



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001830
First-tier Tribunal Nos:
PA/50166/2023
LP/01251/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE METZER

Between

KL
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms S Forey of Counsel, Middlesex Law Chambers
For the Respondent: Mr M Parvar, Presenting Officer

Heard at Field House on 18 June 2024

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. The appellant appeals against the decision of the First-tier Tribunal Judge S J Clarke ("the Judge") who in a determination dated 6 April 2024 dismissed the

appellant's appeal against her asylum, humanitarian and Article 8 European Convention on Human Rights claim.

2. Permission to appeal was granted on 25 April 2024 by a First-tier Tribunal Judge (Dainty) but permission was granted on a very narrow ground only, which is a subset of ground 1 of the grounds of appeal, namely that although the ground itself averred that the Judge failed to consider the appellant's account in light of the country evidence, including the CPIN on gangs, mapped UK considerations of inherent implausibility under Honduras, failed to consider the Tribunal had accepted the appellant's sister's claim that the appellant would also be under threat, failed to give credit for the fact that an asylum seeker may understandably give a, not entirely consistent, fragmented account. At paragraph 4 of the reasons for the decision to grant permission, the First-tier Tribunal Judge indicated that the grounds of appeal went too far in seeking to argue the case without identifying which points were made to the Judge and which points have been made for the first time in the grounds. It stated that the credibility assessment of the Judge took into account perfectly proper considerations. It is argued however that the proper credibility assessment should have referenced the available CPIN on police protection and gangs. On that narrow ground, permission was granted.
3. Before me, a preliminary point was taken on behalf of the respondent by Mr Parvar which I consider is well-founded, namely that the issue of the CPIN was never raised before the Judge. There is no evidence that it was contained within the consolidated bundle and indeed it has not even been provided before me in the Upper Tier Tribunal in the bundle for the present appeal, despite the fact that permission had been granted on that narrow ground, specifically referring to the CPIN.
4. The point is made by Mr Parvar on behalf of the respondent that the failure to provide the Judge with the relevant CPIN contravened the decision in **Lata [2023] UKUT 00163** in which the headnote makes clear that the parties were under a duty to provide the First-tier Tribunal with relevant information as to the circumstances of the case and this necessitates constructive engagement with the First-tier Tribunal to lawfully and properly exercise its role. The parties are therefore required to engage in the process of defining and narrowing the issues in dispute, being mindful of their obligations to the First-tier Tribunal.
5. There are further references in the headnote to the requirement upon the parties to ensure that issue is identified for the Judge in the first place and indeed it is stated in terms that:

"It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl through the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified."
6. In granting permission, the First-tier Tribunal Judge made clear that an important issue to identify was what was placed before the Judge.

7. On my finding, on the absence of evidence to the contrary, the relevant CPIN was not provided before the Judge and it is therefore difficult to see how he could be properly criticised for not referring directly to the CPIN in the findings that were made in the course of the decision.
8. However, I do not regard that as determining the appeal, although I do regard it as an important feature, as considered in **Lata** as being relevant to the merits of the appeal before the Upper Tribunal, which is set out at paragraph 8 of the headnote, namely “A party that fails to identify an issue before the First-tier Tribunal is unlikely to have a good ground of appeal before the Upper Tribunal”.
9. So, on that preliminary question I agree with the respondent that that makes the merits of the ground a difficult one for the appellant to pursue, but as I have indicated previously since permission was granted, and no issue was taken between the parties as to the reference to the CPIN, that does not determine the appeal, although I have indicated the CPIN should be added to the bundle before the Upper Tribunal for completeness sake.
10. The relevant passages in the CPIN are referred in the grounds of appeal drafted by previous Counsel. I wish to make clear at the outset that Ms Forey was instructed at a very late stage and therefore any observations made about the preparation of the case, both before the Judge and indeed in terms of preparation for the appeal and the documents provided for this hearing, are not a criticism of her and that she, in my judgment presented the case wholly in accordance with the basis upon which permission was granted.
11. I note that there was no skeleton argument provided for the present appeal, and reliance was placed upon the grounds of appeal.
12. With that background in mind, there are two passages referred to in the grounds of appeal quoting the CPIN that I shall refer to expressly:

“4.1.5 However, sources consider the HNP to be under-staffed and under-equipped, with high levels of corruption. There were also reports that some police have been involved in criminal activity and collaborated with gangs. Some sources suggest that due to a lack of resources many crimes are not fully investigated, and when investigations do take place they are lengthy and inefficient leading to high levels of impunity. Some people are reluctant to file complaints for fear of reprisal or retaliation from gangs and lack of confidence in state institutions”.

Further, at CPIN 14.1.5:

“The Overseas Security Advisory Council 2020 Crime and Safety Reported noted that:

‘The government lacks resources to investigate and prosecute cases; police often lack vehicles/fuel to respond to calls for assistance. Police may take hours to arrive at the scene of a violent crime or may not respond at all. As a result, criminals operate with a high degree if impunity’.”

13. It is important in determining this appeal to focus upon what genuinely remains in issue for this appeal.

14. In determining that question and looking at the question of the credibility findings in relation to the non-reporting of the threats to the police, it is necessary to look at some of the credibility findings made by the Judge, which are not open to appeal.
15. In summary, at paragraph 12 of the decision, the Judge found that the appellant was not a credible witness and her sister was not reliable. The Judge found that the appellant gave inconsistent explanations and reasons about her case. Further, at paragraph 13, the appellant gave different explanations not reporting the claimed threats to the police and at paragraph 16, the Judge found it implausible that the appellant would let her son travel to and from school by bus if she also said that they were not safe living in a gated colony. At paragraph 17, the Judge held that the sister, N, gave conflicting accounts and at paragraph 18 that she did not know who killed D (the appellant's brother-in-law) and the investigation is ongoing. At paragraph 19, the Judge held that the evidence N gave was based upon what she had been told and it was hearsay not consistent with the appellant's own case, which has its own inconsistencies as already set out and finally at paragraphs 20 and 21, the Judge held that it was implausible not only that the appellant would let her son travel to school by bus, even if they had moved to a different area because the appellant genuinely believed it was gang related. She would also have believed the gangs would know and target her and her family at home, school and travelling to school and that the appellant was not credible about her claims about what happened to her and children in Honduras and noted for completeness that it was not considered linked to the appeal of N. There were final credibility findings at paragraph 21 that the appellant had not shown she was of interest to anyone in her country, had been inconsistent about threats for information about N but then later say generally threats for money and did not find that the daughter, who was a victim of attempted kidnap, and the account was undermined by N who thought it was the son who was the child and that the account of staying with the aunt for two days or 24 days was another inconsistency.
16. Taking all those adverse credibility findings into account, I do not find that the Judge made any material error of law.
17. Setting aside the fact that the Judge was severely handicapped by not being provided with the relevant CPIN in the bundle nor were there any submissions apparently made in relation to the CPIN, I also find that given the other adverse credibility findings, it could not have been incumbent upon the Judge to refer specifically as to whether threats were made or not, as being determinative of the appeal, because the Judge did not find it was credible in relation to the underlying findings about what had occurred, in other words, the Judge did not need to make findings about *why* threats were not made if he did not accept that threats had actually been made, which appears to be clear from the credibility findings which cannot be interfered with. Further, even if the Judge were to be criticised for not making findings in relation to the non-reporting of the threats on the basis of the CPIN, I do not find it would have made any difference to the findings of the Judge given the adverse credibility findings against the appellant and N. In those circumstances, I do not find, even if there was an error of law, which for the reasons set out above I do not find, it could have been material as it would have made no difference to the ultimate outcome of the appeal.

Notice of Decision

18. For those reasons, this appeal is dismissed.

Anthony Metzger KC

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2024