



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01700/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 4 May 2017

Decision Promulgated
On 16 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

MOFTAH MEHEMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Devlin (counsel) Quinn Martin & Langan, solicitors
For the Respondent: Ms M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Gillespie promulgated on 1 December 2016, which dismissed the Appellant's appeal.
3. The Appellant was born on 02/09/1970 and is a national of Libya.
4. On 11 February 2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Gillespie ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 27 March 2017 Upper Tribunal Judge Pitt gave permission to appeal stating inter alia

It is arguable that the expert report of Dr George did comment on the likelihood of the incident involving the threat from a student and possibility of searches at Tripoli airport and that those comments could have made a material difference to the credibility assessment. The grounds concerning the existence of the college have less force but remain arguable.

The Hearing

6. (a) Mr Devlin counsel for the appellant moved the grounds of appeal. He told me that the Judge gave three reasons for finding that the appellant was not a credible witness, and that those reasons can be found at [29] to [31] of the decision. He told me that the Judge considered that the appellant failed to prove the existence of his employer, that the appellant's credibility was adversely affected because he destroyed his documents at Tripoli airport, and that the appellant's claim to fear one alleged agent of persecution did not stand up to scrutiny.

(b) Mr Devlin took me to [24] of the decision, where the Judge discusses two copy documents produced by the appellant. The documents relate to the appellant's claimed employment by a college in Libya. In the closing sentences of [24] the Judge says that original documents are not available and that he approaches the documentary evidence with circumspection. Mr Devlin told me that there was no reason for the Judge to entertain doubts about the authenticity of the documents or to find that the evidence presented by the appellant is implausible. He told me that the Judge has not adequately set out reasons for rejecting the appellant's evidence. He referred me to AB(reliance on photocopies) Republic of Congo (Brazzaville) [2014] UKAIT 00172.

(c) Mr Devlin took me to [25] of the decision and told me that the Judge's analysis of the documents and his rejection of the appellant's account that he was employed by a particular college amounts to an irrational finding. He referred me to the unreported inner house case of Chinder Singh v Secretary of State for the home Department. He told me that the Judge's reasoning proceeds solely on the difference between two names given. The difference could be a grammatical error. The difference could be transliteration caused by translation from Arabic to English. He told me that the Judge's findings were irrational.

(d) Mr Devlin then took me to [26] of the decision, and told me that the Judge's credibility findings are flawed because the Judge proceeds on an assumption about the availability of email addresses.

(e) Mr Devlin turned his attention to the Judge's findings in relation to destruction of documents. He took me to [30] of the decision and told me that the Judge's reasoning is irrational. He told me that the Judge was wrong to consider that any man who would take a risk once would take a risk repeatedly. He told me that there was no evidence to support the Judge's findings.

(f) Mr Devlin took me to [31] of the decision and told me that the Judge's findings there proceed on the Judge's own assumption of the manner in which innocent bystanders would react to a frightening violent incident in which they were not directly involved. He argued that the Judge's finding at [31] is irrational and based on the Judge's opinion rather than on the evidence led.

(g) Mr Devlin then turned his attention to the treatment of the expert report from Dr George. He referred me to [33] to [35] of the decision, and told me that the Judge simply acknowledges the existence of the expert report, but says for, unsustainable reasons, that the expert report has no impact on the subjective evidence. He told me that the Judge's findings were irrational because the expert report says that the appellant's claim is plausible.

(h) Mr Devlin urged me to allow the appeal and to set the First-tier Tribunal decision aside.

7. (a) For the respondent, Ms O'Brien told me that the decision does not contain errors, material or otherwise. She told me that the challenges to the decision amount to a suggestion that the Judge's findings are perverse. She told me that in dealing with documentary evidence the Judge was aware of the principles set out in Tanveer Ahmed (Starred) 2002 UKIAT 00439. She told me that the decision is a carefully worded decision in which the Judge has considered all relevant factors and that the Judge had carefully weighed each strand of evidence, taking a holistic approach before reaching his conclusions.

(b) Ms O'Brien told me that the Judge's conclusions are well within the range of reasonable conclusions available to the Judge on the evidence presented. She told me that the Judge properly engaged with Dr George's report before deciding what weight should be attached to it, and then provided reasons for the weight that it is attached to that report. She suggested that what is argued for the appellant amounts to nothing more than a disagreement with properly reasoned findings. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

8. The grounds of appeal can be marshalled into two main challenges. The first challenge is to the findings between [23] and [31]. Counsel for the appellant clearly stated that the findings at [24], [25], [26] and [31] are findings which no reasonable Judge would make. The argument is quite clearly that the findings are irrational. The second challenge relates to the way in which the Judge treated the evidence contained in an expert report from Dr George.

9. Between [1] and [4] the Judge sets out the background to the appeal. At [5] he summarises the grounds of appeal and between [6] & [9] he accurately sets out the applicable law. Between [10] and [12] he correctly sets out the burden and standard of proof before summarising the evidence between [13] and [20].

10. At [21] the Judge confirms that he has taken a holistic view of the entirety of the evidence. It is not surprising that no challenge is taken to [21] because a fair reading of the decision demonstrates that the Judge has manifestly taken a holistic view of each strand of evidence.

11. At [24] the Judge considers two documents produced by the appellant and between [24] and [27] discusses the documentary evidence set against the totality of evidence. He then sets out his reasons for attaching little weight to the documents. In Green (Article 8 – new rules) [2013] UKUT 254 (IAC) the Tribunal said that

Giving weight to a factor one way or another is for the fact finding Tribunal and the assignment of weight will rarely give rise to an error of law.

12. Between [24] and [31] the Judge finds certain aspects of the appellant's account "implausible" and other passages of evidence to be evidence which he does not find to be persuasive. At each stage the Judge adequately explains his reasoning and, in doing so, explains why he comes to his conclusion. The Judge does not proceed on assumption. He makes his findings from analysis of the evidence placed before him. That is exactly what a Judge should do.

13. In Dasgupta (error of law – proportionality – correct approach) [2016] UKUT 00028 the Tribunal held that in error of law appeals relating to findings of fact, the Upper Tribunal should apply the principles in Edwards v Bairstow [1956] AC 14. In Edwards v Bairstow [1956] AC 14 Viscount Simonds said

For it is universally conceded that, although it is a pure finding of fact, it may be set aside on grounds which have been stated in various ways but are, I think, fairly summarised by saying that the court should take that course if it appears that the commissioners have acted without any evidence or upon a view of the facts which could not reasonably be entertained.

Elsewhere the House of Lords referred to "perversity", defining this as a case in which

..... the facts found are such that no person acting judicially and properly instructed as to the relevant law could come to the determination under appeal.

In R and Others v SSHD (2005) EWCA civ 982 Lord Justice Brooke noted that perversity represented a very high hurdle. It embraced decisions which were irrational or unreasonable in the Wednesbury sense.

14. The Judge reaches carefully reasoned conclusions. The appellant might not like the conclusions that the Judge reaches, but he reaches those conclusions on the basis of an analysis of the evidence placed before him. In reality, the first part of the challenge set up in this appeal amounts to nothing more than a disagreement with the facts as the Judge found them to be. The Judge's findings are neither perverse nor irrational. The Judge's findings are findings which were open to him on the basis of the evidence presented.

15. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

16. The second challenge, and the focus for the grant permission to appeal, relates to the way in which the Judge dealt with an expert report prepared by Dr George.

17. At [33] the Judge turned his attention to the expert report, and summarises the relevant part of the report. At [34] the Judge records that Dr George accepts that he cannot comment in detail on the appellant's claim, but finds the claim to be broadly plausible. At [35] the Judge says that Dr George's report provides background information which confirms the existence of militia, but has not assessed the detail of the appellant's claim.

18. The detail of the appellant's claim comes from the evidence summarised between [13] and [20] of the decision. The Judge analyses the evidence between [21] and [32] of the decision and, for the reasons set out there, finds that the appellant's evidence is neither credible nor reliable. At [36] the Judge found the evidence of the appellant's wife to be incredible. No challenge is taken to that finding.

19. In MF(Albania) v SSHD 2014 EWCA Civ 902 (in a blood feud case) the Court of Appeal decided that it was for the tribunal, not the expert, to decide whether an applicant would be at risk on return. It was neither appropriate nor helpful for an expert to express a view on specific factual questions bearing on the situation of a particular applicant such as whether he could safely relocate or whether he could obtain support from other members of the family, if that view was based on nothing more than a general understanding of local conditions. The Court of Appeal emphasised that where an expert had not met an individual, the weight which can be given to the individual account is a matter for the fact finding of the tribunal. It is not in general within the expert's area of expertise.

20. When read as a whole, the decision clearly demonstrates that the Judge carried out a rounded assessment of the totality of evidence. He found that the expert report is not determinative of this appeal. He found that neither the appellant nor his wife were credible. He sets out adequate reasons for dealing with each strand of evidence. Having found that there was no support for the appellant's claim in any part of the evidence the only conclusion that he could reach is that the appeal should be dismissed.

21. The Judge took correct guidance in law. There is nothing wrong with the Judge's fact-finding exercise. There is no challenge to the Judge's credibility findings in relation to the appellant's wife. The challenge to the Judge's treatment of the appellant's evidence amounts to little more than a disagreement with the Judge's findings on the question of credibility. Those findings are clearly sustainable. They are properly explained and fall well within the range of reasonable findings available to the Judge. The Judge dealt with the expert evidence correctly. Having considered the expert evidence, the Judge had no criticism of the evidence but did not find the evidence to be determinative of this appeal.

22. It is only after considering each strand of evidence and properly analysing it that the Judge reached his conclusions. The conclusions the judge reached were well within the range of reasonable conclusions open to the Judge, and do not run counter to the Judge's overall assessment of the totality of evidence.

23. There is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law. The Judge's decision when read as a whole, sets out findings that are sustainable and sufficiently detailed.

24. No errors of law have been established. The Judge's decision stands.

DECISION

25. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed *Paul Doyle*

Date 12 May 2017

Deputy Upper Tribunal Judge Doyle