



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000268

First-tier Tribunal No: PA/52598/2023
LP/02024/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 12 September 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

**JHM
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Joseph, Counsel, instructed by Barnes, Harrild and Dyer Solicitors

For the Respondent: Ms C. Newton, Senior Home Office Presenting Officer

Heard at Field House on 28 August 2024

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

Introduction

1. The appellant is a citizen of Iraq of Kurdish ethnicity, born on 1 January 1986. He arrived in the UK on 24 April 2019 via small boat and claimed asylum the same day. This application was deemed withdrawn on 28 September 2020, but a further claim was made on the 20 September 2022. The respondent refused this claim by decision dated 11 April 2023 and the appellant appealed to the First-tier Tribunal ("FTT"). By a decision promulgated on 22 October 2023 the FTT dismissed his appeal. The appellant now appeals to the Upper Tribunal with permission.
2. The hearing of this appeal took place via MS Teams. I was satisfied that all parties and the Tribunal were able effectively to communicate with one another. There were no technical difficulties.

FTT decision

3. The issues in dispute before the FTT were set out in the ASA and respondent's review and adopted by the FTT in para. 7 of its decision. They were: (i) the credibility of the appellant's claim; (ii) the risk on return as a result of the appellant's lack of documents; (iii) whether he would have to be returned through Baghdad or could return through an airport in the IKR; and (iv) whether the appellant can safely internally relocate. Article 8 was mentioned in the appellant's skeleton argument but not mentioned at the hearing before the FTT. Nonetheless the FTT dealt with it.
4. In summary, the FTT concluded that (i) the appellant's account was not credible; (ii) the appellant could redocument himself on return; (iii) he could return to an airport in the IKR; (iv) in light of the negative credibility findings, internal relocation did not arise; (v) the Appellant's removal was a proportionate interference with his Article 8 rights.
5. The FTT set out its findings from para. 14, considering the appellant's credibility from paras. 17-33. As these form the central target of the appellant's grounds of appeal, it is necessary to set them out in some detail.
6. At para.17, the FTT noted that *"the Appellant had been broadly consistent in his narrative across the full asylum interview and both statements. However, at the hearing he then added considerable and significant new evidence which had never been mentioned at any point previously. When I then consider all of the evidence in the round (full asylum interview, both statements and his oral evidence) I find that he has not been internally consistent and that this undermines the weight I can give to his evidence and his credibility."*
7. At para. 18, the FTT noted that the appellant had a responsible job, and found that he was an intelligent and able man.
8. At para.19, the FTT summarised his account: he worked *"at the tourism office, becoming aware that Mr Mina was using his position and influence within the PUK to take land which the tourism authorities had. The Appellant became aware that on one such piece of land which a contractor Mr Fayaq was building Mr Fayaq had been warned by Mr Mina to stop building and had then stopped construction. The*

Appellant then posted about this on the tourist Facebook page (not using his name), and that the same day as the Facebook post agents of Mr Mina abducted and beat him threatening him in relation to the post and that they would kill him if this happened again. Shortly after this he then fled the country."

9. In his oral evidence, the FTT noted at para. 20, the appellant provided two "new and highly significant" pieces of evidence, not mentioned previously. These related to a journalist ("J") and a co-worker ("R"). No attempt had been made to obtain evidence from them, though it would, the FTT considered, have been directly relevant to significant parts of the appellant's case.
10. The FTT addressed the evidence relating to J at paras. 21-23. J had written newspaper articles critical of the person the appellant claimed to be at risk from, Mr Mina, he had received threats from Mr Mina which had culminated in J having sought asylum in Canada. The FTT recorded the appellant's evidence that he was in contact with J via Facebook and that the appellant accepted that he could have obtained evidence from him, that their cases were similar and that this would have been useful evidence for him. He was unable to explain why he had failed to mention J earlier.
11. The FTT considered R at paras. 24-27. In the appellant's statements and asylum interview, he had explained that a Mr F had been threatened and as a result stopped working on a construction project. The appellant had not heard the threats himself, but in his oral evidence he said that R had heard Mr F telling his manager that he had been threatened and was not therefore going to work on the construction project anymore. Despite having clarified his earlier statements (which had, via misinterpretation, been recorded as Mr F having been arrested, not threatened), the appellant did not say that he knew someone who had heard the conversation between Mr F and his manager. The appellant had been a colleague of R's and knew him. He had no explanation as to why he had not sought evidence from R and he accepted that such evidence would have been helpful.
12. At para. 28, the FTT drew this together, finding that the appellant having given detailed descriptions of what he said had taken place in his asylum interview and both statements, and going to lengths to provide further detail and clarify issues, his failure to mention two significant pieces of evidence went beyond mere small error or inconsistencies. When considered in the round, the FTT found these matters affected the weight that could be given to his evidence and his credibility.
13. At paras.29-30, the FTT considered other credibility matters. The appellant had given evidence that he was unable to access his Facebook posts, as the account was set up by one of his friends and he did not know the password. He had always accessed it using facial recognition. When his phone was stolen, he had therefore lost the ability to access his account. However,
 - a. the FTT found his failure to report this theft to the police was surprising, his explanation was not reasonable, and this affected the weight to be given to the appellant's evidence and his credibility; and
 - b. when he gave evidence about J he described being in contact with J via Facebook. This meant that he does have access to Facebook and he could therefore have obtained screenshots of his former posts, which purportedly led to his previous persecution. The failure to have obtained

this evidence also affected the weight that could be given to his evidence and his credibility.

14. At paras. 31-32, the FTT considered documentary evidence produced by the appellant, namely a medical note of 18 October 2018 and two newspaper articles. The FTT considered that only limited weight could be given to the medical note and the lack of credibility found as to the core of the appellant's claim reduced the weight that could be given to the newspaper articles.
15. The grounds of appeal do not advance any grounds in relation to the other aspects of the FTT's decision, save to the extent that they are affected by the adverse credibility findings. It is accordingly not necessary to set out the FTT's reasoning in those respects.

Appeal to the Upper Tribunal

Grounds of appeal

16. As already noted, the grounds of appeal seek to challenge the FTT's findings in relation to credibility. They can, in my view, be summarised as follows:
 - a. The FTT failed to assess the consistent and detailed descriptions given by the appellant in his earlier statements and interviews;
 - b. The FTT had no regard to the wealth of supporting documentary evidence that was provided;
 - c. The FTT has confused, at paras. 20-28, an inconsistency with an omission;
 - d. The FTT has erred in finding the new pieces of evidence to be highly significant;
 - e. The FTT has erred in finding this new evidence to be inconsistent with his claim;
 - f. The FTT has focused almost exclusively on the addition of this new evidence without assessing the core of the appellant's claim.
 - g. The FTT has failed to undertake an adequate assessment of the totality of the appellant's evidence;
 - h. The FTT erred in finding as unreasonable the appellant's explanation for not having reported his phone as stolen and failed adequately to consider it;
 - i. The FTT erred in finding as unreasonable the appellant's explanation as to why he could not access his previous Facebook posts and failed adequate to consider it; and,
 - j. The adverse credibility findings are inadequately reasoned and unsustainable.
17. Permission to appeal was granted by the First-tier Tribunal Judge Chowdhury on 24 January 2024. He considered it arguable that the additional information was not inconsistent with the appellant's account and that the FTT had placed significant weight on irrelevant matters. It was also considered arguable that the FTT had had regard to irrelevant matters and made flawed findings in relation to the appellant's stolen mobile phone. Permission was granted on all grounds.
18. The respondent did not file any response to the appeal under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Analysis

19. This is an appeal in relation to the FTT's finding of facts. It is therefore important to have well in mind the following principles applicable to such appeals, helpfully distilled in Volpi v Volpi [2022] EWCA Civ 464 at [2]:

- a. an appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration;
- b. the fact that a piece of evidence is not mentioned does not of itself mean that it has been overlooked;
- c. the validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence.
- d. the weight which a trial judge gives to the evidence is pre-eminently a matter for him;
- e. an appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

20. The principles drawn together in the Senior President of Tribunal's Practice Direction on Reasons for decisions, of 4 June 2024 are also of relevance to this appeal. In the Practice Direction, the Senior President states,

"5. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost (English v Emery Reimbold [2002] EWCA Civ 605 at [16]). The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute (South Bucks v Porter [2004] UKHL 33 at [36]). They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law (Flannery v Halifax Estate Agencies Ltd [2000] 1 WLR 377 (CA). These fundamental principles apply to the tribunals as well as to the courts.

6. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved (SSHD v TC [2023] UKUT 164 (IAC), Annex para 8).

...

Judges and members in the First-tier Tribunal should expect that the Upper Tribunal will approach its own decisions on appeal in accordance with the well settled principle that appellate tribunals exercise appropriate restraint when considering a challenge to a decision based on the adequacy of reasons (TC Annex para 13). As the Court of Appeal has emphasised, a realistic and reasonably benevolent approach will be taken such that decisions under appeal will be read fairly and not hypercritically (DPP v Greenberg [2021] EWCA Civ 672 at [57]).

As an expert tribunal, the First-tier Tribunal will generally be taken to be aware of the relevant authorities within the jurisdiction being exercised, and

to be applying those cases without the need to refer to them specifically, unless it is clear from the language of the decision that they have failed to do so (TC Annex para 12; Yalcin v SSHD [2024] EWCA Civ 74 at [50-51]; Ullah v SSHD [2024] EWCA Civ 201 at [26]). The Upper Tribunal will not readily assume that a tribunal has misdirected itself merely because every step in its reasoning is not fully set out in its decision (TC, annex para 13). Thus, a challenge based on the adequacy of reasons should only succeed when the appellate body cannot understand the Tribunal's thought process in making material findings (HJ (Afghanistan) v SSHD [2017] EWCA Civ 2716; R (Iran) v SSHD [2005] EWCA Civ 982)."

21. Having set out the relevant reasoning of the FTT and the legal principles to be applied in some detail, I can deal with my conclusions relatively shortly.
22. I am afraid that I am unable to accept that the FTT has erred in the manner alleged in the grounds of appeal. As the above authorities make clear, the FTT was not required to set out what it made of every piece of evidence, and the fact that it did not do so does not indicate that it did not "assess" it or "have regard" to it. The FTT was plainly aware of the consistency of the appellant's account on earlier occasions. This was stated in terms. Likewise, the documentary evidence was mentioned and some of it specifically discussed.
23. There is in my judgment no error in the FTT's description of the appellant's new evidence given at the hearing before the FTT as "inconsistent" with that which went before, and, more importantly, no error in it considering that the giving of this new evidence for the first time at the hearing was relevant to the assessment of the appellant's credibility. The grounds seek to suggest that the FTT thought the evidence was inconsistent with the appellant's earlier account, in that he said something different, rather than additional to, that account. However, that is not in my view the meaning which the FTT intended "inconsistent" to have in this context. It is clear from a straightforward reading of the FTT's decision that it was troubled by the fact that what it considered to be important details about the case were being given for the first time in cross-examination. In that way, the appellant's account was expanded upon, and therefore not the same as, or as the FTT put it, was "inconsistent" with, what had been said before. It does not follow that the FTT considered that the content of what was said on each occasion was in conflict.
24. In any event, I do not consider that there is any error in the FTT considering that the appellant's expansion of his case, however that is described, counted against his credibility. The FTT gave rational reasons why it considered the evidence to be important and why, in effect, it would be expected that the appellant, if his account were true, would have given this evidence earlier and/or obtained evidence from R and/or J.
25. Similarly, the FTT's assessment of the reasonableness of the explanations given by the appellant as to why he did not report his phone stolen and why he could no longer access his Facebook account is one which in my judgment it was plainly entitled to make.
26. In my judgment the reasons given by the FTT are adequate and intelligible. I am in no doubt from reading the FTT's decision why it reached the conclusions that it did.

27. While I accept that the FTT has focused on the evidence that caused him concern, I do not consider that this demonstrates any error of law. Its conclusions are not rationally unsupportable.
28. It follows that this appeal must be dismissed.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and shall stand.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 September 2024