IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002206

First-tier Tribunal No: PA/01504/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 December 2024

Before

UPPER TRIBUNAL JUDGE LODATO

Between

AA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Khan, Knightsbridge solicitors
For the Respondent: Mr McVeety, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 2 December 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. I have decided to make an anonymity order in these proceedings because the underlying claim involves international protection issues in that the appellant claims to fear persecution or serious harm on return to Iraq. In reaching this decision, I am mindful of the fundamental principle of open justice, but I am

satisfied, taking the appellant's case at its highest for these purposes, that the potential grave risks outweigh the rights of the public to know of his identity.

2. The appellant appeals with permission against the decision, dated 6 March 2024, of First-tier Tribunal Judge Ficklin ('the judge') to dismiss the appeal on international protection and human rights grounds.

Background

3. The procedural background and immigration history is not in dispute between the parties. The appellant claimed to have been targeted by a powerful family in Iraq after a land transaction ended in an acrimonious dispute. He further claimed to have engaged in *sur place* political activity in the UK which also put him at risk on return. Finally, he claimed that he could not access the civil documentation he would need to avoid conditions contrary to Article 3 of the ECHR.

Appeal to the First-tier Tribunal

4. The appellant appealed against the refusal of the claim. The appeal was heard by the judge on 22 February 2024 before dismissing the appeal on all grounds in a decision dated 6 March 2024. In the discussion section below, I refer to any particular parts of the decision which are relevant to the grounds of appeal.

Appeal to the Upper Tribunal

5. In a decision dated 25 May 2024, Deputy Upper Tribunal Judge Lewis granted permission for all grounds to be argued. He summarised the grounds of appeal in the following way: "Ground 1 - there was inadequate reasoning for rejecting the core of the Appellant's account; Ground 2 - the Judge had failed to assess properly the Appellant's sur place activities; Ground 3 - the reasoning in respect of 're-documentation' was 'unsafe'. Ground 3 is expressed as being contingent upon either or both Grounds 1 and 2". I agree with this synthesis of the grounds of appeal which are before me.

6. At the error of law hearing, I heard oral submissions from both parties. Mr McVeety conceded that the decision involved a material error of law in that the reasons which went to the all-important assessment of credibility were impossible to fully understand. He further accepted that the decision fell to be set aside with no findings of fact preserved. The parties were agreed that the matter ought to be remitted to the First-tier Tribunal to be decided afresh because a full and expansive fact-finding exercise was required. I indicated at the conclusion of the hearing that I would be allowing the appeal and would remit the matter to the First-tier Tribunal to be decided *de novo*.

Discussion

7. The touchstone for considering adequacy of reasoning as an error of law remains R (Iran) & Others v SSHD [2005] EWCA Civ 982. At [13]-[14] of the judgment of Brook LJ, it was emphasised that reasons must be sufficiently detailed to show the principles on which a decision was made and why the ultimate decision was reached. Reasons need not be elaborate, nor is it necessary to address each and every matter which might have had a bearing on the overall decision if those which were material to the reasoning have been articulated. In DPP Law Ltd v Paul Greenberg [2021] EWCA Civ 672, the Court of Appeal, in the context of employment proceedings, considered adequacy of

reasoning as an error of law. Popplewell LJ, stressed, at [57], the need to consider judicial reasons fairly and as a whole without being hypercritical. Restraint is required to read reasons benevolently. “Simple, clear and concise” reasoning was to be encouraged to enable to parties to broadly understand why they had won or lost. Further, it should not be assumed that an element of the evidence which was not expressly discussed was thereby left out of account. While these observations were made in the context of employment proceedings, they are of relevance in the immigration and asylum sphere because this is also a jurisdiction in which decisions are made by expert tribunals attenuated by the need to give appeals anxious scrutiny.

8. The Upper Tribunal is not bound by the respondent’s concession that the decision involved a material error of law. However, the fact that there is no dispute between the parties necessarily functions as an important factor in the assessment of whether the judge’s reasons were sufficiently clear to enable those directly affected by the decision to understand why the appeal was resolved in the way it was. Here we have the successful party frankly acknowledging that it is not entirely clear why they won. I am satisfied that the concession was properly made.

9. The credibility of the appellant’s narrative about the events which unfolded before he departed Iraq was critically important in the assessment of whether he had a well-founded fear of persecution on return. The judge’s core reasoning going to this issue is to be found at paragraphs [12] to [14] in the following terms:

> [12] *The Appellant is not credible. His account is incoherent and does not meet the lower standard of proof.*
>
> [13] *He was not consistent between the AG and the AIR about the cost of the land. There is no evidence about the type of fraud the Appellant says is common in Iraq. He was also inconsistent about whether Shaho was at the police station when the police officer tore up the sale contract.*
>
> [14] *The Appellant said that the land was 8 hours away by car, but Shaho arrived from the police station before the Appellant and his brother did. When the Appellant fled the claimed gun battle, he said that he reached his friend’s house after running for “7-8 hours”. This is impossible.*

10. The fact-finding assessment copied above begins with assertions that the appellant is not credible and that his account was incoherent. The reasoning goes on to assert that the appellant provided inconsistent accounts about the cost of the land but does not explain what those discrepancies were or why they were such as to weigh against his credibility. It is difficult to understand why an absence of country background information about this particular type of fraud might count against the appellant’s narrative evidence, and it is certainly not explained by the judge. A further inconsistency is then referred to about whether Shaho was present in the police station without any explanation as to what the differences were in the various accounts or why they weighed against his credibility. Paragraph [14] provides greater detail about an aspect of the appellant’s narrative which aroused concern, but there remain gaps in the reasoning which leave the parties in a state of uncertainty about precisely what was “impossible”. I was unable to glean from this brief paragraph whether the judge found that it was physically impossible for a human being to run continuously for 7-8 hours, or if it was impossible for a human being to reach a destination after a 7-8 journey on foot before another reached the same

destination by car. This was plainly a matter which weighed heavily on the judge in rejecting the appellant's version of events. It was therefore important for the judge to explain with sufficient reasoning what was impossible and why.

11. The combination of unsupported assertions and unreasoned findings lead me to conclude that the judge's reasons were not lawfully adequate to enable the parties to understand why the appeal was decided in the way it was.

12. Both the issues relating to the appellant's claimed *sur place* activity in the UK and his access to the necessary civil documentation on return to Iraq turned on the assessment of his underlying credibility. It follows that both parts of the decision were built on a foundation that was wrong in law and cannot stand. As I indicated at the hearing, I set aside the decision as a whole and I am not minded to preserve any findings of fact.

Disposal

13. The parties agreed that the appropriate disposal was to remit the matter to the First-tier Tribunal to decide the appeal *de novo* because a wide-ranging fact-finding process was required.

Notice of Decision

I set aside the decision of the judge because the decision involved a material error of law. I preserve no findings of fact. The appeal is to be remitted to the First-tier Tribunal to be decided *de novo* by a judge other than Judge Ficklin.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 December 2024