



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002643

First-tier Tribunal No: PA/55147/2023
LP/00372/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 December 2024

Before

UPPER TRIBUNAL JUDGE LODATO

Between

AR
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, counsel

For the Respondent: Dr Ibisi, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 6 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 because the underlying claim involves international protection issues in that the appellant claims to fear persecution or serious harm on return to Afghanistan. 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 25 February 2024, of First-tier Tribunal Judge Hillis ('the judge') to dismiss the appeal on international protection grounds.

Background

3. The procedural background is not in dispute between the parties. In brief summary, his case was that he would be at risk of persecution on return to Afghanistan on account of a blood feud which arose out of a road traffic accident and that he would be perceived as 'westernised'.

Appeal to the First-tier Tribunal

4. The appellant appealed against the refusal of the claim. The appeal was heard by the judge on 15 February 2024 before dismissing the appeal on protection grounds in a decision promulgated on 25 February 2024. In the discussion section below, I address any parts of the decision which are relevant to the grounds of appeal.

Appeal to the Upper Tribunal

5. The appellant applied for permission to appeal in reliance on the following grounds:
 - Ground 1 - the judge failed to engage or resolve one of the reasons why the appellant claimed to be at risk on return to Afghanistan, namely, the perception that he had been 'westernised' since his arrival in the UK.
 - Ground 2 - the judge unlawfully held a plausibility factor against the appellant's credibility in that he reached conclusions about the familial implications of marriage between two families that was not based upon any served evidence or country background information.
 - Ground 3 - the judge misunderstood the effect of country background information he relied upon and improperly limited the likely causes of a blood feud.
 - Ground 4 - the judge adopted a procedurally unfair approach in reaching adverse findings of fact about the appellant's claimed journey to the UK in circumstances where he was not given the opportunity to address or answer these concerns during the hearing.
6. In a decision dated 20 May 2024, Resident Judge Davidge of the First-tier Tribunal refused permission for the grounds to be argued. The application for permission was renewed to the Upper Tribunal. In a decision dated 21 June 2024, Deputy Upper Tribunal Judge Murray granted permission. In the reasons for the decision, it was stated that only grounds one and four were arguable. The following observations were made in granting permission for ground four to be argued:

[...] The Respondent did not rely on section 8 and it is clear from the RFRL, review, ASA and witness statement that there was no issue as to the plausibility of the Appellant's journey to the UK. The FTTJ makes clear adverse credibility findings at paragraph 16 in relation to the Appellant's journey to the UK and it is arguable that this was procedurally unfair.

7. At the error of law hearing, Mr Holmes suggested that the way in which the permission decision was framed meant that all four grounds were in play because the judge who granted permission did not limit permission in the part of the order which set out the notice of decision. The reasons did not operate to restrict the grant of permission without a direction to that effect (see EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 00117 (IAC)). Dr Ibsi contended that the judge's intentions were clear in the reasons but could point to no authority to support her suggested procedural approach of the reasons operating to effectively insert words into the notice of decision.
8. At the error of law hearing, I heard oral submissions from both parties going to all four grounds of appeal. I address any submissions of significance in the discussion section below.

Discussion

9. For reasons which will become clear, I will address ground four first.
10. Ground four challenges, on procedural fairness principles, the lawfulness of the conclusions the judge reached at [16] of his decision where he reached the following findings:

I find the Appellant's account of his father having raised the large sum required to send him to the UK in particular, him being detained for just over six months in Turkey and on release travelling through many countries over the following five months in Europe to be implausible. I do not find it credible and reliable that the agent his father paid in Afghanistan would have been in contact with teh [sic] Appellant again on his release. The Appellant makes no mention how of he paid the agent to bring him from the Turkey/ Greek border through Europe for a five-month period and then funding his crossing into the UK from Dunkirk by boat (witness statement at paragraph 26). If the agent only assisted him to cross from Turkey into Greece and he travelled on alone then he does not explain how he financed the car and train journeys. At paragraph 34 he states he had an agent from Nimruz to Turkey then another from Turkey to France and then another from France, presumably to the UK, arriving by boat.

11. The appellant's case was that these matters were never put to him during the hearing to address, either by the respondent or the judge in clarifying questioning. Dr Ibsi, for the respondent, did not suggest otherwise. At [7] of his decision, the judge noted that the appellant was a child when he arrived in the UK and was questioned for the purposes of his protection claim. It was further pointed out that the respondent had not taken any points arising out of s.8 of the Asylum and Immigration (treatment of Claimants, etc) Act 2004. The respondent dealt with s.8 of the 2004 Act at section eight of the reasons for refusal letter dated 31 July 2023 in the following way:

You were detained and fingerprinted in several safe countries and failed to claim asylum. Your explanation for not claiming asylum in a safe country is that you were following the instructions of your father who wanted you to come to the UK, as you have an uncle here. Given your age and maturity at the time, it is accepted that you were following the instructions your father had given you. Section 8 (4) will therefore does not apply.

12. At [20] of the decision, the judge explained that “[t]he cumulative effect of the Appellant’s account is that I conclude he is not a credible and reliable witness in the core aspects of his account”.
13. During the error of law hearing, Mr Holmes clarified that this ground was not a complaint that the judge took a s.8 point against the appellant when no such point had been taken by the respondent. Instead, the problem was said to be purely one of procedural fairness in that factors were held against the appellant about which he simply had no prior notice nor a meaningful opportunity to counter. The relevance of s.8 was that it was under this banner that questions about an appellant’s journey to the UK tend to be raised and, in this case, the firm impression was left by the reasons for refusal letter that the respondent took no issue with this dimension of his factual narrative. For the respondent’s part, Dr Ibisi reiterated that the judge had not improperly taken a s.8 point against the appellant and that this part of his reasons was merely a single piece of the fact-finding jigsaw. In relation to whether it amounted to a procedural irregularity not to give the appellant an opportunity to address the points taken at [16], Dr Ibisi advanced no meaningful submissions and simply observed that it was a matter for me to decide. This coheres with the respondent’s rule 24 response to the grounds of appeal where it was merely asserted that the judge had not erred in law in how he dealt with this aspect of the appeal.
14. The appellant’s credibility was the decisive factor which resulted in the dismissal of his appeal. Paragraph [16] of the decision was not the only basis on which he was found not to be credible, but the reasons he gave for rejecting this part of the appellant’s account clearly weighed heavily on the judge in deciding that he was not worthy of belief. To break down the findings in [16], the judge found the overall account of the arrangements made for the journey, and the events which were said to have transpired during that journey, to be implausible and lacking in detail. In view of the position adopted by the respondent in the reasons for refusal letter where no issue was taken about his description of these events and the fact that he was not questioned about these matters during the hearing, he could be forgiven for being taken by surprise by the outright rejection of how he claimed to reach the UK from Afghanistan. It simply cannot be known if the appellant might have had a satisfactory answer to the doubts expressed by the judge because he never had an opportunity to respond to these points. The hearing process is designed to give the parties a fair opportunity, in the context of adversarial proceedings, to deal with matters raised in keeping with the principal controversial issues. It was always apparent that the appellant’s credibility was squarely in issue, but he could have had no reasonable foresight that his account of how he reached the UK would be treated as a key factor weighing against his credibility. This is not to say that the judge is precluded from seeking clarification from the parties about matters which might concern him but, in such circumstances, a fair opportunity must be given to enable the parties to address these matters of concern. No such opportunity was presented here, and I am satisfied that this worked real procedural unfairness to the appellant.

15. I find that the judge's adoption of important adverse credibility factors against the appellant in circumstances where he was not given an opportunity to address them in advance was a material procedural irregularity which rendered the proceedings unfair. I allow the appeal on this ground as it amounts to a material error of law which necessitates that the decision be set aside. It would be inappropriate to preserve any findings of fact in the circumstances as it is impossible to know if any of the other findings were tainted by the those which were in legal error. As I have found that ground four succeeds, it is unnecessary to address grounds one to three.

Disposal

16. The parties were agreed that the only appropriate disposal would be to remit the matter to the First-tier Tribunal to decide the appeal *de novo* because the decision involved an error of law which rendered the overall proceedings unfair such that the appellant was deprived of a fair hearing. I agree.

Notice of Decision

I allow the appeal on the basis that ground four demonstrates that the decision involved a material error of law. I set aside the decision without preserving any findings of fact. The appeal is to be remitted to the First-tier Tribunal to be heard *de novo* by a judge other than Judge Hillis.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 December 2024