Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10169/2018

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision issued**
On 20th June 2019	**On 12th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

KM
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr P Harvey, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is brought against a decision by Judge of the First-tier Tribunal S Gillespie dismissing an appeal on asylum and human rights grounds.

2. The appellant is a national of Iraq. He is a lawyer. He claims to fear persecution or serious harm in IKR because he represented a man who was tortured in police custody.

3. Permission to appeal was granted principally on the ground that the Judge of the First-tier Tribunal failed to consider the evidence of an expert witness. It was also contended in the application for permission to appeal that the judge did not properly take into account the evidence of the appellant's wife; assumed without justification that judges and lawyers in the IKR would act in the same way as judges and lawyers in the UK; erred in making adverse credibility findings about the appellant's conduct in Turkey on his way to the UK; and misdirected himself when considering the possibility of internal relocation.

Submissions

4. Mr Harvey addressed me on the grounds set out in the application. For the respondent, Mr Govan acknowledged that the decision might have been clearer. The expert evidence was, however, referred to by the judge at paragraphs 15-16 of the decision. The judge accepted that the appellant had been involved in a case against the police but did not accept that proceedings were continuing. The judge referred at paragraph 49 to the witness statement by the appellant's wife. There was no material error arising from any failure properly to consider the evidence.

5. In relation to the behaviour of judges and lawyers in IKR, Mr Govan submitted that the findings made by the Judge of the First-tier Tribunal at paragraphs 46 and 50 were broader than contended in the application for permission to appeal. The judge might have speculated at paragraph 50 about the reaction of the investigating judge in IKR. Nevertheless it was pointed out at paragraph 50 that the appellant did not show how the case in IKR had progressed. There was no material error.

6. In relation to the Appellant's experiences in Turkey, Mr Govan pointed out that the appellant had had access to a significant amount of money, as referred to at paragraph 48 of the decision. The judge properly considered the judge's explanation of events in Turkey. Finally, Mr Govan submitted that the issue of internal relocation was not material as the appellant was not found to be at risk in Iraq.

Discussion

7. I regret to have to say that I have significant concerns about the way the Judge of the First-tier Tribunal made his decision in this appeal. The judge recorded at paragraph 41 that a significant concession in respect of the appellant's credibility was made on behalf of the respondent at the hearing. Nevertheless the judge then made a number of adverse credibility findings with almost no

evidence or adequate reasoning to support them. For instance, at paragraph 48 the judge found that the appellant was safe in Turkey after he left Iraq and then brought his family across Europe "without considering securing himself" in Turkey. Mr Harvey pointed out that the appellant could not seek refugee status in Turkey because of Turkey's geographical limitation on the Refugee Convention, which means that Turkey only accepts as refugees those facing persecution in Europe and offers only temporary protection to those originating outwith Europe. It is not at all clear what the judge meant by saying the appellant left Turkey "without considering securing himself". This was not an adequate basis on which to draw an adverse inference in respect of credibility.

8. The Judge of the First-tier Tribunal also drew an adverse inference from the appellant's claim that his mobile phone, containing evidence crucial to his protection claim, was taken from him by people smugglers in Turkey. At paragraph 46 the judge wrote: "I do not find it credible that a lawyer with experience in handling evidence would lose such important evidence recorded on his phone by handing it to a smuggler in Turkey." I do not know whether the judge meant that the appellant should have backed-up the evidence on his phone to another device or medium, or whether he meant that the appellant should not have handed over his phone, or both. So far as handing over his phone is concerned, the type of people he handed it to are not known for respecting the law, or indeed for respecting the property or safety of the people they seek to exploit. If the judge meant to imply that the appellant had a choice over whether to part with his phone, the evidence for this is lacking.

9. If, on the other hand, the judge meant that he should have held in another form the evidence of threats against him and his family said to have been sent to his phone, then as the application for permission to appeal points out, the judge should have taken into account the difficulties likely to be faced in general terms in gathering and securing evidence by those who may have had to flee from their country to escape persecution.

10. Both of the adverse credibility findings made by the Judge of the First-tier Tribunal in respect of events in Turkey lack an adequately reasoned foundation.

11. It is pointed out in the application for permission to appeal that in the second part of her report the expert witness concluded that the appellant had produced reliable evidence of representing a client who alleged torture by the police; that such cases against the police in IKR rarely, if ever, succeeded but complainants would face threats and coercion to make them abandon their case; and that there would be neither a sufficiency of protection for the appellant nor any prospect of internal relocation. Following the concession made on

behalf of the respondent the judge indeed accepted, at paragraph 41, that the appellant was involved in a case alleging torture of his client by the police. This, however, was only a part of the expert evidence.

12. Mr Govan submitted that the expert evidence was addressed by the judge at paragraph 16. This contains, however, no more than a very brief refence to the evidence being before the judge, although even in these few words the judge makes a mistake over the expert's gender. Simply noting that an expert report was provided was not sufficient in this appeal to show that the judge had engaged with the terms of the report, so far as material, and taken it into account in making findings and conclusions. The judge erred by omitting to have proper regard to the expert report.

13. There is a further issue over the judge's treatment of the evidence by the appellant's wife. The judge stated at paragraph 49 that her evidence showed no more than that she served refreshments to certain individuals who visited the appellant at home. It is pointed out in the application for permission to appeal that her evidence included other matters, such as a threat towards the children received by the appellant on his phone, and the circumstances in which the family fled. Because of the appellant's evidence that his phone was taken from him, his wife's evidence of what she saw on the phone was potentially material and the Judge of the First-tier Tribunal erred by not properly taking her evidence into account.

14. It was contended in the application for permission to appeal that the Judge of the First-tier Tribunal erred by making assumptions about how lawyers and judges in IKR would behave. There is some substance in this point. Furthermore, even by the standards and practices of the judiciary in the UK, a judge might feel constrained from making comments about a case in which he or she had been directly involved, particularly where those comments were to be used in evidence in another jurisdiction. Mr Govan pointed out that the judge in IKR was an investigating judge, a post which has no direct equivalent in the UK, but the point made on behalf of the appellant is not without merit.

15. Having found a number of errors in the assessment of the evidence by the Judge of the First-tier Tribunal I do not consider it necessary to consider in detail the ground of the application relating to internal relocation. To an extent this is linked to the judge's inadequate consideration of the expert report, in which internal relocation was addressed.

16. The errors made by the Judge of the First-tier Tribunal go to the heart of the credibility findings. In view of the extent of fact-finding

required to re-make the decision it is appropriate to remit the appeal to the First-tier Tribunal, in terms of Practice Statement 7.2(b), for a fresh hearing before a differently constituted tribunal with no findings preserved. The concession made on behalf of the respondent would of course stand unless withdrawn in writing in advance of the hearing.

Conclusions

17. The making of the decision of the First-tier Tribunal involved the making of an error of law.

18. The decision is set aside.

19. The appeal is remitted to the First-tier Tribunal for a fresh hearing before a differently constituted tribunal with no findings preserved.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. In order to preserve the positions of the parties until the appeal is decided I make a direction in the following terms. Unless or until a court or tribunal directs otherwise no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and the respondent. Failure to comply with the direction may give rise to contempt of court proceedings.

M E Deans
9th July 2019
Deputy Upper Tribunal Judge