Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08501/2018

THE IMMIGRATION ACTS

Heard at Glasgow
On 9th May 2019

Decision & Reasons Promulgated
On 7th June 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR A H
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Criggie of Latta and Co, Solicitors.
For the respondent: Mr A Govan, Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a national of Lebanon, born in May 1970. He arrived at Heathrow airport on 30 December 2017 with his wife [I]. Their daughter, [G], born in 2008, accompanied them. They were granted entry on foot of visit visas. Then, on 10 January 2018 the appellant made a claim for protection on the basis of political opinion.

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2. His claim was that they married in 1997. His wife was unable to conceive and in 2007 underwent fertility treatment. She then gave birth to their daughter who was born prematurely. The medical fees were significant and the appellant approached organisations for support. He said that Hezbollah were willing to pay the US$18,000 required by the American Hospital.

3. Following this, he joined Hezbollah and was assigned to security duties. He did not undertake military service on account of his age but on several occasions was asked to do so. Matters came to a head in 2017 when they wanted him to go to Syria to fight. Rather than do this he resigned. Then in October 2017 he learned from his friend that he was to be killed because of his unwillingness. Consequently he fled. Initially said he travelled to Turkey but was returned at the point of entry. Then he came to the United Kingdom.

4. The respondent refused his claim on 22 June 2018. The respondent did not accept the claim made was true. The appellant had also referred to the family's various medical issues but the respondent concluded they did not meet the high threshold applicable to remain on health grounds.

<u>The First tier Tribunal</u>

5. His appeal was heard at Glasgow on 20 September 2018 before First-tier Tribunal Judge I Ross. In a decision promulgated on 11 October 2018 it was dismissed.

6. The judge found the evidence of the appellant about Hezbollah vague and inconsistent with the objective evidence. The appellant had obtained an expert report from a Dr Fatah. That report stated that due to the conflict in Syria Hezbollah had a shorter training period for new recruits. The judge did not find it credible that the appellant would suddenly be called upon to fight if he was involved as a non-combatant with Hezbollah since 2007. The appellant had produced photographs said to be of him holding a gun. However, the judge could find no indication as to circumstances whereby they were taken.

7. The judge rejected the appellant's claim that Hezbollah would pay for his child's medical treatment. The expert could find no reported incident of Hezbollah paying medical bills as described. The amounts would be substantial for the organisation and the expert could not understand why they would spend this amount of money on someone who was not a significant figure or well connected with the organisation. It was noted that the appellant's wife is a Sunni Muslim and the judge thought it unlikely that Hezbollah would assist her.

8. The judge also referred to the appellant's claim that he travelled to Turkey on 7 November 2017 and then returned to Lebanon until 30 December 2017. An ability to remain as claimed suggested he was not at risk.

9. His credibility was also damaged by his failure to claim on arrival at Heathrow airport.

10. The judge also referred to the absence of documentation about his daughter's medical treatment.

<u>The Upper Tribunal</u>

11. Permission to appeal to the Upper Tribunal was granted on a renewed application. The application submitted that the judge erred in consideration of the assistance given by Hezbollah in respect of his daughter medical treatment. The appellant's evidence was that the hospital may have waived the charges for Hezbollah. It was pointed out there was no requirement in an asylum claim for corroborative evidence and it was argued the judge materially errors in expecting documentary evidence about the hospital charges. It was also argued that the judge erred in attaching weight when assessing the appellant's credibility to the negligible delay in claiming asylum.it was contended the judge gave in adequate reasons for rejecting the claim of the appellant and the evidence of his wife.

12. Mr Criggie argued that the judge erred in law in his reasoning and in the standard of proof applied. The 1st point raised related to requiring corroboration of the settlement of hospital bills. He also submitted the judge required a higher standard of proof than necessary.

13. The other issue he referred me to was the section 8 point taken by the judge. He said the delay amounted to around 11 days between arriving in the country and claiming protection. The appellant in his witness statement at paragraph 29 said that he had contacted the police 3 days after he had arrived who then directed him to the asylum screening unit.

14. The judge at paragraph 24 of his decision refers to the appellant's failure to claim on arrival at Heathrow airport and that the evidence of the appellant and his wife was inconsistent as to whether or not there was a conversation with the immigration official. The appellant said he had attempted to claim asylum in Turkey and was turned away. Because of his experiences the appellant said he did not claim on arrival at Heathrow. He submitted

that the delay on the appellant part was insignificant and, furthermore, he had given a reason for not clearing on arrival.

15. The 3rd ground raised related to paragraph 26. The judge recorded that he found it an incredible coincidence the appellant would speak to a friend who was a travel agent who advised him that the United Kingdom is a good place to claim asylum in. The judge suggested that the claim was manufactured and that the appellant was aware claims involving Syria might be successful. Mr Criggie suggested this was speculation by the judge and lacked sufficient reasoning.

16. The final ground advanced he felt was the strongest. I was referred to paragraph 27 were the judge did not attach weight to the evidence of the appellant's wife. His wife had submitted a statement at the hearing and he argued the judge did not give reasons for rejecting her evidence in this way. He said there was no assessment by the judge of her evidence or how she performed in relation to cross-examination. On the other hand, the judge appeared to accept her evidence that she was receiving medical treatment in the United Kingdom which was the same as that received in Lebanon. He said the judge wrongly dismissed her evidence as being purely concomitant upon the appellant's and did not look upon the merits of her evidence independently of the appellant's.

17. In response, Mr Govan said the central finding behind the decision was the rejection by the judge of the appellant's account about how he came to be involved with Hezbollah. The rejection of the account was consistent with the expert report obtained on behalf of the appellant. I was referred to paragraph 17 through to 20 where the appellant's claim was inconsistent with the objective evidence about how Hezbollah recruited. Paragraph 18 quotes from the expert report to the effect that Hezbollah's recruitment process is an arduous and thorough undertaking, lasting months. This eased with the war in Syria but this related to new recruits whereas the appellant said he had been involved since 2007.

18. I was referred paragraph 22 where the judge said that the appellant's profile did not fit with the type of individual Hezbollah would seek to recruit. The reference to documentation about the medical treatment was, he submitted, peripheral to the question as to why the appellant would be recruited. He said taken in context the reference to the production of the hospital bill was peripheral.

19. Regarding the delay in claiming I was referred to paragraph 339L of the immigration rules which provides that a failure to claim timely is a factor to be taken into account. It refers to making a claim at

the earliest possible time unless good reason for not having done so is demonstrated.

20. Regarding paragraph 26, he submitted no material error was demonstrated as the judge had looked at all the evidence in the round and rejected the underlying claim, describing it as being manufactured.

21. Regarding the evidence of the appellant’s wife, Mr Govan made the point that the judge had looked at the evidence of the round and concluded the claim was not genuine. She in effect was a dependent upon her husband’s claim.

22. In response, Mr Criggie said that the comment about his wife’s evidence at paragraph 27 had to be read with paragraph 15. He submitted the judge failed to analyse the evidence obtained at paragraph 15 but jumped to a bald dismissal at paragraph 27.

Conclusions

23. Mr Criggie has highlighted particular paragraphs in the decision in support of his challenge. It has been suggested the judge materially erred in law by reference to the paragraphs referring to his wife’s evidence; the medical bills in respect of his daughter; the requirement fight for Hezbollah; section 8 issues and the reference to the claim being manufactured. It is important however to look at the decision as a whole. The decision does not distinguish between evidence in chief in cross-examination but it seems most likely the reference is to answers given in cross-examination.

24. Paragraph 12 records the appellant stating that he had been a sales manager and owned a small phone shop which operated from his house. In the course are giving evidence he referred to his Visa application. This suggested someone of substance. It recorded previous travel to China and Turkey. There was also bank balance of €52,298.

25. His evidence was that the bank account was artificially inflated so as to facilitate his Visa application. Paragraph 41 of his statement refers to his brother supplying these funds whereas in oral evidence he said it was his nephew lived in Greece. The appellant then said it was his nephew and that the money has since been returned.

26. Paragraph 14 referred him being asked about the medical bills allegedly paid by Hezbollah. He was asked about the documentation he brought with him and it was pointed out he came here with the intention of claiming asylum. He said he had travelled to Turkey with a similar aim. These questions are against the background where his credibility is not accepted. He was asked why he did not

claim at Heathrow. His recorded answer was that this he was not aware this was possible. Later it was suggested he was not unaware it can be done at the airport but was mindful of his experiences in Turkey and therefore delayed until he was in the country. His evidence was that at Heathrow he and his wife were questioned and they said they were visiting intending to leave after 10 days.

27. According with the usual procedure, the appellant's wife would have been excluded when her husband gave evidence. She confirmed the bank statement reflected monies from the appellant's nephew. She also said they came to the United Kingdom to claim asylum. She denied any conversation with the immigration officer.

28. At paragraph 22 the immigration judge refers to the claim that Hezbollah paid his daughter's medical bills. The reference to the absence of the bill is in brackets. The judge is not suggesting by this a requirement of corroborative evidence. Rather, this reflects the questions he was asked about the bill at hearing. This is in the context of claim made where the claimed indebtedness arose out of something which he should have been able to demonstrate. His evidence was that this was a preplanned flight claim asylum. He left from home and had the opportunity to assemble his evidence.

29. Central to the appellant's claim was the account of his indebtedness which the judge rejected. That rejection was consistent with the expert evidence. It was in this context following cross-examination that the reference to the hospital bills arose. The notion that Hezbollah would be involved in this way flies in the face of the expert report commissioned on behalf of the appellant. Dr Fatah's evidence as recorded at paragraph 21 was that the amounts claimed would have been a substantial amount for the organisation. He could find no similar record. He was open to the possibility of this happening if the individual was an important figure in the organisation or well-connected: this was not the appellant situation. Furthermore, albeit judging by his subsequent Visa application, the appellant was not impecunious.

30. The appellant's claim was that his flight was precipitated by a call to arms. However his account of being taken on in the 1st place by Hezbollah was contradicted by the expert report. This referred to an arduous process which only eased in later years.

31. The reference to his wife's evidence at paragraph 27 has to be read with her evidence at paragraph 15. She was confirming that the bank account was inflated to obtain their visas. She contradicted the appellant's account by saying there was no conversation with the immigration officer at the airport. Her evidence was not central to the claim but added to the negative credibility finding. The

central claim was the one made by the appellant rather than his wife.

32. Associated with the credibility issues where the failure to claim on arrival and the account about why the appellant came to the United Kingdom.

33. The assessment of the appellant's credibility was a matter for the judge. The primary focus was upon the central claim. There was a solid foundation for rejecting the claim about financial assistance, recruitment and fighting in the expert report. The other matters really supplemented this. In conclusion, I can find no material error of law established.

Decision.

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Ross. Consequently, that decision dismissing the appellant's appeal shall stand.

Deputy Upper Tribunal Judge Farrelly

Date 05 June 2019