Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01929/2019

THE IMMIGRATION ACTS

Heard at North Shields (Kings Court)	**Decision & Reasons Promulgated**
On 16 August 2019	**On 30 August 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

AA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person (with interpreter)
For the Respondent. Mr Diwnycz, Senior Presenting Officer

DIRECTIONS

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008
Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

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1. This is an appeal by a national of Kuwait where he was born in 1983. It is against the decision of First-tier Tribunal Judge Heap who for reasons given in her decision dated 11 April 2019 following a hearing on 28 March 2019 dismissed the appellant's appeal against the Secretary of State's decision refusing his asylum claim which had been made on 7 June 2018. The appellant had entered the United Kingdom on 24 January 2018 via a waiver visa, having had a history of previous visa grants as a visitor between 2003 and 2005.

2. The judge noted the appellant's case at paragraph [5] of her decision as follows:

> "5. The Appellant's position as set out in the Notice of Appeal which was settled by his then solicitors is that he fears a return to Kuwait on the basis of the following matters;
>
> a. That there would be a risk to his health as he was misdiagnosed in Kuwait and was not provided with adequate treatment for testicular cancer;
>
> b. That he would be at risk on the basis that he would be returning as a failed asylum seeker; and
>
> c. That he would be at risk as he is wanted for arrest as a result of a previous court warrant issued over a dispute with a rich and powerful opponent who had sued him and been awarded compensation for a car accident even though the Appellant had not been at fault."

3. The Secretary of State accepted the appellant's nationality and health problems but did not consider he would be at risk as by the appellant's own admission he had not suffered any problems of the complaints that he had made regarding the misdiagnosis. In relation to the automobile accident the judge recorded the detail of the appellant's claim as set out in the respondent's refusal decision (in which the claim was rejected as one of prosecution rather than persecution). Thereafter the judge directed herself as to the relevant law before turning to the procedure at the hearing when the appellant was unrepresented. This included having to address the appellant's request for video footage to be viewed which had been in Arabic and for which there were no translations. The judge also noted aspects of the way in which the interpreter intervened in the appellant giving evidence before setting out her findings of fact between paragraphs [29] and [36].

4. As to the health issue the judge concluded at [31]:

> "31. The first of those matters is that the Appellant is said to fear a return on the basis of his previous misdiagnosis and the need for ongoing treatment in Kuwait. As set out the Decision, the Appellant has not claimed that he has experienced any persecution or difficulties with regard to the Kuwaiti authorities as a result of the complaints that he apparently made regarding his misdiagnosis. Indeed, his evidence was that he had approached the Kuwaiti Embassy in the United Kingdom and a member of the Kuwaiti Royal family for assistance with his medical treatment which would appear to be at odds with his claim to be in fear of the Kuwaiti authorities because

> of complaints made about medical treatment. It is clear that the real issue which the Appellant has is a belief that he will not be able to access the ongoing medical treatment that he needs in Kuwait or that again that will be somehow deficient. There is, however, no evidence to that effect or anything to suggest that there are insufficient treatment options in Kuwait for the Appellant to access."

5. Thereafter the judge turned to the issue in relation to the car accident on which she reached the following conclusions at paragraph [33]:

> "33. I am not persuaded, even to the lower standard, that the Appellant has any form of warrant issued for his detention following non-payment of the sums Order to be paid by the Court given the fact that he claimed to have evidence of that but has failed at any stage to provide it. The closest that the Appellant has got to providing evidence was a document from the Kuwaiti Ministry of Justice in 2014 to put in place a travel ban if he did not pay the £26,625 dinars [sic] ordered to be paid as a result of the automobile accident. Clearly that travel ban was not enforced given that the Appellant left Kuwait using his own passport. However, even assuming that it was correct that the Appellant has some form of warrant against him, any detention or prosecution arising from that does not engage a Convention reason nor is there any evidence that any action taken by the authorities would put him at risk of serious harm."

6. At paragraph 34 the judge explained that the incident did not engage a Convention reason or that it would place the appellant at a risk of serious harm.

7. Finally, as to the risk the appellant claims that he would face as a failed asylum seeker the judge observed at paragraph [35]:

> "35. The third issue is that the Appellant says that as a failed asylum seeker he will be at risk of persecution or serious harm on a return to Kuwait. There is no evidence whatsoever submitted by the Appellant or by his solicitors at a time when they were instructed to show that he is at risk of persecution or serious harm simply by virtue of returning to Kuwait as a failed asylum seeker."

8. This led the judge to conclude that the appellant had not established a well-founded fear on Convention grounds. She turned to Article 3 and explained at paragraph [38]:

> "38. With that in mind, it is then necessary for me to consider if the return of the Appellant in those circumstances would breach the Appellant's human rights. Firstly, there is no evidence that there is an absence of medical treatment for cancer in Kuwait and, indeed, evidence supplied within the Respondent's bundle demonstrates that there is free medical treatment for all Kuwaiti nationals. The Appellant has clearly had some form of poor experience and either misdiagnosis or delay in diagnosis in Kuwait but that does not equate to an unavailability of ongoing treatment now that he has received a diagnosis. As the Decision points out, he can take with him evidence of his diagnosis and the treatment that he has been receiving and

> there is no evidence to suggest that he would not be able to receive further treatment in Kuwait. The Appellant may well be mistrustful of medical practitioners in Kuwait but that is no different to anyone in any country who has had the misfortune to experience medical negligence. That mistrust does not equate to evidence of an absence of available and sufficient medical treatment."

And within the same paragraph before concluding that there was nothing to suggest the appellant's circumstances came within the scope within the scope of *N v SSHD* [2005] UKHL 31 and *AM (Zimbabwe) v SSHD* [2018] EWCA Civ 64.

9. The grounds of appeal relied on by the appellant refers to the deterioration of human rights in Kuwait particularly the death penalty for non-violent offences had returned and was reinstated in 2017. Under Sharia law anyone not admitting guilt under oath for a crime would be judged as guilty. There was often no jury or representation for a defendant and it was submitted that this presented a risk on return.

10. In granting permission to appeal First-tier Tribunal Judge Bird explained as her reasons:

> "3. The appellant seeks permission to appeal against this decision. It is alleged that the judge made an arguable error of law in finding that an arrest warrant issued against him would not raise a protection need – paragraph 33.
>
> 4. The judge made findings on this issue which are supported by adequate reasons. The judge on the basis of these was entitled to the conclusion he came to. No arguable error of law has been made."

11. The appellant was unrepresented but assisted by a court interpreter. I explained to him the tension between the reasons given by Judge Bird and the grant of permission.

12. In *AS (Afghanistan) v SSHD* [2019] EWCA Civ 208 the Court of Appeal considered the jurisdiction of the Upper Tribunal to correct any clerical mistake or accidental slip or omission with reference to rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was common ground before the court that this rule ("…in common with slip rules applying to other jurisdictions, applies only to what I have above called "errors of expression". (per Underhill LJ at [18]).

13. The court further observed at [33]:

> "33. I note in this connection that rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 permits the correction of "any … accidental slip or omission in a decision, direction *or any document produced by it*". Whatever "decision" might cover if it stood alone, the italicised words appear to put it beyond doubt that the power extends to the written reasons for any decision. The TPC thus regarded it as desirable in that context that the slip rule should not be limited to formal decisions. It would be odd, to put it no higher, if we were to give rule 42 a construction which produced a different result in the Upper Tribunal."

Before holding at [35]:

> "35. I would for those reasons hold that the Upper Tribunal has power under rule 42 to correct clerical mistakes and other accidental slips or omissions not only in its formal decisions but in its reasons for those decisions."

14. The court referred to the Tribunal decision in *Katsonga* [2016] UKUT 00228 (IAC) but that citation was qualified in note 7 as follows:

> "Note 7 My citation of *Katsonga* should not be taken as implying approval of the proposition in the judicially-drafted headnote that "the 'Slip Rule'… cannot be used to reverse the effect of a decision", which if taken out of context may be misleading. If, say, a "not" were accidentally omitted from a declaration or injunction its correction might well reverse what would otherwise be the effect of the decision, but it is hard to see why it should for that reason be illegitimate: indeed it might be thought to be the paradigm of the kind of case for which the slip rule was required."

15. In my judgment in the light of the clear disconnect between the reasons given by Judge Bird and the decision to grant permission, it is appropriate for her to consider whether to apply the slip rule which, if applied, would mean the Upper Tribunal no longer had continuing jurisdiction.

16. Accordingly this appeal is remitted to the First-tier Tribunal for its consideration under rule 31 of the First-tier Tribunal Rules 2014.

Signed Date 22 August 2019

UTJ Dawson

Upper Tribunal Judge Dawson