



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12804/2017

THE IMMIGRATION ACTS

Heard at Field House London
On 15 May 2018

Decision & Reasons Promulgated
On 23 May 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL McCARTHY

Between

**AMM
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, instructed by Elder Rahimi Solicitors (London)
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Given the nature of the appellant's appeal, which involves issues of international protection, it is appropriate to continue the anonymity direction made by the First-tier Tribunal. The full terms of my order are set out at the end of this decision and reasons statement.
2. The appellant appeals with permission of First-tier Tribunal Judge Mailer against the decision and reasons statement of First-tier Tribunal Judge Jessica Pacey that was issued on 25 January 2018. The appellant alleges that Judge Pacey misunderstood a core element of his protection claim and therefore her credibility findings are not sound.

3. Judge Mailer, when granting permission, commented:

“The grounds are at time intemperate, sarcastic and gratuitously offensive: see e.g. paragraphs 8, 11 and 16. Such approach is wholly unnecessary and is to be deprecated.”

4. Mr Gayle apologised for any offence given. He was not the author of the grounds and would ensure the author, Mr T D H Hodson, was advised of the Tribunal’s concerns. I informed those present at the hearing, which included the appellant, that I remained impartial and would not hold the adverse comments of Mr Hodson against the appellant.

5. Mr Gayle did not rely on the entirety of the grounds, finding them lengthy and convoluted. He did not raise any grammatical concerns, which was welcome given the complexities of transitive and intransitive verbs such as, “to leave”. Mr Hodson, who settled the grounds, appears to be unaware that this specific verb can be used in either manner, that is with and without a subject. Such grammatical arguments are best avoided unless they are obvious and the author is a grammarian.

6. Mr Gayle submitted that the central argument was whether Judge Pacey had failed to understand the events that led to the appellant fleeing the Kurdish region of Iraq. He suggested that the questions the judge asked at the end of examination revealed her lack of comprehension.

7. Mr Gayle suggested the sequence of events relied upon by the appellant were as follows. The appellant received a phone call from his Christian girlfriend who was not well. She feared she was pregnant because they had unprotected sex a few weeks earlier. The appellant realised this would be a serious problem for him because of the social mores and the different religions his family and her family practiced. The appellant decided he and his girlfriend needed to leave Iraq. He collected her and they went to the villa owned by his friend’s family in Chnarok without either family knowing. Soon after arriving, the close friend who knew about their relationship arrived. Later that day the appellant received a phone call from his father during which he was threatened because of the serious nature of the offence with a Christian girl. The appellant was threatened therefore after he left his home in Iraq but before he left Iraq. This is what Judge Pacey misunderstood.

8. Mr Gayle said that the error was such that it undermined the entirety of the credibility assessment and the appeal needed to be reheard. He pointed to the issue infecting the other findings made by Judge Pacey. He reminded me that the grounds included an observation that Judge Pacey failed to have regard to cultural norms in Iraq and she should have treated references to unprotected sex and his girlfriend’s sickness as being references to a fear she was pregnant.

9. Mr Tarlow responded and said Judge Pacey gave a number of reasons why she found the appellant’s account not to be credible and only one of those findings was

challenged. The other negative findings stood by themselves and therefore any error was not material to the outcome. In any event, in his opinion, the findings regarding the events were open to her because of the inconsistencies in the account.

10. As I indicated at the end of the hearing, the appeal is dismissed because there are sufficient sound negative credibility findings to undermine the veracity of the appellant's account irrespective of any potential misunderstanding.
11. Judge Pacey records how the appellant changed his account over who threatened him and when. He was unable to explain why his account had changed. He blamed interpreters but had not challenged the interview records. Although there is some reference to this in the grounds, they do so by shifting the burden of proof. I recall that it was incumbent on his solicitors to go through the interview records with him and it can be assumed they did because otherwise they would be open to criticism on negligence grounds.
12. Judge Pacey records that the appellant made additions to his account as time passed and there was no reasonable explanation for so doing. The failure to give consistent account will undermine a person's credibility unless a reasonable explanation is provided and therefore Judge Pacey was not only entitled to make this finding but it is sustained.
13. Judge Pacey found the account to be implausible because on the appellant's account the couple did not go into hiding. They went to Chnarok in the open and there was a reasonable risk they would have been recognised. This finding is unchallenged.
14. Judge Pacey found the appellant had given inconsistent accounts regarding who knew about his relationship. She referred to the different answers given during the interview. She also identified the appellant had given inconsistent accounts regarding the knowledge his girlfriend's parents had about their relationship. Judge Pacey was entitled to draw adverse credibility points from these inconsistencies because the appellant could not give an explanation, reasonable or otherwise.
15. Judge Pacey was concerned by the vagueness of the appellant's account regarding his girlfriend's fear of being pregnant. She was entitled to expect he appellant to be clear about what happened since it was central to his claim. The vagueness cannot be attributed to cultural or religious norms without evidence, for which there was none.
16. Judge Pacey also identified the appellant gave inconsistent evidence about his financial situation. On the one hand he said he had access to \$24,000 at short notice from his savings, which he used to pay the agent to take him and his girlfriend from Iraq to the UK, whilst on the other hand he says he had no means to support himself and his girlfriend in Iraq.

17. Judge Pacey also found the letter from the appellant's friend to be reliable. Not only was its provenance questionable because of the lack of supporting evidence, the contents of the letter were at odds with the appellant's account.
18. In addition to all these adverse credibility findings, Judge Pacey noted the appellant was evasive on a number of issues. She had the benefit of seeing the appellant give oral evidence.
19. I return to the question of whether Judge Pacey misunderstood the appellant's account. I find that although such an issue is arguable and therefore deserved a grant of permission, in the context of the many adverse credibility findings made by Judge Pacey, it is clear that the appellant's account was in fact confused because it contained inconsistencies. Therefore, although the matter needed examination, having examined the case in detail I do not find Judge Pacey was in fact confused.
20. In addition, as I indicated at the end of the hearing, I do not find the issue of the alleged confusion can be attributed the seriousness the grounds suggest. Although it relates to a core issue of the protection claim, it is not the only core element. It must be examined in context, which I have done. Even if there was error, it would not be material to the outcome as the other adverse credibility findings are distinct and not infected by any error that might arise from the one area specified.
21. For all these reasons, I conclude that the findings of Judge Pacey are sound and her decision should be upheld.

Notice of Decision

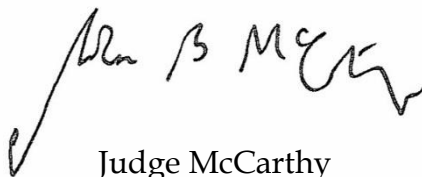
The appeal is dismissed.

The decision of FtT Judge Jessica Pacey does not contain legal error and is upheld.

Anonymity

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The respondent can be referred to as "AMM".

Signed



Date

17 May 2018

Judge McCarthy

Deputy Judge of the Upper Tribunal