IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003605

First-tier Tribunal No: PA/52740/2021
IA/07367/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 January 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

FRM (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Georget, instructed by Wimbledon Solicitors
For the Respondent: Ms Lecointe, Senior Presenting Officer

Heard at Field House on 2 December 2022

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. This order is made because the appellant is an asylum-seeker.

DECISION AND REASONS

1. The appellant is an Iraqi national of Kurdish ethnicity who was born on 20 May 1985. He appeals, with permission granted by the First-tier Tribunal, against the decision of First-tier Tribunal Judge Wilding ("the judge"). By his decision of 10 June 2022, the judge dismissed the appellant's appeal against the respondent's refusal of his protection claim.

2. The appellant's protection claim may be summarised quite shortly. He is originally from Diyalah but he moved to Halabja when he was eleven years old. He ran a clothes shop in Sulaymaniyah. In 2016, he met and fell in love with a Kurdish woman, "A". Their relationship was initially kept secret but the appellant eventually tried on two occasions to seek her family's consent to their marriage. He was rebuffed on the first occasion. After the second, he was seriously injured by her family in an attack and he spent time in hospital as a result. The appellant and A left the country for Turkey, where they married in an unofficial Islamic ceremony. They decided to travel onwards to the UK but they were separated on the journey and have not been in contact since. The appellant fears return to Iraq as A's family is politically connected via her uncle's senior position in the Peshmerga.

3. The respondent did not consider the appellant's account to be a truthful one. Nor, for the detailed reasons he gave in his decision, did the judge, who dismissed the appeal largely for that reason.

4. There were four grounds of appeal against the judge's decision:

   (i) The judge misunderstood or mischaracterised the appellant's claim in respects which were material to his credibility findings;

   (ii) The judge impermissibly relied on his own view of the plausibility of material aspects of the appellant's account;

   (iii) The judge failed to take any or any proper account of the impact which the appellant's medication might have had on his ability to recall material matters; and

   (iv) The judge impermissibly required corroboration of material aspects of the appellant's account.

5. Permission to appeal was granted by Judge Boyes, but only in relation to the first three grounds. At the outset of the hearing before me, Mr Georget confirmed that there had been no application to renew the fourth ground and that he was content only to rely on the first three.

6. Mr Georget helpfully indicated that he intended to rely on the grounds of appeal as pleaded and would be content to reply to Ms Lecointe's submissions.

7. Ms Lecointe accepted that the judge had fallen into error as contended in the first two grounds of appeal. She had checked the notes kept by the Presenting Officer who appeared before the judge and it was clear that the judge had erred as contended in ground one. Ms Lecointe also accepted that the judge's findings as to the plausibility of the appellant's account were based on his own views, rather than being grounded in the background material. She submitted that the third ground disclosed no error on the part of the judge, however, since there was no medical evidence before him as to the effect of the medication taken by the appellant. The errors disclosed by the first two grounds were immaterial, however, given the multi-faceted difficulties with the appellant's credibility identified by the judge.

8. Mr Georget responded briefly, noting that the test for materiality was whether the findings would inevitably have been the same but for the error and that it was difficult to make that assumption when, as here, an assessment of credibility is made for a variety of reasons, some of which were evidently flawed. He accepted that there was no medical evidence before the FtT or the Upper Tribunal but he noted that the judge's point at [12] was seemingly that the effect of the appellant's medication had been inconsistent; not that there had been no effect.

9. I reserved my decision.

Analysis

10. Ms Lecointe was undoubtedly correct to concede that the judge had fallen into error as suggested in the first ground. At [24], he noted that the appellant could not explain 'why the ordinary custom in Islamic marriages of having witnesses to the marriage was disposed of'. Ms Lecointe confirmed, however, that the appellant's evidence to the judge was that there were two witnesses to the marriage. This sentence therefore reflects not one but three errors on the part of the judge. Firstly, he misunderstood the appellant's claim as to the number of witnesses present. Secondly, he thought (wrongly) that the appellant had been asked to explain why there had been no witnesses. Thirdly, he thought (also wrongly) that the appellant had been unable to provide a satisfactory answer to that question. As Mr Georget noted at [5] of the grounds of appeal, it had never been the appellant's evidence that there were no witnesses, and it is a matter of concern that the judge misunderstood the evidence in that regard.

11. The second respect in which ground one reveals a misunderstanding on the part of the judge is in connection with his [28]. In that paragraph, the judge noted that the appellant had been able to raise an 'astonishingly large' amount of money by selling A's jewellery in a short space of time. As Mr Georget contends, however, the appellant never said that he had raised this enormous sum purely from the sale of A's jewellery; he had contended throughout that he was a shopkeeper and that he had also sold the shop in order to pay for their journey from Iraq. Again, this reveals an important misunderstanding on the part of the judge.

12. I am less sure that Ms Lecointe was correct to accept so readily that the judge fell into error in the manner contended in ground two but I have decided, on balance, to accept that concession. The law could not be clearer when it comes to the propriety of a judge using plausibility as a facet of their reasoning in an appeal against the refusal of international protection. A judge is not required to take at face value an account proffered by an appellant, no matter how contrary to common sense and experience it might be. What he is required to do, instead, is to look through the spectacles provided by the country information in order to assess the plausibility of the account which is proffered: Y v SSHD [2006] EWCA Civ 1223, at [25]-[27], per Keene LJ.

13. The primary difficulty with the judge's decision, when considered against that guidance from the Court of Appeal, is that it contains no reference to the background material until the judge comes to consider the possibility of the appellant obtaining a replacement civil status document, at [35]. It is clear that the judge found the appellant's account of A's life and background implausible. At [14], he doubted whether she came from a traditional, conservative home, given that she was able to go to university and to live what the judge described as a 'normal' student life. On its face, however, there is nothing inherently implausible about a Kurdish family expecting their daughter to undertake an

arranged marriage to a cousin whilst at the same time permitting her to go to university. That might be thought, in fact, to represent a traditional divide between matrimonial, 'honour-based' matters on the one hand, and educational matters on the other. The point was not as stark as the judge suggested, in my judgment, and what he was required to do, in the event that he was concerned by the point, was to consider the background material and to assess the plausibility of the account through the spectacles it provided. The absence of any reference to the background material is concerning, therefore, and I am prepared to accept the submission made by both advocates that the judge fell into error in this respect.

14. The third ground discloses no error of law. The reality of this case, as Mr Georget was constrained to accept before me, is that there was no medical evidence before the FtT. The supplementary bundle contained photocopies of two pill boxes: one for Cocodamol and one for Omeprazole. I think I can properly take judicial notice of the fact that these two common medications are respectively for pain relief and gastrointestinal complaints. There was nothing before the Tribunal to show that either medication would have had any impact on the appellant's ability to recall basic matters about his claim. Whilst the judge's treatment of the point at [12] might not have adopted the approach required by [15] of the Joint Presidential Guidance Note No 2 of 2010, I cannot see how a more compliant consideration could have yielded a different result. As I said to Mr Georget at the hearing, there was simply no evidence upon which a properly-directed judge could have concluded that the appellant's evidence or his memory had been affected by this medication.

15. Ms Lecointe submitted that the errors into which the judge had fallen were not material to the outcome of the appeal and that his decision might nevertheless be upheld. I am unable to accept that submission, essentially for the reasons given by Mr Georget. The judge's duty in a case of this nature is famously one of 'the most anxious scrutiny' and that duty is not discharged when the evidence is fundamentally misunderstood.

16. Nor is that duty discharged when the judge fails to evaluate the plausibility of the account given by reference to the country information. I do note that many of the cogent points made by the judge against the appellant are untouched by these difficulties but the relevant question, as Mr Georget submitted, is whether the judge's conclusions would inevitably have been the same were it not for the errors of law: IA (Somalia) v SSHD [2007] EWCA Civ 323, [15]. Notwithstanding the cogency of some of the remaining points taken against the appellant, I cannot accept Ms Lecointe's submission that these errors were immaterial to the outcome. Taking a step back and considering the credibility findings as a whole, I cannot be sure that the judge would have reached the same conclusion if he had not fallen into the errors described above.

17. I therefore find that the FtT's decision was vitiated by legal error and that it must be set aside in full. There will have to be a de novo hearing. Given the extent of the fact-finding required, and the likelihood that a hearing can be listed more quickly in the FtT, I shall order that the appeal is remitted to the FtT to be heard by a judge other than Judge Wilding.

Notice of Decision

The appellant's appeal is allowed. The decision of the FtT is set aside. The appeal is remitted to the FtT to be heard de novo by a different judge.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 December 2022