



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005259
First-tier Tribunal No:
PA/51283/2022
IA/03448/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 June 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SM
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr. P. Lawson, Senior Home Office Presenting Officer
For the Respondent: Mr. W. Khan, Counsel instructed by Fountain Solicitors

Heard at Birmingham Civil Justice Centre on 25 May 2023

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.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Howorth, (the “Judge”), promulgated on 19 September 2022, in which she allowed SM’s appeal against the Secretary of State’s decision to refuse a grant of asylum. SM is a national of Iraq who claimed asylum based on his imputed political opinion.
2. For the purposes of this decision I refer to SM as the Appellant, and to the Secretary of State as the Respondent, reflecting their positions before the First-tier Tribunal.
3. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 7 November 2022 as follows:

“As to the substantive grounds relied upon by the Respondent. It is right to observe that the Judge sets out the evidence and respective cases of both parties in some detail, including a significant number of claimed inconsistencies. However, and whilst the assessment of a witness and that of their account is a matter for the Judge (and not all aspects of the evidence need be addressed) given the number and nature of inconsistencies in this case, it is arguable that the Judge failed to provide adequate reasons for finding as he did, namely that they were minor, and that the Appellant was generally consistent. It is therefore arguable, in my view, that the Judge made a material error of law by failing to provide adequate reasons, so that the Respondent could understand the basis for the conclusions reached.”

The hearing

4. The Appellant attended the hearing. I heard submissions from Mr. Lawson and Mr. Khan. I reserved my decision.
5. Mr. Khan provided a Rule 24 response at the hearing. He said that it had been served prior to the hearing, but neither the Tribunal nor the Respondent had received a copy. I gave time to Mr. Lawson to consider it.

Error of law

6. The Respondent submitted in the grounds that the Judge had failed to provide adequate evidence-based reasons to support her finding that the discrepancies in the Appellant’s account were minor, and that his account was broadly consistent. The Appellant’s claim was based on coming to the adverse attention of the BADR organisation. The core of the Appellant’s account revolved around an incident where the electricity was cut off, and a subsequent shooting involving the Appellant. It was the account of these events that the Respondent considered to be inconsistent, as set out over two pages of her decision letter, from [16] to [26]. The main findings of the Judge are contained in three paragraphs, [29] to [31].
7. At the start of her findings, the Judge considers from where the discrepancies arise. At [25] she states:

“There are discrepancies in the Appellant’s evidence between his initial statement and all his later evidence. With the exception of the approximate date given in screening, all the Appellant’s other evidence is consistent.”

8. The Appellant did not adopt this first statement at the hearing. However, the Judge reviewed it and found that she could place weight on it. She states at [28]:

“It cannot be the case, that where a statement has been prepared and submitted, particularly with the help of legal representative and with such a declaration attached, that it can later be disregarded as not being accurate where discrepancies are highlighted. It makes for a situation where in any circumstance where the Appellant was found to give varying accounts, he could simply state that the earlier statement was not accurate. In the Appellant’s case he is still represented by the same firm, there is no statement of truth from the firm or the individual that prepared the statement, there is no evidence of any complaint being made. It is insufficient to blame the pandemic, it would be perfectly reasonable for a phone interpreter to be used and it is common practice to do so. I therefore find that the first statement should be relied upon and weight put upon it.”

9. The Judge then turns to make findings on the account as a whole. She states at [29] to [31]:

“29. Having considered the discrepancies raised by the Respondent, I find that they are minor and taking into account the level of detail and the time that has passed since these events occurred, I find that overall, the Appellant’s account is broadly consistent. I do not address each of the apparent discrepancies of the Appellant in concluding as I have above, but will highlight the key areas raised by the Respondent. The Respondent states that different accounts were given by the Appellant in respect of when the electricity at the shop was cut off (the day of the second visit of the general, or the day after). When the Appellant shot warning shots the Appellant stated that these were two in the air, an alternative occasion two at the ground and on the date of the hearing, two in the air and two on the ground. On leaving the scene of the shooting, the Appellant wither went to his brothers house or spoke to him on the phone. Differing accounts of whether he stayed with his cousins or uncle (which reasonably can be considered to be the same place) where a car from the Badr organisation was parked. I find that these discrepancies are minor and when considered in the round with the large amount of evidence provided by the Appellant in his various statements, Home Office interview and orally at the hearing his account has a ring of truth.

30. I accept the Appellant’s explanation as to the different dates given for the attack. In respect of aspects such as whether the Appellant went to see or called his brother, the Appellant has provided explanations and I found him to be credible witness.”

31. At the hearing Ms Mathe raised the implausibility of aspects of the Appellant’s account, such as how he was able to get to his gun when the General and guards were there and how he was then able to escape having been shot in the foot. The Appellant’s answers came across as plausible. It is entirely plausible, that a person shot in a high intensity situation where the wound was minor might not realise until later that he had been shot. The Appellant’s account is supported by photographs of a shot building and a scarred foot. I don’t put large amounts of weight on these photographs as it is impossible to know whether the building is that of the Appellant’s and to know the scenario that caused the marks, further the picture of the foot is in isolation, you could not know if it was the Appellant’s foot or what caused the scarring. Despite these defects of the evidence, the photographs are corroborative of the Appellant’s version of events and I do put a little weight on them.”

10. Having relied on the first statement, which is where the Judge has found that the discrepancies arise, she then finds at [29] that these discrepancies are minor. Mr. Khan submitted that the Judge was entitled to find at [29] that these inconsistencies were minor. He submitted that it “must be right” that at [29] the

Judge was referring to the inconsistencies between the Appellant's first statement and the rest of his evidence because those were the inconsistencies referred to by the Respondent in her decision.

11. However, as submitted by Mr. Lawson, I find that [29] does not just deal with the evidence in the first statement. The Judge refers to the Appellant giving three different answers to the same question, including at the hearing. Therefore, when stating that the inconsistencies were minor, it is not clear whether she also includes evidence given at the hearing, which was inconsistent with evidence in the Appellant's first statement and at the asylum interview. At [31] she deals with one of the inconsistencies relating to the shooting. However, this is the only inconsistency which she has addressed in any detail. She has listed some others at [29] but these are not all of those raised by the Respondent, and she gives no reasons as to why she considers these to be minor in the overall context of the Appellant's account.
12. The Judge also finds in this paragraph that the Appellant's account is "broadly consistent". However, she gives no reasons for this finding. At the end of the paragraph she states that she has taken into account the "large amount of evidence provided by the Appellant in his various statements, Home Office interview and orally at the hearing", but in the same paragraph she has referred to discrepancies in this evidence. She has stated that the discrepancies are minor when compared to the "large amount" of evidence provided, but she has not made any findings about this "large amount" of evidence. It is not clear why she has found that this "large amount" of evidence has "a ring of truth".
13. It was submitted in the Rule 24 response that it was not necessary for the Judge to "set out in detail the consistent evidence", but she has not referred to it at all, let alone set it out in any detail. It is difficult to know from the decision what the account is that she has found consistent and to have a ring of truth. She states that she highlights the "key areas" raised by the Respondent, but she has not addressed the areas set out in the decision. I find that it is not clear from [29] what evidence the Judge has accepted as she has not given adequate reasons. I find that this is an error of law.
14. In relation to [30] I find that the Judge has failed to give any reasons for why she accepted the Appellant's explanation for the different dates of the attack. At [21] of her decision the Respondent set out why this was an inconsistency which damaged the credibility of the Appellant's account. The Judge has failed to set out the explanation which she accepted or give reasons as to why she accepted it. Given that the attack is a core element of the Appellant's claim, I find that her failure to give reasons for accepting the explanation regarding when this attack took place is an error of law.
15. In relation to [32], it was submitted by Mr. Khan that, as the Appellant had been granted protection in Greece, section 8 could not apply to his behaviour there. He submitted that the Appellant's failure to claim asylum in France should not be conflated with his problems in Iraq. Mr. Lawson submitted that it was not only the failure to claim in France but at [28] of her decision the Respondent set out how the Appellant had destroyed travel documents and failed to provide a reason for doing so. Documents had then been found on him when a search was conducted. He had been granted asylum in Greece, and then failed to claim in France, which was behaviour falling under section 8.

16. The Judge simply states at [32] “the Appellant’s credibility must be damaged”. However, the first sentence of [33] is “I take into account all of the above and conclude to the relevant standard that the Appellant is a credible witness and has done enough to show that he is a refugee”. There is no reasoning given for why in one paragraph she states that his credibility must be damaged, but then immediately asserts that he is a credible witness. I find that the failure to give reasons for why she finds him to be a credible witness is an error of law.
17. I find that the Judge has failed to give adequate reasons for her findings that the discrepancies are minor, and that the Appellant’s account is broadly consistent. She has failed to give any reasons for why she accepted his explanations and found him to be a credible witness. It is not possible to establish from her decision what version of events she has accepted. I find that these errors are material as they go to the core of the Appellant’s claim.
18. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”
19. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). The Judge’s decision contains no clear findings, and therefore findings will need to be made in relation to the entirety of the Appellant’s account. I therefore consider that the extent of the fact-finding necessary means that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involves the making of material errors of law.
2. I set the decision aside. No findings are preserved.
3. The appeal is remitted to the First-tier Tribunal to be reheard de novo.
4. The appeal is not to be listed before Judge Howorth.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Case No: UI-2022-005259
First-tier Tribunal No: PA/51283/2022

3 June 2023