



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004467
UI-2021-001776
UI-2023-004656

First-tier Tribunal No: PA/52780/2020
PA/52780/2020
IA/02653/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

2nd February 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

MMKR
(ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Ms Patel
For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 13 December 2023

DECISION AND REASONS

1. The appellant is a citizen of Iraq who was born on the 7th April 1976. She appealed against the decision of the respondent, dated the 26th November 2020, to refuse her protection and human rights claims. The First-tier Tribunal, in a decision promulgated on 7 September 2023, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Permission in the First-tier Tribunal was granted on Ground 2 only:
The second ground asserts that the decision was remitted de nova but the Judge adopted the earlier reasoning from the decision that was set aside but

does not annex or reproduce those findings. He has not adequately explained his reasoning. This ground raises an arguable error of law.

3. On renewal of the application for permission, Upper Tribunal Judge Canavan granted permission on Ground 1 also. She also refused permission on Ground 3:

In an order dated 22 September 2023 First-tier Tribunal Judge Athwal granted permission to appeal in relation to the second of three grounds, but refused permission in relation to the other grounds. The appellant renewed the application to the Upper Tribunal in relation to the first and third grounds.

I acknowledge that the judge gave additional reasons for rejecting the appellant's claim to have separated from her husband in the UK relating to his assessment of her evidence at the hearing. It is difficult to assess when no copy of Judge Devlin's decision appears to be before the Upper Tribunal at the current time. However, in so far as the overall credibility of the appellant's evidence was tied up with negative findings made by a previous First-tier Tribunal judge, whose findings were adopted by Judge Kelly, and which are the subject of the second ground, it might be appropriate for the first ground to also be argued.

4. I find that the appeal should be dismissed on both grounds for the following reasons.

5. Ground 1 states:

A material aspect of the A's case was that she would be returned as a lone woman on the basis that her relationship with her husband had broken down. The Judge's reasons as to why he rejects this aspect of the A's case is unclear. The findings at paragraph 30 of the decision and reasons do not adequately explain why the Judge does not accept the evidence that A and her husband were separated as claimed. There was simply no evidence to suggest that the A would be accompanied by her husband should she be required to return to Iraq.

At [30], Judge Kelly wrote:

Having considered the evidence in detail, I have stood back and considered it in the round by weighing those features of it that tell both for and against the appellant as a credible witness of truth. I have thereby left in no real doubt that she has fabricated the entirety of her account of her reasons for leaving Iraq, the circumstances in which she claims to have lost her CSID (Iraqi identity card), and her supposed subsequent separation from her husband whilst in the UK. I also have no real doubt that she has fabricated her account of these matters for the purpose of joining and remaining with her family members in the United Kingdom.

6. It is, frankly, obvious that paragraph [30] is simply a summary and conclusion to the analysis of the credibility of the appellant's account which the judge has carried out in the preceding paragraphs. Indeed, the use of the expression 'having considered the evidence in detail, I have

stood back and considered it in the round..' makes this manifestly clear. At [28], for example, the judge gave detailed reasons for not believing the appellant's account:

For the same much the same reasons that I find it difficult to accept the appellant's claim concerning the unexplained refusal of her husband to support her account of the existence of a supposed blood feud, I also find it difficult to accept her claim that her two eldest children are not prepared to give evidence (written or oral) to support that claim. Indeed, it transpired at the hearing that she had not even asked them to do so, claiming instead to have simply accepted her husband's say-so on the matter; a husband with whom she claims no longer to be living. Moreover, this claim does not sit easily with the fact that her eldest daughter accompanied and supported her mother when she visited the neurologist, whose report I considered at paragraph 22 (above). It also transpired at the hearing that the appellant was not even claiming to have witnessed for herself the events that had led to the disappearance of her two eldest children and the killing of their uncle (the appellant's brother) whilst in the course of their return journey from Erbil. Instead, it was her account that she had remained at home whilst her brother and her two children had gone out to fetch provisions. She had started to become worried when they did not return home after two hours, only for her worst fears to be confirmed when she received a telephone call from a passer-by, who had witnessed her brother's murder and then reported it to the appellant using the first number in the contact list of her brother's mobile telephone. The appellant accepted that in such circumstances she had simply surmised that her husband's attackers had been members of the Jabouri tribe because, as she put it, "we had no other enemies". The possibility that the motive for such an attack, if it happened at all, may simply have been robbery, was not one that appeared to have occurred to her. All of this renders it all the more extraordinary that she did not seek to rely upon the evidence of her two eldest children, with whom she is not only in frequent contact but who also live in the same town as her.

7. The judge did not believe that the appellant and her husband had separated because he found that her entire account was untruthful; she had, in short, not proved any part of that account, including what she had said about her relationship with her husband.

8. Ground 2 provides:

This was an appeal which had been remitted back to the Ftt by the Upper Tribunal for a hearing de novo. The decision earlier of Jftt Devlin was set aside . 6. The Judge in this case unusually [18] adopts earlier reasoning of Jftt Devlin and importantly does not annex or reproduce those findings in his decision and reasons. It is simply impossible for the reader of the decision to discern or follow that reasoning. The Judge should have formally annexed or reproduced the earlier decision and this procedural error is arguably material.

9. Judge Kelly's decision at [18] reads:

Whilst Upper Tribunal Judge Jackson made it clear that all matters would need to be assessed by the First-tier Tribunal de novo and "in the round" [11], he also

noted, at paragraph 4, that, "...Judge [Devlin] found that most of the points taken against the appellant by the Respondent were either ill-founded or had not been made out". Having read Judge Devlin's decision, I find myself to be in entire agreement with his reasoning to this extent. I have accordingly adopted his reasoning **insofar as it assists the appellant** when assessing the appellant's overall credibility. This applies to the reasoning appearing at paragraphs 43 to 45, 46 to 48, 51 to 58, 59 to 62, 70 to 72, 73 to 75, 76 to 79, 80 to 82, 83 to 85, 86 to 92, 93 to 95, and 97 to 99, whereby Judge Devlin either rejected or placed little upon arguments that had been advanced by the respondent in paragraphs 29 to 43 of the Reasons for Refusal Letter. In the interests of brevity, I shall not reproduce that reasoning here. I nevertheless wish to record the fact that I had indicated to the parties, at the outset of the hearing, that I was minded to adopt Judge Devlin's reasoning to the this extent. I also note that Mr Scholes did not thereafter seek to persuade me to do otherwise during his closing submissions.

10. The emphasis is not mine but that that of Judge Kelly himself. It is entirely clear that the judge was aware of the dangers of adopting any part of a decision which had been set aside, hence the judge's emphasis that he only relied on those parts of Judge Devlin's decision which assisted the appellant. The appellant would have been aware of Judge Devlin's decision because it had been issued in her own appeal; it was not necessary for Judge Kelly to exhibit a copy of it to his own decision. The appellant has suffered no injustice as a consequence of Judge Kelly relying on parts of a previous decision which were favourable to her appeal. Ground 2 is not made out.
11. For the reasons I have given, the First-tier Tribunal did not err in law either for the reasons asserted in the grounds of appeal or at all. It follows that the appeal should be dismissed.

Notice of Decision

The appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 1 February 2024