



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003600

First-tier Tribunal No: PA/54134/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

1st November 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

NA
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms A Sepulveda of Fountain Solicitors

For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard remotely at Field House on 23 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the decision of the First-tier Tribunal (Judge Burnett) dated 22.7.23, the appellant, an Iraqi national of Kurdish ethnicity from the IKR, has been granted

permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Mills) promulgated 4.7.22 dismissing his appeal against the respondent's decision of 18.8.21 to refuse his claim for international protection.

2. After hearing and taking into account the helpful submissions of the two legal representatives, I reserved my decision to be provided in writing, which I now do.
3. In summary, the grounds assert that the First-tier Tribunal Judge erred in the assessment of credibility and failed to consider the appellant's explanations contained within his witness statement. In particular, it is claimed that the judge failed to take into account the appellant's age, culture and personal circumstances when reaching the credibility findings, failed to provide adequate reasoning, including for the alternative finding that internal relocation was open to him.
4. In granting permission, Judge Burnett considered it arguable that when making an adverse credibility finding at [46] of the decision, the judge failed to take into account the appellant's witness statement explanation as to why he went to Turkey despite his claim to have been identified by the Turkish authorities. It was also considered arguable that at [49] of the decision the judge failed to indicate whether the appellant's explanation as to why he did not claim asylum in an EU country was accepted or rejected, or whether the explanation was found to be reasonable in light of the section 8 considerations. It was also considered arguable that the alternative finding at [51] was too short and that there was no reference to the Country Guidance of SMO within the reasons.
5. When considering the grounds, I must bear in mind that it is not an error of law for the judge to fail to set out all of the evidence or to make findings on every issue. As the judge explained at [37] of the decision, in Budhatkoki [2014] UKUT 00041 (IAC), "it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost." At [17] of the impugned decision, the judge confirmed that all of the evidence as well as the judge's detailed record of proceedings had been taken into account before findings were made. A similar statement is made at [50] of the decision. In the light of those assurances of self-direction, I have carefully considered whether the decision discloses on its face that material evidence or information was not taken into account, as claimed by the grounds supplemented by the oral submissions made before me.
6. At [46] of the decision, the judge considered as an issue which "significantly undermines the credibility of his claim," that the appellant failed to address in witness statement or oral evidence why he chose to flee to Turkey despite claiming to fear the Turkish authorities because he had been identified by their security services as having attended PKK seminars. The appellant was on notice as to this issue as the respondent had raised this as an issue at [61] of the refusal decision letter, stating that it was internally inconsistent with his claim.
7. In this regard, the evidence relied on by the grounds as not having been taken into account refers to the witness statement of 1.12.21 which explained in remarkably very brief terms that the appellant's father had arranged for an agent to guide him to the UK, but the agent took him through Turkey as part of the journey.

8. During submissions, Ms Sepulveda made some further assertions as to the evidence before the Tribunal which I found to be a gloss on that very limited evidence. For example, she suggested that the appellant travelled with and resided with the agent in Turkey and was, therefore, less likely to come to the attention of the Turkish authorities. When asked to point me to the evidence in support of this assertion, Ms Sepulveda accepted that at [12] of the witness statement the appellant stated only that it was “accommodation organised by the agent.” Furthermore, the witness statement does not specifically state that he had no choice as to route, nor that he was concerned about staying 10 days in Turkey. The grounds and the submissions made to me by Ms Sepulveda make the gloss on the very brief statement by suggesting that the appellant had no say as to what countries he travelled through, being under the direction of the agent throughout. I am not satisfied that these assertions can be read into the brief statement of fact in the appellant’s witness statement.
9. In all the circumstances, I am not satisfied that there was any error by the judge’s finding that the explanation for travel to Turkey was not addressed. As Mr Wain pointed out, at [10] of the decision the judge set out verbatim the appellant’s skeleton argument which included at subparagraph 6 the appellant’s account of travelling with the agent arranged by his father. It follows that the judge has undoubtedly taken the appellant’s explanation into account before making any findings of fact.
10. As explained above, the grounds and the submissions in support purport to read more into the witness statement than there actually is, which is little more than a statement of purported fact with no explanation for the inconsistency raised in the refusal decision, which the judge found surprising. I am satisfied that concern could have been addressed more fully before the First-tier Tribunal but was not. As stated above, nothing at all was said as to whether the appellant was concerned about travelling to and staying for a considerable number of days in Turkey. Nor, does he specifically state that he had no choice in the matter. In any event, it is clear from the decision, including between [38] and [50] of the decision, that the credibility findings were only made after taking all of the evidence in the round. Ms Sepulveda sought to draw a distinction between the words “significantly undermines the credibility of his claim” at [46] and “undermines the appellant’s credibility” at [48] of the decision. I do not accept that anything material can be read into the difference in wording. I note that there are some positive credibility findings as well as the negative and that an overall conclusion is reached. In the circumstances, I am not satisfied that this part of the first ground discloses any arguable error of law in relation to the credibility findings.
11. The remaining parts of the first ground complain of other similar alleged errors between [47] to [56] of the impugned decision. For example, at [47] the judge did not accept that there was any attempted forcible recruitment of the appellant by the PKK. Whilst the witness statement asserts at [17] that he was forced to attend the PKK seminars, and at [7] claimed that he was forced to join the PKK, the judge was entitled to point out that after attending the seminars he declined to stay and fight and was allowed to leave on each of four such occasions. I am satisfied that no error of law is disclosed by this ground, even when the appellant’s age, cultural background and personal circumstances are taken into account. The grounds in this regard ignore the rather glaring inconsistency between the claim in his witness statement that he was forced to join the PKK and his interview account that he was invited to join but refused to do so. Unarguably, the difference was of considerable significance in the credibility assessment and not explicable by matters of age, cultural background, or the like. The grounds also

ignore that at [50] the judge explained that all matters had been taken together in the round before finding that the appellant failed to provide a credible account and rejecting the claims that he faced forced PKK recruitment and that this had become known to the Turkish authorities. Unarguably, the judge was entitled to make the adverse credibility findings complained of and to find that the claim had been fabricated.

12. In relation to the s8 matters, at [49] the judge was entitled to observe that the appellant was within the EU for some 18 months without ever claiming asylum, and to find that this damaged his credibility. The grounds rely on the explanation in the asylum interview that he did not claim asylum because he was under the control of the smuggler. No other explanation was proffered. The grounds do not demonstrate that the judge ignored the explanation, rather it was woefully inadequate to amount to a reasonable explanation so as to justify not relying on the s8 provisions. In the circumstances, no properly arguable error of law arises.
13. In relation to identity documentation, the grounds complain that the appellant's evidence as to the whereabouts of his documentation had not been independently assessed and considered but rejected based on the First-tier Tribunal's adverse credibility findings. It is argued that inadequate reasoning has been provided for rejecting the appellant's claim to have lost his identification documentation. The way this was put to me in Ms Sepulveda's submissions was that if the credibility findings in relation to the other aspects of the appellant's case were flawed then this aspect of the appellant's case would also need to be revisited. I am satisfied from consideration of the findings at [54] to [56] that the judge was entitled to reject, for the reasons stated, the appellant's claim. The findings were also consistent with SMO2, as set out by the judge under the heading of Country Guidance.
14. In light of the findings as to the claim of forced recruitment, there was no risk on return but in any event at [51] the judge made the alternative findings that the appellant had failed to demonstrate that he would be unable to seek the protection of the IKR authorities against the PKK, or to relocate "to another part of the IKR away from the Turkish border where neither the PKK nor the Turkish hold sway."
15. In this regard the grounds argue that the judge failed to comply with the guidance of SMO2 to consider the reasonableness of relocation within the IKR. However, as Mr Wain submitted, the judge had already set out in detail the guidance of SMO2 and can be assumed to have taken it into account. The grounds as drafted do not demonstrate that relocation was unreasonable and do not explain in what specific regard the findings relating to internal relocation are flawed. The grounds point to the finding at [38] to [40] of the decision, where the judge unarguably took into account the background evidence as to the situation in the northern Dohuk province of the IKR, accepting that the area has long been used as a PKK base for attacks against Turkish armed forces and is the recipient of Turkish attacks and incursions against the PKK. In this regard, Ms Sepulveda argued that the First-tier Tribunal accepted that the appellant's home area was a segregated or separate region within the IKR and therefore in light of E32 and E33 of the headnote of SMO2, the findings were in error of law. It appears the argument relates to the article 15(c) risk of indiscriminate violence. However, this was specifically addressed at [52] to [53] of the impugned decision in the light of SMO2 guidance and the findings in this regard were not challenged in the grounds of appeal.
16. Unarguably, in any event, I am satisfied that the decision discloses that the judge adequately considered the reasonableness of internal relocation in the light

of the Country Guidance and the background information, which is detailed in the decision, and that the findings were open to the judge on the evidence.

17. More significantly, I also note that the grounds do not challenge the sufficiency of protection findings at all. For that reason alone, the appeal must fail. In the circumstances, I am satisfied that no material error of law is disclosed by the alternative findings.
18. In reality, the grounds as drafted attack the decision in the way deprecated by the Court of Appeal in VW (Sri Lanka) [2013] EWCA Civ 522 where at [12], LJ McCombe stated, "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact." For example, the grounds as drafted attempt to undermine the decision by asserting that the judge failed to follow the SMO2 guidance formula in relation to assessing the reasonableness of relocation, without an adequate consideration of the decision as a whole. Similarly, individual credibility findings are challenged without recognising that they were made in the round in the light of the evidence as a whole.
19. The second ground appears to be little more than makeweight by arguing that insufficient reasons have been provided for rejecting the claim under paragraph 276ADE and in the article 8 ECHR proportionality balancing assessment. These grounds are unparticularised and comprise barely four lines; they fail to specify in what way the assessments were inadequately reasoned. In her submissions, Ms Sepulveda stated only that these 'very significant obstacles' and article 8 proportionality assessments are based on flawed credibility findings. Effectively, as Mr Wain submitted, they stand or fall with the asylum claim. As I have found, nothing in the findings suggests any material error of law and thus this second ground must fail.
20. In all the circumstances, for the reasons explained above, the grounds fail to disclose any material error of law.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order for costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2023

(PA/54134/2021)