



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003354

First-tier Tribunal No: PA/00632/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

KAO
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk of Counsel

For the Respondent: Mr McVeetie a Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 21 September 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. The Appellant was born on 1 July 1988 and is a citizen of Iraq. His first appeal against the refusal of his protection claim was dismissed on 2 February 2018. Fresh submissions were made on various dated most recently on 14 January 2022 which led to the refusal on 21 July 2022. That refusal was considered in an appeal heard on 27 January 2023 by

First-Tier Tribunal (FtT) Judge Handler. It is against that decision that this hearing relates.

Permission to appeal

2. Permission was granted by FtT Judge Komorowski on 3 August 2023 who stated:

"2. The application discloses arguable errors of law in the following respects only:

a. For the reasons stated in the application at paras. 9-13, the judge arguably erred in what was said to be Facebook evidence from the appellant's brother. In particular, it is arguable that the "download your information" data of a third party outwith the United Kingdom is not material that is sufficiently readily available that one can reasonably expect it to be provided to support an appellant's case.

b. As stated in paragraph 14 of the application, it is arguably irrelevant what knowledge MPS had of the adverse credibility findings made in the appellant's earlier appeal, his evidence only being relevant to what he personally is said to have witnessed rather than what opinion he might have generally about the appellant or his asylum claim."

The Appellant's grounds seeking permission to appeal

3. The grounds assert that:

"9. The Appellant produced photographs said to show an attack on his brother in August 2019. At [28a] the FTTJ deals with this evidence thus:

'Mr Schwenk said that it was significant that at p29 of the appellant's bundle there was the FB [Facebook] account of the brother. Actually, the document on p29 of the appellant's bundle is described as 'Brother's FB messages translation.' It appears to me that the document at p29 is a translation of the appellant's FB account said to show messages from his brother. Even if that document was said to be the brother's FB account, that is insufficient to show to the lower standard that is what it is because it has not been clearly stated or supported by other evidence that can reasonably be expected to be readily available, such as further information about the account obtained via the 'download your information' function as referred to in XX.'

10. The Appellant respectfully submits that there are a number of problems with such reasoning. Firstly, the Appellant continues to contend that the document at p.29 of his bundle is a copy of his brother's Facebook page (the translation of which appears at p.30-31) and the FTTJ's finding to the contrary represents a mistake of fact which has arguably led to unfairness.

11. Secondly, the FTTJ places limited weight on the copy of the brother's Facebook account on the basis that there is no information from the 'download your information' function as referred to in XX (a reference to XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC)). The Appellant submits that, whilst it may be reasonable to expect an Appellant to provide this information from their own account, it is arguably impractical and unfair to expect this information to be provided about the accounts of third parties and XX does not provide any support for such a proposition.

12. The Appellant produced video evidence of what he claimed were two armed men attending his house in September 2019 because they wanted to kill him. At [29b] the FTTJ finds that these videos do not offer any significant support for the Appellant's claims. She says that *'[t]here is no evidence beyond that of the appellant and the video footage itself that this is what happened'*.

13. The Appellant submits that the above reasoning arguably applies too high a standard of proof and/or imposes a requirement for corroboration. The Appellant has provided video evidence showing the event. He has personally given evidence

describing that event. However, the FTTJ appears to reject the evidence because it has received no corroboration from a third source. The Appellant submits that this constitutes an arguable material error of law.

14. At [30] the FTTJ decides to place very limited evidential weight on the evidence of MPS. One of the reasons she gives for this is because '*MPS does not say that he is aware of the credibility findings made in the [previous determination]*'. MPS's statement dealt with his visit to the IKR and his unsuccessful attempt to negotiate a truce between the parties to the feud which is at the centre of the Appellant's claim. It is unclear what relevance MPS's knowledge of the credibility findings of FTTJ Chowdhury could have on his evidence. The Appellant respectfully submits that the determination of FTTJ Handler is arguably flawed in a material way because she has taken into account an irrelevant consideration when reaching her determination. The Appellant submits that her decision might have been different if this error had not been made,"

The First-tier Tribunal decision

4. Judge Handler made the following findings in relation to the grounds the subject of this appeal:

"28. For the following reasons I attach very limited weight to the photographs said to show the appellant's brother, injured, after an attack in August 2019.

a. The photos are presented as 13 small images. The evidence that the person on the images is the appellant's brother is limited to the evidence of the appellant. Mr Schwenk said that it was significant that at p29 of the appellant's bundle there was the FB account of the brother. Actually, the document on p29 of the appellant's bundle is described as 'Brother's FB messages translation.' It appears to me that the document at p29 is a translation of the appellant's FB account said to show messages from his brother. Even if that document was said to be the brother's FB account, that is insufficient to show to the lower standard that is what it is because it has not been clearly stated or supported by other evidence that can reasonably be expected to be readily available, such as further information about the account obtained via the 'download your information' function as referred to in XX. Therefore, there is very limited evidence about the identity of the person on those photos and I find it insufficient to show to the lower standard that it is the appellant's brother. I find therefore that the photos do not offer significant support to the appellant's claims that his brother has been attacked in 2019.

...

29. For the following reasons, I attach very limited weight to the Video Evidence.

...

b. The appellant says that the second and third videos both show the same incident from different angles and show two armed men attending his house in September 2019 because they wanted to kill him. I accept that the second and third videos show the same incident from different cameras. The videos show two men getting out of a pickup truck outside what looks like the same property as shown on the first video. The two men are each holding something and they could have been holding guns. They approach the property. They walk around briefly outside the property. One man climbs on to the tiled steps of the property and goes inside for a short period of time. The appellant says he was going into the courtyard of the house. He then goes back down the stairs and out of the entrance. The two men then get back in their pick up truck and drive off. Then immediately a number of people come out of the house into the street, coming down the stairs to the same tiled steps. The appellant says this is his mother and siblings. He says that they came out of the house asking for help in case the men came back. There is no evidence beyond that of the appellant and the video footage itself that this is what happened. The men do not appear to have attempted to force entry into the house. The appellant has not said whether or not they knocked at the door. The people said to be the appellant's family do not appear to be seeking help from any third parties when they leave the

house which is what the appellant said they were doing. Considering all of these issues and considering all matters in the round, I find that the second and third videos do not offer any significant support for the appellant's claims...

...

30. I attach very limited evidential weight to the evidence of MPS for the following reasons. MPS did not attend the hearing and therefore his evidence could not be cross examined. I note that he has provided a second witness statement to explain why he could not attend and I take that into account together with the fact that his evidence is accompanied by identification documentation. MPS says in his first witness statement that he is aware that the appellant has been fighting for his case to succeed but has not been able to do so. However, he does not say that he is aware of the credibility findings made in the PD. He does not explain how he met Rozghar's family other than saying 'Through my affiliates I managed to have a meeting with Rozghar's family'. He does not say whether the appellant told him where to find Rozghar's family. He has not explained how he satisfied himself that the people he spoke to were Rozghar's family. MPS says in his witness statement dated 11 January 2022 that the appellant requested a FB friendship from MPS 'a few months ago'. He does not give the date of his travel to Iraq when he says he visited Rozghar's family other than to say 'Recently he became aware that I am travelling to Kurdistan'. In the 2023WS the appellant says that he made contact with MPS 'at the end of 2021'. Neither MPS nor the appellant have been specific about when they made contact and the appellant has not provided reliable evidence from his FB account to show that contact. In the absence of further detail and cross examination on these aspects, I find that the evidence of MPS does not add materially to the appellant's claims."

Oral submissions

5. Regarding Ground 1, 2, and 4 ([10, 11, and 14]) of the grant application Mr Schwenk added nothing and simply repeated his written grounds.
6. Regarding Ground 3 ([12 and 13] of the grant application) he added that the Judge attached next to no weight on the video evidence. Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11 stated at [53];

"that when assessing future risk decision-makers may have to take into account a whole bundle of disparate pieces of evidence:

(1) evidence they are certain about;

(2) evidence they think is probably true;

(3) evidence to which they are willing to attach some credence, even if they could not go so far as to say it is probably true;

(4) evidence to which they are not willing to attach any credence at all."

7. The video evidence should have had at least some credence attached to it. It is irrational not to do so.
8. There were other adverse credibility findings, but these go to the core of the account and relate to new evidence, and are key to the findings of Judge Handler.
9. In response, Mr McVeetie confirmed that there was no Rule 24 notice. Regarding Ground 1 and 2 the headnote in XX states;

"7) Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person's locations of access to Facebook and full timeline of social media activities, readily available on the "Download Your Information" function of Facebook in a matter of moments, has not been disclosed.

8) It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value."

10. When considering Facebook evidence and excerpts and manipulation, XX does not distinguish between an Appellant and witnesses. That is what is here and applies as the Judge was considering the brother's Facebook account. The Judge's finding is on all fours with XX.
11. Regarding Ground 3 he submitted that the weight to attach to the evidence is a matter for the Judge. The Judge did not say she attached no weight to that evidence. The Judge found *"that the second and third videos do not offer any significant support for the appellant's claims"*. There is nothing wrong in that. It is not perverse.
12. Regarding Ground 4 he submitted that there is no challenge to the rest of the findings in [30] of the decision. The Judge found the evidence to be extremely vague. The weight to be attached was a matter for the Judge.
13. In response, Mr Schwenk submitted in relation to the Facebook evidence that Mr McVeetie gave the reason that the Judge should have given. It is an alternative set of reasons. It is not the Appellant's information to download and he cannot be criticised for it. The concern regarding the evidence of MPS is significant if not the only reason for the very limited evidential weight being attached to it.

Discussion

14. There is nothing in Ground 1. In [28] The Judge identified the messages to be *"a translation of the appellant's FB account"*. The Judge noted that that was how the Appellant's bundle described it. That is how it is described in the index to the Appellant's bundle in the First-tier Tribunal. The extract was included at page 29 of that bundle as was the translation at page 30. Even if the Judge was wrong in that, it was not material as the Judge said *"Even if that document was said to be the brother's FB account, that is insufficient to show to the lower standard that is what it is because it has not been clearly stated or supported by other evidence that can reasonably be expected to be readily available..."*. The Judge therefore considered the evidence even if it was not merely a translation.
15. There is nothing in Ground 2. XX does not delineate between Appellants and witnesses when considering Facebook evidence. The observation in relation to the *"Download Your Information"* function was in the context of

considering what weight to attach to the evidence of the Appellant's brother's Facebook account. It was merely given as an example, as stated in XX, of "*other evidence that can reasonably be expected to be readily available*". The Judge was entitled to find, in the absence of that evidence, that "*there is very limited evidence about the identity of the person on those photos and I find it insufficient to show to the lower standard that it is the appellant's brother*".

16. There is nothing in Ground 3 as the Judge gave a detailed description in [29(b)] of the video evidence. It has not been asserted that her description is inaccurate in any way. The Judge was entitled to "*find that the second and third videos do not offer any significant support for the appellant's claims.*" The Judge did therefore give the evidence some weight to the evidence. The amount of weight was a matter for her.
17. There is nothing in Ground 4. The Judge was factually accurate in stating MPS "*does not say that he is aware of the credibility findings*". It was just one of numerous reasons identified in [30] for very limited evidential weight being given to the evidence of MPS. None of the other reasons are challenged as being in any way problematic. Even if the Judge was wrong in considering that, considering the numerous other unchallenged reason, the error is immaterial.

Notice of Decision

18. The Judge made no material error of law. The decision of the First-tier Tribunal shall stand.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
24 September 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.