**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: PA/11853/2019**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On Monday 4 October 2021** | **On Tuesday 9 November 2021** |

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**
**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**A F**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**Representation:**
For the appellant: Mr K Gayle, Counsel, instructed by Elder Rahimi Solicitors
For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

## Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Hughes ("the judge"), promulgated on 9 February 2021. By that decision, the judge dismissed the appellant's appeal against the respondent's decision, dated 18 November 2019, refusing his protection and human rights claims.

2. The appellant, a citizen of Iran, arrived in the United Kingdom in 2007 as a visitor. In early 2017, he claimed asylum on the basis that he had converted from Islam to Christianity, that the Iranian authorities knew of this and were causing his family problems, and that he would be at risk on return. An appeal against the refusal of that original claim was dismissed by the First-tier Tribunal in 2018. It was not accepted that his family was ever the subject of adverse attention and it was found that the appellant would, if returned to Iran, live there as a non-practising Shia Muslim, thereby not attracting any hostility from the authorities.

3. Further submissions were provided to the respondent in May 2019. These were predicated on what was said to be material developments in his circumstances. In particular, it was asserted that the Iranian authorities had demonstrated a continuing adverse interest in the appellant by intimidating his wife in October 2018 and April 2019.

4. The refusal of what was deemed to constitute a fresh protection claim led to an appeal being dismissed in January 2020. That decision was challenged and eventually set aside by the Upper Tribunal in September 2020. The case was remitted to the First-tier Tribunal and it is the further decision of that Tribunal which is now under challenge before us.

## The decision of the First-tier Tribunal

5. The judge directed himself to the well-known principles set out in Devaseelan and took the 2018 findings as a starting point for his assessment of the appellant's protection claim.

6. In summary, the judge rejected the appellant's claim that the authorities had taken an adverse interest in his family by virtue of his profile. CCTV footage obtained by the appellant was viewed by the judge, but it was found that this did not in fact support the assertions made. The absence of supporting evidence was noted and factored into the assessment of credibility. So too were aspects of the appellant's account deemed to be implausible and inconsistent. Ultimately, the judge rejected the core elements of the claim and concluded that the appellant would not be at risk on return for the reasons put forward, or indeed on any other basis.

## The grounds of appeal and grant of permission

7. The grounds placed particular reliance on the CCTV evidence, describing it as "compelling" and criticising the judge for, in effect, failing to accord it significant weight. It was also said that the judge had required corroborative evidence of the

appellant, this being an error of law. Findings on implausibility and inconsistency were said to be flawed. Amongst the points raised it was said that:

> "12. The [judge] materially erred by failing to recognise that sophisticated intelligence services use automated speech recognition for mass surveillance. There is now no need for 'agents' to listen to every phone call. It is submitted that it would be naïve to assume that the Iranian intelligence service does not spy on international telephone calls, using the kind of keyword search algorithms described by the former NSA contractor Edward Snowden."

8. Permission to appeal was granted by the Upper Tribunal on all grounds on 28 April 2021.

## The hearing

9. Both parties provided helpful skeleton arguments in advance of the hearing. These were supplemented by a concise oral submissions, which we have taken full account of. Rather than summarise them here, we propose to address relevant points as they arise in the course of our analysis and conclusions, below.

## Analysis and conclusions

10. For the reasons set out below, we conclude that the judge did not err in law.

11. We turn first to the CCTV evidence. This related to the claimed incident in October 2018, said by the appellant to demonstrate that the Iranian authorities maintained an adverse interest in him.

12. Having viewed the footage, the judge describes what was shown in some detail at [69]. He accepted that the "high point" of the evidence showed that on the date in question a police officer had attended the appellant's former home and had spoken to his wife. The interaction was described by the judge as being "unremarkable" and "inconsistent with the appellant's wife description of the earlier phone from the police in which she was threatened with violence and imprisonment which caused her to cry a lot." There was no evidence of the wife being upset or of the police officer acting in an intimidatory manner. Further, the judge found that the CCTV evidence was wanting in another respect: on the appellant's case, the recording equipment had not been seized until after the incident in April 2019 and therefore footage of the wife returning from her claimed attendance at the police station in October 2018 could, in the absence of a proper explanation to the contrary, reasonably have been made available as evidence in the appeal: [70]. Finally, and importantly, the judge made it very clear that the CCTV footage was being considered alongside the "entirety" of the evidence. A holistic assessment of the evidence was here, as in all cases, the correct approach to adopt.

13. We find that the judge conducted an appropriate and sustainable analysis of the CCTV evidence, such as it was. In our judgment, rather than this evidence providing "compelling" support for the appellant's claim, the judge was entitled to find that it materially undermined the case being put forward.

14. The appellant asserts that an aspect of this analysis involved an impermissible requirement for corroborative evidence. We disagree. The judge expressly stated at [60] (in which he cites TK (Burundi) [2009] EWCA Civ 40) and [72] that he was not requiring corroboration as such. In the absence of clear contraindications, we would be slow to conclude that he had in fact gone on to do precisely what he said he would not do. Beyond that, there is no rule of law that precludes a judge, in any circumstances, from taking account of the absence of evidence which might, depending on the facts of the case, be reasonably provided. At [71] the judge provided a sustainable reason for why he regarded the absence of additional CCTV footage relating to the wife's claimed return from the police station to be problematic: the appellant had had access to the relevant equipment until many months after the incident and had obtained footage in respect of the police officers attendance at the house.

15. We conclude that the other allegations relating to corroborative evidence are also not made out. There is some merit in this submission that the appellant would not have been able to obtain records of telephone calls from the police to the wife. However, in light of what we say in the preceding paragraph, the judge was entitled to find that the absence of evidence of telephone calls made by the appellant to his wife, specifically in relation to the April 2019 incident, at which time he had a smartphone, undermined the claim: [72].

16. The points raised at paragraphs 7, 10, and 13 of the grounds are plainly nothing more than disagreements with findings which were eminently open to the judge. In respect of paragraph 7 and the inconsistent evidence of whether the appellant's wife went to the police station with an officer or alone, the grounds themselves acknowledge that the evidence in question (one source of which was an email from the wife) was "not clear". The arguments set out in paragraph 10 are simply points which may have been raised in submissions before the judge, but in no way disclose an error of law. At [73] the judge gave adequate reasons for concluding that it was, in all the circumstances, implausible that the appellant would have insulted the Iranian regime. Those circumstances included the claimed fact that telephone conversations were being monitored by the authorities and that the appellant's wife had been interrogated by the police in 2018 because of similar comments made by him then. Paragraph 13 of the grounds seeks to gloss over what was, as set out by the judge at [75], a significant inconsistency as to dates. The appellant had been given a fair opportunity to clarify his evidence and the judge gave him the benefit of some doubt in respect of one "slip of the tongue". Notwithstanding this, it is apparent that the appellant compounded his inconsistent evidence on a central aspect of his claim. The judge was fully entitled to take this into account.

17. We have left to the end an aspect of the appellant's challenge which causes us concern. Paragraph 12 of the grounds of appeal has been quoted above. The point was reiterated in Mr Gayle's skeleton argument and in oral submissions. When asked whether there was in fact any evidence before the judge relating to the assertion that the Iranian authorities used "automated speech recognition" software/equipment and/or "keyword search algorithms", Mr Gayle confirmed that there had been none.

He alluded to the country guidance decision in BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC), but, when pressed again, was unable to direct us to any passage therein which indicated the existence of these capabilities. No such evidence is contained within the respondent's CPIN (at least none to which Mr Gayle was able to identify) and there was no expert evidence before the judge. In the end, Mr Gayle found himself in a position of having to submit that such information was "in the public domain" and that the judge should have taken account of it.

18. Such a position is, we are bound to say, not good enough. There may be situations in which certain matters (significant political developments in a country, endemic ill-treatment of detainees by the authorities to the extent that its occurrence is uncontroversial, or suchlike) can properly be said to be apparent from information "in the public domain". Historically, parties have regularly referred to country reports from certain sources being "in the public domain" (examples might include the United States State Department human rights reports, or Amnesty International country reports). However, the assertion made in the grounds of appeal and pursued before us is in a very different category. It constitutes a contention that the authorities of the country in question use particular forms of technological surveillance in order to monitor its citizens and detect and identify those of potential adverse interest. Such a contention must, in our view, require specific evidence to support it, whether that emanates from, for example, a country expert, a country guidance decision, or other reliable country information reports. Simply to state that the submission can be made good by reference to unidentified information "in the public domain" will not only be inadequate before the First-tier Tribunal, but is also inapposite in challenges mounted to the Upper Tribunal. We would expect representatives to give very careful consideration to whether such points should be included in grounds of appeal.

19. Bringing matters back to the present case, we have no hesitation in concluding that this aspect of the appellant's challenge fails.

20. It follows from the above that the judge's conclusions are sustainable, that his decision shall stand, and that the appeal to the Upper Tribunal must be dismissed.

**Anonymity**

21. The First-tier Tribunal made an anonymity direction and we are satisfied that it is appropriate to maintain that direction in view of the fact that this case involves protection issues. This factor outweighs the important public interest in open justice.

**Notice of Decision**

**22. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**23. The appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal shall stand.**

Signed: *H Norton-Taylor* Date: 14 October 2021

Upper Tribunal Judge Norton-Taylor