



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/03463/2018

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice

Decision and Reasons Promulgated

On 25th June 2018

On 3rd July 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

DMA

(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan instructed by UK & Co Solicitors

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq of Kurdish ethnicity. He appealed a refusal of his protection and human rights claim on 7 February 2018. The appellant first entered the United Kingdom in September 2001 and claimed asylum but his claim was refused and his appeal was dismissed. In 2007 he applied for voluntary return was returned to Iraq on 27 May 2009. On 20 April 2011 he, his wife and their child entered the United Kingdom and his wife claimed asylum with the appellant as her dependent. On 30 May 2011 he became the lead appellant, with his wife a his dependent and she withdrew her claim. On the

30th of every 2013 he was convicted Liverpool Crown Court of sexual assault on a female child under the age of 13 years and was sentenced to 15 months imprisonment and placed on the Sex Offenders Register for 10 years. He was served with notice that he was liable to deportation and he responded. On 6 November 2013 he indicated he wish to reinstate his asylum claim. His wife indicated that she wished to claim independently. He is now separated from his wife and child. His appeal against that decision was dismissed by the First-tier tribunal in March 2015 and became appeal rights exhausted in April 2015. In September 2015 he was deported back to Iraq and in June 2017 he was arrested for having made an illegal entry into the United Kingdom and detained. In June 2017 he claimed asylum once more and made a human trafficking claim. This was considered but he was not accepted as a victim of trafficking.

2. The appellant's appeal came before first-tier Tribunal Judge Woolf, who determined that his protection and human rights claim should be dismissed. She determined his human rights in relation to Articles 2 and 3 of the European Convention on Human Rights. The grounds included an appeal on the basis of family and private life, conceding that the exception under paragraph 399 and 399A were not be met, but, it was submitted that in the appellant's case there were very compelling circumstances which outweighed the public interest in deportation. It was noted the appellant had a wife and four children who lived in the United Kingdom who had all been granted humanitarian protection. If the appellant were returned to Iraq, he would be prevented from being able to maintain contact with his children
3. The judge set out the background to the claim and it is clear from paragraph 6 of the determination that her consideration was confined to Articles 2 and 3, not Article 8.
4. The judge made the following findings.
5. She considered whether the appellant could give a cogent evidence in the light of the report of Dr Arnold. She accepted that Dr Arnold was qualified medical expert but it was not clear over what period the doctor had examined the appellant. The doctor confirmed that the scars most certainly occurred more than 6 -12 months before examination but could not give more precise information on their age. He found the lacerations were typical of the cause of a blow by a gun and gave consideration to other causes. There was no indication of whether the appellant was asked about this but the doctor noted that a previous examination in the UK had not identified scars to the hands. The judge identified that the Dr Arnold had not been party to a screening interview from the appellant whereby he notified an injury to his head and back and further that appellant had identified scars from a previous substantive asylum interview conducted June 2011 which predated his removal in 2015. The judge found at paragraph 64, that there was no indication that Dr Arnold was given copies of the records of the previous interviews so that he would have been unaware of the evidence on these previous injuries, which had been prior to the detention claimed in September 2015. The judge also noted that there were records for Dr Arnold, which were not before the judge. The judge identified that Dr Arnold mentioned nothing in his report in relation to the appellant's

occupational history. Dr Arnold did not detail the precision what he knew about the appellant's previous occupational experiences. The judge identified the appellant told him he had been engaged in farming work whilst in Turkey and clearly post the detention in 2015 but there was no indication that this had been relayed to Dr Arnold. Further scars were considered to be consistent with the appellant's account but, the judge found that, they could have been caused by other causes. The judge concluded that Dr Arnold's report fell to be given some weight but, for the reasons given, less weight was attached.

6. At paragraph 70 the judge gave no weight to the Helen Bamber foundation report as this was merely a recommendation that the appellant obtained a medicolegal report.
7. The rule 35 report was described by the judge at paragraph 70 as being a factual report based on an examination of the appellant and brief notes and taking into account that which the appellant said. This report was incomplete bearing in mind Dr Arnold's report.
8. The judge identified a Dr Arnold acknowledged that the list of common causes of PTSD with which he diagnosed the appellant, included torture, warfare and natural disasters.
9. The judge considered the psychological well-being service report dated 4 April 2018 at paragraph 72. This identified that the appellant was experiencing symptoms depression anxiety control symptoms and separation from his wife and children, added to his current level of stress. The judge identified at paragraph 73 she had borne in mind the appellant's psychological state and Dr Arnold's diagnosis but these had been raised a month or so after his detention and only pending removal. The judge found there was nothing in the medical evidence which indicates the appellant was unable to give evidence.
10. She found that although some aspects of the appellants claim with relation to his knowledge of Christianity may have been plausible but it was less credible that the appellant did not even know the day Jesus was born. The judge found that the appellant's identity with and commitment to the Muslim faith right until September 2015, and on 16 October 2014 where he identified strongly as a Muslim, and his description of its importance to his identity, as inconsistent with his current claim that he had little commitment to the Islamic faith and thus had converted to Christianity
11. The judge found there were further inconsistent aspects to his claim such that his family were not aware previously of his conversion to Christianity and had supported him. The appellant now asserted that his brother did not support him and did not attend the hearing because his family had rejected him because of his conversion but, the judge found, the appellant had made no mention of this in his very recent witness statement and as a result was not satisfied he had been disowned by his brother. The appellant was vague and lacked specific knowledge about the arrangements whereby his brother previously assisted his escape from Iraq by paying \$15,000 by way of bribes in September 2015.

12. The judge found the appellant was inconsistent in relation to his oral evidence about CCTV the prison and that he changed his story about how he knew the nature of his conviction for terrorism.
13. At paragraph 83 the judge identified that the appellant supplied a typed letter purporting to come from his wife dated 5 April 2018 and that it was quite
'vague in that all that is related is the names and dates of birth children with the statement "I do not have any objections or restrictions of the father of my children... to see his children". She was not called to give evidence and claimed in relation to her own asylum claim that she was in fear of the appellant should she return to Iraq. It must be said however the respondent did not accept her claims were credible. The appellant suggested reasons why she may not have been able to attend the hearing where is the provision of a witness statement from her recent date should enable the appellant to know exactly why she did not could not attend rather than have to speculate about the reasons there might been for her failure to do so.'
14. The judge identified that the previous decisions of the adjudicator and Judge Wright show the appellant was found to be a wholly unreliable witness as was his wife in the second appeal.
15. She found that the appellant had previously obtained CSID card and this indicated that he would be able to do so again. She applied the country guidance case of **AA**.

Application for Permission to Appeal

16. The application for permission made stated that the determination contained material errors of law and set out the following grounds that the judge:
 - (i) did not deal the grounds of the appeal.
 - (ii) had failed to consider the plausibility and reliability of the appellant's evidence
 - (iii) had failed to take into account **R (HK) v Secretary of State Department** [2006] EWCA Civ 1037. The story of the whole should be considered in the light of the available country evidence and expert evidence
 - (iv) failed adequately to consider Dr Arnold's report in relation to the scarring and causes of PTSD
 - (v) failed to place evidential weight on the letter from the Helen Bamber foundation
 - (vi) failed to adequately consider the letter from psychological Well-being service April 2018 in relation to the appellant's stress depression anxiety trauma
 - (vii) failed to acknowledge or take into account the evidence appellant was tortured after he was deported back to Iraq

- (viii) failed to consider appropriately the appellant's claim that he had been converted from Islam to Christianity and would be considered an outsider by his family because his conversion
 - (ix) "the TJ attach no weight his finding that the appellant is not credible" – the judge did not offer a plausible reason for rejecting the appellant's explanation
 - (x) the judge failed to engage with the appellant's family life. His family had been granted humanitarian protection. The judge totally ignored this aspect the appellant's claim
17. Permission to appeal was granted by Judge Bird on 2nd May 2018 on the basis that no adequate reasoning was given to show why the medical report failed to corroborate the appellant's account.

The Hearing

18. At the appeal hearing Mr Chohan noted that there was a contact order which had not been adequately addressed in the decision. The judge had not taken into account the fact that the brother no longer supported conversion to Christianity. The judge had failed to give adequate weight to the medical evidence and to properly assess the risk on return.
19. Mr Jarvis indicated that the grounds were not clear. He argued that this was a dispute about the weight to be attached to the evidence. The judge did engage with the relationship of the wife paragraph 83 and it was mere speculation on the part of the appellant as to why she was not present at the hearing. I was referred to in paragraph 25 of Y [2006] EWCA Civ 1223, such that '*a judge should be cautious before finding an account to be inherently incredible because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible*' and '*those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society*'. However, the judge had highlighted the broad range of discrepancies in relation to the appellant's conversion. The appellant already had a poor immigration history and the judge went through that history. It was important to look at the findings in the light of all the findings and as why indicated the credibility was based on an accumulation of points. That was the position here. The findings in relation to the medical evidence were detailed and the report acknowledged and they were weighed. An expert view cannot be binding on how scars are caused and it is open to the judge as to what weight should be attached. Nothing in Dr Arnold's report was determinative. The judge was obliged to assess the underlying claim and she did that. Dr Arnold had not been informed about a key element of the appellant's background and the judge was not barred from arriving at his own conclusions. The judge clearly understood the interplay between the reports and the evidence given. In relation to the Christianity the fact that the appellant did not know when Jesus was born was still not the basis for automatic findings against the appellant and those findings made at paragraph 78 were permissible adverse findings. Mr Collins the Home Office Presenting officer at the first-tier Tribunal hearing

challenged the evidence and the medical reports. There was no obligation on the respondent to ask the expert to attend. There was a careful assessment made by the judge and the grounds were merely a broad gloss complaint. The brothers support or lack of it was addressed adequately.

Conclusions

20. I address each ground in turn

(i) my conclusions in relation to the grounds of appeal being addressed is to be found at the close of my decision. I do not accept that the judge failed to address all the grounds of appeal. It is clear from an overall reading of the decision that the judge approached the appeal of the appellant by carefully considering all of the evidence and applying the correct standard of proof. A synopsis of the findings is given above to show the broad range of findings made by the judge and contrary to the assertions in the grounds the judge did adequately engage with the evidence

(ii) that the judge failed to consider the plausibility and credibility of the appellant's evidence is not made out. It is clear from the findings that the judge did consider the key elements of the claim and appropriately factored in the medical reports when considering the evidence in the round.

(iii) as indicated by Mr Jarvis at the hearing, Y at paragraph 30 confirms that it is open to a judge to look at all of the issues of credibility in the round, and cumulatively and the judge did not fall into the trap of merely finding the appellant's account incredible without given reasons for such findings. The background to the claims of the appellant is that twice previously the appellant had been found by an adjudicator and an immigration judge to have been untruthful and lacking in credibility with regard to an asylum claim. A series of reasons were given, and these can be seen from above which undermined the appellant's claim. The judge made specific reference to the country guidance of AA at paragraph [85] of her decision. It cannot be argued that she failed to have reference to the background material.

(iv) it can be seen that from paragraphs 64 to 74 of the decision, the judge addressed the medical evidence of Dr Arnold in detail and in round. The report was not determinative because it was undermined by the fact that Dr Arnold had not been given access to the previous screening interview and substantive asylum interview whereby the appellant acknowledged previous scars and injuries, which had predated the appellant's removal in 2015. Nor had the appellants relayed to Dr Arnold his occupational activity of farming whilst in Turkey. The judge gave a very careful attention to other report of Dr Arnold but for good reasons which have been identified in the findings above resisted placing more weight on that report. It is a matter for the judge as to the weight placed on a medical report as held in JL (medical reports -credibility) [2013] UKUT 145 and nothing suggests that the judge departed from the guidance therein.

(v) it is clearly not the case that the judge failed to address the Helen Bamber report and she gave sound reasons for rejecting the report, not least, that it was

merely a recommendation letter that the appellant obtain a medicolegal report, and, not intended to provide evidence to the tribunal. The rule 35 report was found to be incomplete and rule 35 reports must be seen in the overall context in which they are given.

(vi) the judge evidently addressed the psychological reports of both Dr Arnold and the Psychological Well-being Service but noted that separation from his wife and children had added to his current levels of distress. The judge specifically, at paragraph 73, stated that she had taken this evidence into account but clearly found it undermined by the fact that the appellant had presented himself with his psychological symptoms *post* his detention for removal from the United Kingdom. The judge at paragraph 74 notes that she has considered all the evidence including the discrepancies and, that there was nothing in the medical evidence, to suggest that the discrepancies would have been explained by the medical evidence and, further, that he was fit to attend the hearing to give oral evidence.

(vii) this ground I find to be sweeping and generic and is addressed by the responses to the other grounds raised.

(viii) the judge specifically addressed the points on the asserted Christian conversion from paragraph 76 onwards, and, it is clear that the backdrop was the previous asylum claims which were refused and the adverse credibility findings made against the appellant. The judge did consider the new evidence and claim. The judge gave sound and cogent reasons for rejecting the appellant's claim in relation to his conversion, not least his previous commitment to the Islamic faith as outlined in the findings I have set out above. Mr Chohan also argued that the judge had assumed the wrong timeline when assessing the appellants claim and that the brother had only recently been apprised of the appellant's conversion. It is clear that the judge has taken into account the claim that the brother has rejected the appellant albeit his support previously, but as made clear the rejection by the brother was found by the judge to be opportunistic and a very recent addition to his witness statement.

(ix) this ground simply does not make sense and although Mr Chohan tried to recast this ground at the hearing it is incumbent upon representatives to be clear as to the ground they set out.

(x) Mr Chohan referred to a contact order which was ignored by the judge and he argued that Article 8 was not addressed. I can see that the original written grounds of appeal did make reference to article 8 and yet the judge has concentrated on articles 2 and 3 of the ECHR. No findings were made in relation to the appellant's family life save that the appellant and his wife had separated, and the children were recorded as previously being at risk bearing in mind the previous conviction of the appellant for sexual assault. The appellant now had some supervised contact. The basis of this family life was therefore on the appellant's contact with his children. It is clear that the relationship with the wife has broken down. She did not even attend court. I also note that the skeleton argument of counsel did not address article 8, albeit that it is included in the grounds. However, it is clear as recorded by the judge

at paragraph [50] that Article 8 was specifically said to be not pursued. In the light of that representation there can be no material error of law.

21. For the reasons I give I find there is no material error of law in the judge's decision which incorporated adequately reasoned findings for dismissing the appellant's claim. The decision will stand.

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 their 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.

Signed *Helen Rimmington*
2018

Date 28th June

Upper Tribunal Judge Rimmington