



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002922

First-tier Tribunal No: PA/62383/2023
LP/02170/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

6th December 2024

Before

UPPER TRIBUNAL JUDGE NEVILLE

Between

B M
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Sepulveda, representative
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Field House on 16 October 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

1. The appellant is an Iraqi national who arrived in the UK on 9 October 2021 at the age of 26. He made a protection claim three days later, stating that on return to Iraq he would be killed by a powerful local man who,

coming home early one evening, had found the appellant in bed with his wife (I shall call her 'B'). The man had fired at least three shots at the appellant. He managed to get away, naked but without injury. That night he stayed with a friend and discovered the next day that armed men had visited his home. He made arrangements to flee Iraq for the UK.

2. In a decision dated 13 November 2023, the respondent disbelieved the appellant's account and refused the claim. That decision was upheld on appeal by First-tier Tribunal Judge Hickey who, in a decision of 29 April 2024, found that the appellant's account was entirely fabricated. The Judge also rejected a claim that the appellant would be at risk of serious harm on return as someone with no suitable identity document that would enable him to live and travel.
3. The appellant applied for permission to appeal against the Judge's decision to the Upper Tribunal, on grounds that can be summarised as arguing that the Judge gave inadequate reasons for rejecting particular parts of the appellant's account and placed impermissibly great significance on what he saw as its implausibility.
4. On 1 August 2024 Upper Tribunal Judge Meah granted permission on all grounds, but drew particular attention to the way in which the Judge had dealt with the claim to be at risk on return due to lack of documentation.

The Judge's findings of fact

Principles

5. This is a challenge to adequacy of reasons and to findings of fact. Neither ground permits the Upper Tribunal to simply disagree with the result or the way in which it was reached. As held in *South Bucks County Council v Porter* [2004] UKHL 33, reasons must:
 36. [...] enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision.
6. In *Volpi v Volpi* [2022] EWCA Civ 464, at [2], the Court of Appeal reiterated the caution with which an appellate tribunal must approach findings of fact:
 - i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
 - ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached

a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) 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. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) 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. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) 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.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

7. The appellant asserts over-reliance by the Judge on what he considered to be plausible. In *HK v SSHD* [2006] EWCA Civ 1037, Neuberger LJ made the following well-known remarks:

27. The difficulty of the fact-finding exercise is particularly acute in asylum cases, as has been said on more than one occasion in this court - see for instance *Gheisari -v- Secretary of State* [2004] EWCA Civ 1854 at paragraphs 10 and 12 per Sedley LJ and at paragraphs 20 and 21 per Pill LJ. The standard of proof to be applied for the purpose of assessing the appellant's fear of persecution is low. The choice is not normally which of two parties to believe, but whether or not to believe the appellant. Relatively unusually for an English Judge, an Immigration Judge has an almost inquisitorial function, although he has none of the evidence-gathering or other investigatory powers of an inquisitorial Judge. That is a particularly acute problem in cases where the evidence is pretty unsatisfactory in extent, quality and presentation, which is particularly true of asylum cases. That is normally through nobody's fault: it is the nature of the beast.

28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).

29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:

“In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability.”

30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala -v- Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was "not proper to reject an applicant's account merely on the basis that it is not credible or not plausible. To say that an applicant's account is not credible is to state a conclusion" (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done "on reasonably drawn inferences and not simply on conjecture or speculation". He went on to emphasise, as did Pill LJ in *Ghaisari*, the entitlement of the fact-finder to rely "on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible". However, he accepted that "there will be cases where actions which may appear implausible if judged by...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background".

8. In *KB & AH (credibility-structured approach : Pakistan)* [2017] UKUT 491 (IAC), the Upper Tribunal held that plausibility is a valid indicator of credibility, but requires a certain degree of caution in its approach.

Consideration

9. I begin by observing that the Judge correctly referred himself to the applicable standard of proof and the need to consider all the evidence in the round before drawing an overall conclusion.
10. In the first passage criticised by Ms Sepulveda, the Judge addressed the appellant's claim that he had been able to conduct his affair with B at her home on multiple occasions: (I have removed some passages that are either irrelevant or might risk identifying the appellant)
 16. While I am cautious about making adverse findings in relation to plausibility given the different cultural context, I nonetheless consider that there are plausibility issues with the appellant's account. [...] The husband, it is asserted, is a powerful and influential man and became the leader of a powerful tribe after his

father was assassinated. He has many armed men and goes around with armed bodyguards [...]. Yet despite needing bodyguards, on the appellant's account no security was ever left at his home address and all the bodyguards would be with him when he was away from the house. [...] Not only would this lack of security be a risk for his wife and child, but also for [the husband] if others wanted to harm him on any return. Yet if the appellant is to be believed there were no guards nor, it seems, any other form of monitoring. It makes little sense [...]

11. I reject Ms Sepulveda's argument that this required the appellant to explain something that was outside his knowledge. The Judge did not treat the absence of guards at the house as a question that a credible appellant would be able to answer, rather as a feature of the account that seemed unlikely. He was accordingly entitled to afford it some very modest adverse weight in his overall assessment and cannot be seen to treat it as conclusive. He was likewise justified at [17] to find it unlikely that the appellant would be able to escape several armed men in the way he described.

12. The next criticism of the Judge's approach relates to the appellant's claim to have lost access to the Snapchat account he had used to communicate with B. The appellant's explanation was that he had forgotten all the account details and it had been set up by a friend 3 or 4 years before the incident. The Judge held as follows:

18. [...]I found that his explanation regarding the email as making little sense. Why would he not have used his own email, not least since it might assist if he has been locked out for some reason or needed to reset. On his own evidence, if he had ever lost or damaged his phone, or been locked out for some reason, he would have had no means of ever signing back in. I also found the appellant's evidence regarding this to be vague and lacking credibility. This would have been highly cogent evidence of the relationship. If his account is truthful, he could be expected to be highly motivated to retrieve the data. He arrived in the UK on 9 October 2021 [and by] the date of hearing had had 2 ½ years to seek to obtain the material. When asked in cross examination he spoke in general terms of his bad memory and someone setting it up for him and he had tried to obtain it but failed. I found his account lacked credibility and I do not accept the appellant's explanation.

13. Beyond doubt the Judge was entitled to describe the Snapchat messages as "highly cogent evidence of the relationship" and to carefully scrutinise the reasons claimed for its absence. The grounds assert first, that this paragraph is inadequately reasoned and second, that the explanation was plausible. I reject the first argument, as the appellant is clearly told why his explanation was rejected. The second argument simply disagrees with the Judge's assessment, which I find cannot be described as irrational or 'plainly wrong' such as to show any error of law. As argued by Mr Tan, it would have been obvious that detail would be required on what attempts had been made to recover the account.

14. I reach the same conclusion on two other adverse indicators relied upon by the Judge: first, the appellant's failure to identify the position in society occupied by B's husband by the time of his interview, some two years after leaving Iraq; and second, that he waited so long before contacting his family home after the incident despite the fact his family might be in danger. While caution is properly to be attached assessment based on plausibility, these were all matters that the Judge was entitled to approach as potentially ill-thought-out, rather than capable of explanation by reference to cultural and social differences.
15. The appellant's final point on credibility has given me some pause for thought. In his the appellant's asylum interview he had said that his mother had called him after the incident, but in oral evidence before the Judge had maintained that he had called his mother. The Judge afforded this inconsistency "some weight". Where evidence is given through an interpreter, it will often be dangerous to place significant reliance on differences such as this - they can often arise from mistaken translation or the respective syntax of the two statements being less definite than in English. Nonetheless, on reflection I cannot see that the Judge's overall assessment of credibility is significantly undermined. A fair reading of the decision shows that this factor bore relatively little weight in the Judge's assessment, and the relevant authorities warn against "island hopping" where a decision has been taken with regard to the whole sea of evidence.
16. Carefully reminding myself of the necessary caution when relying on plausibility as an indicator of whether something actually happened, as explained in *HK*, I consider that the Judge's assessment of credibility must stand. Rational reasons were given for finding that multiple aspects of the account were unlikely and that an unsatisfactory explanation was given for why evidence of obvious importance was not provided.

Documentation

17. This point is only raised tangentially in the grounds, and Ms Sepulveda did not develop any argument that on the Judge's findings he reached the wrong conclusion as to risk arising from the lack of a CSID. The appellant's evidence was that his CSID was with his family, but he had lost contact with them. The Judge rejected that the appellant had lost contact with his family as claimed, so they could either send his CSID to him or (if the appellant were returned to Sulaymaniyah) they could meet him with it at the airport. Given that I have upheld the Judge's credibility assessment, nothing in that approach is contrary to the country guidance in *SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 (IAC)*, or discloses any other error of law.

Disposal & anonymity

18. There being no error of law, the appeal is dismissed. I continue the anonymity order previously made. The risk of harm to the appellant upon identification if the subject matter of this decision is re-addressed in future,

and maintaining the integrity of the UK asylum system, justifies derogation from the principle of open justice.

Notice of Decision

- (i) The appeal to the Upper Tribunal is dismissed.
- (ii) The decision of the First-tier Tribunal to dismiss the appeal stands.

J Neville
Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 December 2024