



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

Appeal Number: PA/05537/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 21 September 2020
At a remote hearing via Skype**

**Decision & Reasons
Promulgated
On 24 September 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AB

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondent: Mr Selway, Counsel

DECISION AND REASONS

Introduction

1. The appellant ('the SSHD') has appealed against a decision of the First-tier Tribunal ('FTT') Judge Hands, sent on 8 November 2019, allowing his appeal on humanitarian protection ('HP') grounds. The FTT did not accept the SSHD's submission that the respondent ('AB')

should be excluded from HP as a consequence of alleged war crimes in Libya, pursuant to Article 1F(a) of the 1951 Refugee Convention.

Background

2. AB is a citizen of Libya. His immigration history is lengthy but it suffices for the purposes of this decision to say that he applied for asylum in August 2014, with his three children (all born in the UK) and wife as his dependents.
3. The appellant was interviewed in relation to his asylum claim in 2014 and 2016. It was only after AB obtained permission to challenge the SSHD's delay in making a decision regarding his asylum claim on 16 May 2019, that the asylum claim was refused on 30 May 2019. This concluded that there were serious reasons for considering that as a member of the Revolutionary Committee, AM played a significant and substantial role in crimes against humanity. This conclusion largely turned upon AM's answers in the 2016 interview.
4. The FTT noted at [14] that the issue in dispute between the parties was whether AM should be excluded from international protection status by reason of his role as a member of the Revolutionary Committee. The FTT rejected the SSHD's submission that the 2016 interview contained reliable evidence to support Article 1F exclusion. Having accepted that AM would come to serious harm in Libya in the light of the relevant country guidance, the FTT allowed his appeal on HP grounds.

Appeal to the Upper Tribunal ('UT')

5. The SSHD applied for permission to appeal against the FTT's decision in three grounds of appeal.
 - (i) The FTT's approach to the 2016 interview was inadequately reasoned and perverse.
 - (ii) The FTT erred in law in giving weight to the appellant's demeanour when accepting his explanations.
 - (iii) When assessing A's claim to have avoided any adverse facilitation of ill-treatment during his 16-year membership of the Revolutionary Committee, the FTT failed to consider this in the context of the country background evidence.
6. UT Judge Kekic granted permission to appeal in a decision dated 23 January 2020 observing that whilst it may be that the SSHD's assertions and objections amount ultimately to nothing more than disagreement, the grounds merit further consideration. In a note and directions dated 6 July 2020, UT Judge Pickup noted that the SSHD merely relied upon her written grounds of appeal and AB relied upon

a rule 24 notice, but considered that the UT would benefit from oral submissions at a hearing. The matter was therefore listed as a remote hearing before me.

7. At the beginning of the hearing before me Mrs Pettersen agreed with my summary of the grounds of appeal set out above and made brief oral submissions in support of these. Mr Selway relied upon his rule 24 notice. Although it was sent back in March, it was not on the Tribunal file and was emailed to both myself and Mrs Pettersen. Mrs Pettersen was given time to consider this and she made brief submissions in response to these and Mr Selway's oral submissions.
8. At the end of the hearing both representatives confirmed that the remote hearing had been conducted fairly and they had no issues of concern. After hearing from both representatives, I reserved my decision, which I now provide with reasons.

Error of law discussion

Ground 1 - 2016 interview

9. As Mrs Pettersen acknowledged, ground 1 turns on the FTT's approach to the 2016 interview. The SSHD criticised this in three respects which I address in turn below. Before doing so it is important to note that the FTT was aware of the competing submissions regarding this interview, having set those out in a comprehensive and careful manner at [15] to [22]. The judge also made it clear at [23] that she read the 2016 interview (which contained over 500 questions and answers, recorded over the course of four hours, set out over 32 pages of closely spaced typing) very carefully. At [24] the FTT noted that the transcript of the interview was confused and confusing in many parts including the poor use of English. The FTT was clearly prepared to accept AB's evidence that at the time in order to obtain employment and get ahead in Libyan society he had to become a member of the Revolutionary Committee as consistent with the country background evidence - see [25] to [27]. However, the FTT was still obliged to reconcile on the one hand, AB's evidence in his witness statements and his 2014 interview that he did not pass on information regarding dissidents, with on the other hand, several aspects of the 2016 interview that suggested the opposite.
10. Significantly, the FTT was satisfied that the interview contained inconsistencies, contradictions and confusing statements and particularised examples of this at [28] - see in particular [28(a) to (m)] The FTT expressly noted at [28(k)] that AB provided apparently contradictory evidence about his role, yet the interview did not seek to clarify this when such probing was necessary, before the SSHD could properly accept those answers implicating AB and the answers containing clear denials which could not.

11. It is in these circumstances, that the FTT was entitled to take into account AM's claim that some of the confusion within the 2016 interview, emerged from his failure to explain himself as clearly as he wished because English was his second language. The judge was fully aware of AB's experience of studying and teaching English and expressly directed herself to this at [23]. The FTT was entitled to find that notwithstanding his background, AB still required assistance when using English and did so from time to time during the course of the FTT hearing. Whatever his expertise and experience of English, it remained his second language. It is widely accepted that when providing answers to difficult questions in a formal environment, it can be difficult to use a language that is anything other than the person's first language - see the Equal Treatment Bench Book, at Chapter 8 at [73] to [74]. The judge was entitled to observe that she was satisfied that with the use of the court interpreter from time to time, AB fully understood the proceedings. It was open to the judge to contrast this with AB not using the interview interpreter and becoming confused at times. In any event, it is noteworthy that the FTT did not conclude this factor to be determinative of the interview being unfair. Rather it was with "*this in mind*" that the FTT considered the substance of the interview. As set out above, the substantive assessment of the 2016 interview was comprehensive and particularised. The SSHD has not sought to challenge any of the particularised findings at [28]. Instead, in the grounds of appeal the SSHD focussed her criticism upon the FTT's observations as to procedural requirements.
12. At [24] the FTT noted that there was little time (under 4 hours) for AB to give clear answers to over 500 questions. Although this has not been as clearly expressed as it might have been, it is tolerably clear, when the decision is read as a whole, that the FTT was concerned that the questioning did not seek to resolve some of the confusion and contradictions apparent in the lengthy answers. The FTT's observations in this regard do not give rise to a material error of law.
13. The SSHD has submitted that the FTT's finding that the 2016 interview was an unfair one because the serious allegation that AB was a war criminal, was not made in advance, is perverse. It is important to note the FTT's comments in this regard in context. The FTT was already concerned that the way in which the questions were put and the failure to resolve contradictions, rendered parts of the 2016 interview unreliable - see [28] and [30]. The FTT was also clearly concerned that AB had already been interviewed in 2014 and considered that in the circumstances of this particular case it would have been more helpful for him to be told that one of the purposes of the second interview was to explore the possibility that his role in the Revolutionary Committee was such that he should be excluded from international protection - see [32]. Here, the FTT also observed that AB was not specifically asked about his own individual involvement with the Revolutionary Committee. The FTT was not suggesting that

there is any general duty to give a warning where exclusion is considered. The FTT merely made observations that a warning before and during this interview would have been helpful in eliciting clear responses, in the particular circumstances of this case – see [34].

14. I asked Mrs Pettersen if the SSHD had any policy guidance on the correct approach to follow when conducting interviews, where the possibility of exclusion was being considered. She did not understand there to be any. This is surprising given the seriousness of the allegation for the individual and the need for clear evidence over and above suspicion or mere belief, following individualised examination – see Al-Sirri v SSHD [2012] UKSC 54 and Al-Sirri (Asylum – Exclusion – Article 1F(c)) [2016] UKUT 00448 (IAC). I am aware that there is international guidance from EASO and the UNHCR but neither representative took me to this, and I therefore say no more about it.

Ground 2 - demeanour

15. Mrs Pettersen submitted that the FTT was required to go beyond the appellant's demeanour when reasoning why his evidence was considered credible. This fails to acknowledge the role that "general demeanour" played in [30]. The consideration of AB's demeanour in this paragraph is not a significant or 'stand out' matter. I do not accept, as the SSHD submits, that the Judge relied on demeanour alone "as rebuttal for his previous inconsistent account". The use of that simple phrase is not a material error of law. The FTT has not focused upon AB's demeanour but has rather explained that it was the content of the appellant's written and oral evidence together with his general demeanour when giving that evidence, that persuaded the FTT to regard aspect of the 2016 interview to be unreliable. I note that AB's rebuttal witness statement is very detailed indeed and particularises why many of the 2016 interview responses are unreliable.
16. When the decision is read as a whole, the FTT's findings are not predicated upon the impression made by AB at the hearing. Rather, the FTT accepted the range of the evidence relied upon by AB to support the proposition that aspects of his 2016 interview, as relied upon by the SSHD to displace the burden of proof upon her, were unreliable.

Ground 3 - country background evidence

17. Mrs Pettersen clarified that it was not the SSHD's position that every member of the Revolutionary Committee met the requisite threshold to be subject to exclusion. Rather there was sufficient evidence to exclude this particular individual. The difficulty with this submission is that it relies upon evidence from the 2016 interview that the FTT regarded to be unreliable. The FTT was clearly aware of and indeed accepted that the Revolutionary Committee did what the SSHD stated

they did and AB was a member for a very lengthy period – see [30]. Notwithstanding this, it was open to the FTT to conclude that on the evidence available and for the reasons provided, AB could not be held individually responsible in the manner alleged by the SSHD.

Conclusion

18. It follows that the grounds of appeal relied upon by Mrs Pettersen do not identify a material error of law.

Notice of decision

19. The FTT decision does not contain an error of law and I do not set it aside.

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.

Signed: UTJ Melanie Plimmer
Upper Tribunal Judge Plimmer

Dated:
22 September 2020