



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/12816/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 14th June 2019**

**Decision & Reasons Promulgated
On 26th June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR MIRAN ABDULRAHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Rogers, I A S (Middlesbrough)

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq whose date of birth is recorded as 27th October 1997. He made application for international protection as a refugee. On 26th October 2018 a decision was made to refuse the application and the appellant appealed. The appeal was heard by Judge of the First-tier Tribunal Cope on 6th December 2018 sitting at North Shields.
2. The substance of the appellant's case as advanced in the First-tier Tribunal is set out at paragraph 17 of the Decision and Reasons of the First-tier Tribunal. In summary he formed a sexual relationship with a young woman. This was not a relationship approved of by the young woman's family. She became pregnant. Subsequently they were just

about to have sexual intercourse when the young woman's brother came to the premises where they were and realising what was occurring fired shots at the appellant who managed to escape. The appellant fled, for fear of his life.

3. There was a second element to the appellant's case based on political activity in respect of which it was his case that he had sent videos of his participation in demonstrations against the KRI Government to the young woman with whom he had had this relationship.
4. Judge Cope rejected the appeal. In short, he did not believe the appellant. He dismissed the appeal on all grounds. Not content with that decision, by Notice dated 4th March 2019 the appellant made application for permission to appeal to the Upper Tribunal. There were three grounds. The first two grounds go to the characterisation of the evidence and the third ground criticises the judge in relation to video evidence which Ms Rogers contended was in fact based upon a misunderstanding of the evidence. The point is that the judge held against the appellant the destruction of the sim card assuming that that was where the appellant was saying the video was contained when in fact it was the appellant's case that the video had been obtained from the "cloud".
5. I am very grateful to both parties for their help in this matter and particularly to Ms Rogers for the very realistic approach which she took to this appeal relying as she did simply on the grounds. The appellant, I have no doubt, was disappointed with the finding of the judge, but the test for me is not whether I would have made a different decision, that is not for the Upper Tribunal. The test for the Upper Tribunal where a challenge is made to findings of fact, and there is no dispute that this appeal is about a challenge to findings of fact, (the whole case turned on credibility), is whether the findings of the judge were open to him or her. A question I have to ask myself is was the decision against the weight of the evidence? Another question I should ask is was the decision perverse, and yet another is was the decision irrational?
6. I have read this Decision and Reasons with some care. It runs to 125 paragraphs. In my judgment the judge approached this appeal with some care. There are what I consider to be unimpeachable self-directions. At paragraph 22 for example the judge reminded himself that when considering "plausibility" that while something may seem to be implausible it does not mean that it did not happen. The judge noted that there were aspects of the appellant's case where he had been consistent about events in Iraq. He also recognised that some of what the appellant had to say was "not inconsistent with the background evidence". Though that was a factor which the judge directed himself, rightly, to which he should have regard, he was right to say that consistency in itself did not necessarily lead to a favourable finding on credibility. That is obviously right because a judge needs to look at all of the evidence.

7. I have to say that I thought the grant of permission in this case was generous. In observing that the judge's assessment of the appellant's credibility was arguably unbalanced, it occurred to me reading this Decision as a whole that what was being said in the grant was tantamount to saying that the more the judge found reason for not accepting what the appellant had to say, the more unbalanced, and so the more criticism there should be.
8. At the core of the appellant's case was the notion that this young woman was pregnant. The judge found that that was something to which the appellant should have made reference at an earlier stage than he did. That was of itself, without more, sufficient reason for the judge to reject that aspect of the appellant's case. There has to be sufficient reason for a judge to come to a view; there was. The same observation could be made with respect to the inconsistency which the judge found with respect to the appellant's contention that he took part in political activities: dealt with at paragraph 59 onwards within the Decision and Reasons. What the judge did was to test his view by reference to other aspects of the evidence. Even if those other aspects which are criticised could not of themselves have justified the decision that the judge came to, certain it was that he was entitled to have regard to them in making an overall assessment of the appellant's credibility.
9. Though I understand that the appeal was being brought on instructions, this is yet again one of those cases to which the observations of Lord Justice McCombe in **VW (Sri Lanka) [2013] EWCA Civ 522** is appropriate in which he said at paragraph 12:

"Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying that the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact".

Whilst understanding why those acting for the appellant had brought the appeal, it is an appeal with very little merit.

Notice of Decision

The appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal is affirmed.

Signed

Date: 24 June 2019



Deputy Upper Tribunal Judge Zucker