’s analysis. His reliance on [32] of *Mosira* was apposite. In that paragraph the Court of Appeal said this:

“I pause here to observe that at this point it was open to the Secretary of State to seek to respond to the appeal by arguing (a) Mr Mosira was not a "refugee" as defined in Article 1A of the Refugee Convention and never had been (nor had he been recognised under para. 334 of the Immigration Rules as having refugee status), so there was no impediment arising from the Refugee Convention to his deportation to Zimbabwe and it was simply unnecessary to consider or apply Article 1C(5) of the Convention and para. 339A(v) of the Rules to remove that status; (b) alternatively, if Mr Mosira was entitled to maintain that he had refugee status attracting protection under or equivalent to that under the Refugee Convention (e.g. on the grounds that he had a legitimate expectation in domestic law to equivalent protection by reason of the grant of refugee status to him pursuant to the 2003 policy, which could entitle him to rely on the ground of appeal in section 84(1)(e) of the 2002 Act, if not on the ground in section 84(1)(g)), he could still lawfully be deported in accordance with the Refugee Convention on the grounds of "public order" as set out in Article 32(1); and (c) there was no impediment to his deportation arising from the ECHR and the Human Rights Act 1998. On the Secretary of State's case that Mr Mosira did not face a real risk of ill-treatment if returned to Zimbabwe, Article 33 of the Refugee Convention and section 72 of the 2002 Act were irrelevant.”

1. As regards ground 5 and the contention that the FtJ did not make a decision on humanitarian protection, he did, at [85] although in any event on the FtJ’s findings there is no basis for decision on humanitarian protection in his favour.
2. In relation to article 8, the bald assertion that the FtJ’s decision in that respect “is not well reasoned” has no merit. There is a full analysis of article 8 between [86] and [102] and in respect of which the appellant provided no evidence.
3. In conclusion then, I am not satisfied that there is any error of law in the decision of the FtJ.

*Decision*

1. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal on all grounds stands.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Upper Tribunal Judge Kopieczek 17/01/19