Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: PA/05624/2019 (P)

THE IMMIGRATION ACTS

DECIDED UNDER RULE 34

Decision & Reasons Promulgated

On 21 July 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

AA

(Anonymity Direction Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. *Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the Appellant. This prohibition applies to, amongst others, all parties.*

2. The appellant, a national of Iraq and of Kurdish ethnicity, has appealed to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 9.8.19, dismissing his appeal against the respondent's decision of 31.5.19 rejecting his claim for international protection.

3. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 6.9.19. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Owens granted permission on 27.1.20, being "*just persuaded that the judge arguably erred at paragraph [26] in asserting that there was a contradiction between the evidence of the witness and of the appellant, when the witness clearly referred to the appellant being 'sent off' until he could work again which was consistent with the appellant's evidence. The negative credibility findings are arguably material to an assessment of the risk to the appellant on return to the IKR. Although some of the other grounds are weaker all grounds may be argued*."

4. The appeal had been originally listed for hearing in Edinburgh on 30.4.20, a date which had to be vacated as a result of the COVID-19 pandemic. On 22.4.20, the Upper Tribunal issued directions proposing that the error of law issue should be decided on the papers without a hearing and providing for further written submissions.

5. In response to those directions, on 4.5.20 the Upper Tribunal received the appellant's 'Note of Argument for the Appellant'. The respondent's response to the appellant's grounds, drafted by Mr Tufan, was received on 15.5.20. Finally, on 18.5.20 the Upper Tribunal received the 'Appellant's response to home office submissions,' which objected to admission of the late-submitted submissions of the respondent. Given that there is no apparent prejudice to the appellant and given the difficulties caused by the COVID-19 pandemic, I admit all submissions.

6. Having had regard to the Senior President of Tribunals' Practice Direction, *Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal,* to the *UTIAC Presidential Guidance Note No 1 of 2020*, *Arrangements during the COVID-19 pandemic,* and to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), and to the views expressed by the parties, neither of whom objects to the error of law issue being decided without a hearing, I am satisfied that it is appropriate to determine the appeal on the papers without a hearing and on the basis of the written submissions summarised above. I do so because I am satisfied that the parties have had full opportunity to make full,

thorough and detailed submissions on the error of law issue, all of which enable me to determine the error of law issue without a hearing. I, therefore, share the view that a hearing is not necessary. Accordingly, pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I proceed to make the relevant decisions without a hearing. In doing so, I confirm that I have carefully considered the impugned decision of the First-tier Tribunal in the light of the grounds and all written submissions.

7. The core of the appellant's factual claim is that he will be at risk on return because he was falsely accused of embezzlement by his employer and threatened with death if he failed to protect his employer by taking responsibility for a crime he did not commit.

8. For the reasons set out in the decision, the First-tier Tribunal did not find the appellant's factual claim plausible or credible and at [34] found the late-produced alleged arrest warrant unreliable. At [35] the judge noted that the appellant's representative was not able to identify what refugee ground was being relied on. The judge concluded that if the appellant feared return to Iraq because of an allegation that he had embezzled money, this would be a fear of prosecution, not persecution. However, the judge did not accept that the appellant left Iraq in the circumstances he claimed; there was no well-founded fear of return for any Convention reason. Neither did the judge accept that there was a real risk of serious harm so as to qualify for humanitarian protection.

9. The grounds relied on are as follows:

a. That the First-tier Tribunal erred in assessment of the evidence generally and in particular the arrest warrant and supporting witness statements;

b. Provided inadequate reasons for the finding at [21] that the appellant's claim that he was being monitored was speculation; and for being not satisfied that embezzlement by Mr Chalak would reflect badly on the station founder, Hero Khan;

c. Took an erroneous approach at [23] in criticising the appellant's evidence as to why Mr Chalak would not have taken action against him sooner than he did. It is asserted that the Tribunal re-characterised the evidence based on its own perception of reasonability.

10. There is no merit in the claim that the judge failed to assess the evidence in the round. The appellant argues that at [17] of the decision the judge arrived at the adverse credibility findings before

surveying all of the evidence. This ground is entirely misconceived and arises from either a misunderstanding or misreading of the decision. At [16], the judge made clear that all of the evidence before the Tribunal, both oral and documentary, had been considered in the making of the decision. At [17] it is explained that applying the lower standard of proof the judge was not satisfied that the appellant had demonstrated that he has a well-founded fear of persecution for a Convention ground "for the forgoing reasons." It may be that the judge would have been better advised to have used "following" rather than "forgoing" but it is perfectly obvious to any reader that the reasoning supporting the conclusion is set out in the subsequent paragraphs of the decision. It cannot be that the judge was referring to reasons previously explained, as [15] of the decision comprised an unchallenged summary of the appellant's evidence.

11. Neither was there any error in the judge treatment of the arrest warrant. It should be borne in mind that the arrest warrant appeared for the first time in a supplementary bundle presented immediately prior to the hearing. It had been sent by fax after closure of office hours on 24.7.19 for a hearing taking place the following morning. Effectively, the respondent was ambushed at the hearing by the production of the warrant. The judge adjourned to allow the respondent's representative to read the documents and, if necessary, take instructions. After the short adjournment, the Home Office Presenting Officer returned to court to state that it would be very unlikely that the respondent would be able to carry out any verification checks on the arrest warrant and, therefore, did not seek an adjournment.

12. It is clear from the decision that the judge gave careful consideration to the warrant, noting its limitations. For example, at [29] the judge observed that the appellant did not introduce any background evidence as to such documents in Iraq, so the judge had nothing to compare it with. Neither was there any expert evidence to support the reliability of the document. The Presenting Officer made clear that he did not accept the genuineness of the warrant. From [31] the judge made a series of observations about the document, noting that much of the spaces providing for detail had been left blank. It was noted at [32] that the document was issued to a wide section of society. The judge noted the country background evidence placed before the Tribunal indicated that the effectiveness of law enforcement in the IKR was higher than south and central Iraq. At [34] the judge was not persuaded that that a jurisdiction operating effective law enforcement would be so considered if it produced arrest warrants containing such sparse

detail. The judge found this spare detail implausible and concluded it could not be relied on.

13. The appellant's grounds and submissions are to the effect that where the respondent has failed to carry out verification checks on such a document, it may not be impugned. Apart from it being astonishing that the respondent should be criticised for not verifying a document with which it was ambushed at the hearing, the submission is a misconstruction of the case law relied on. PJ (Sri Lanka) v SSHD [2015] held at [29] that:

> *"… the jurisprudence referred to above does no more than indicate that the circumstances of particular cases may exceptionally necessitate an element of investigation by the national authorities, in order to provide effective protection against mistreatment under article 3 ECHR. It is important to stress, however, that this step will frequently not be feasible or it may be unjustified or disproportionate. In Tanveer Ahmed the court highlighted the cost and logistical difficulties that may be involved, for instance because of the number of documents submitted by some asylum claimants. The enquiries may put the applicant or his family at risk, they may be impossible to undertake because of the prevailing local situation or they may place the United Kingdom authorities in the difficult position of making covert local enquiries without the permission of the relevant authorities. Furthermore, given the uncertainties that frequently remain following attempts to establish the reliability of documents, if the outcome of any enquiry is likely to be inconclusive this is a highly relevant factor. As the court in Tanveer Ahmed observed, documents should not be viewed in isolation and the evidence needs to be considered in its entirety."*

14. Simply because a document is potentially capable of being verified does not mean that the respondent has an obligation to take this step. Instead, depending on the particular facts of the case, it may be possible and necessary to make an enquiry in order to verify the authenticity and reliability of a document, when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see Singh v Belgium [101] - [105]). There is no material difference in approach between the decisions in Tanveer Ahmed and Singh v Belgium, in that in the latter case the court simply addressed one of the exceptional situations when national authorities should undertake a process of verification.

15. Further, courts are not required to order the Secretary of State to investigate particular areas of evidence or otherwise to direct her enquiries. Instead, on an appeal from a decision of the Secretary of State it is for the court to decide whether there was an obligation on her to undertake particular enquiries, and if the court concludes this requirement existed, it will resolve whether the Secretary of State sustainably discharged her obligation (see NA (UT rule 45: Singh V Belgium) [2014] UKUT 00205 IAC). If court finds there was such an obligation and that it was not discharged, it must assess the consequences for the case.

16. I am not satisfied that there was any obligation or requirement on the respondent to take steps to verify the arrest warrant, nor on the Tribunal to require it. It was fairly obvious that seeking to verify an Iraqi arrest warrant in Iraq was unlikely to be feasible and the Presenting Officer's conclusion that verification was unlikely was entirely understandable. Neither was the respondent prohibited from impugning the document. Pursuant to Tanveer Ahmed [2002] UKAIT 00439, the burden was on the appellant to demonstrate that the document was reliable. The judge gave careful consideration to the document and provided cogent reasons for finding the document, with the shortcomings noted by the judge, unreliable. No error of law arising in respect of this ground.

17. The remaining grounds are in essence a trawl through the decision looking for minor issues with which to undermine the decision of the First-tier Tribunal.

In Herrera v SSHD [2018] EWCA Civ 412, the Court of Appeal said that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. It is well-established law that the weight to be given to any particular factor in an appeal is a matter for the judge and will rarely give rise to an error of law, see Green (Article 8 -new rules) [2013] UKUT 254. Further, In R (Iran) and others v SSHD [2005] EWCA Civ 982, Lord Justice Brook held that there was no duty on a judge in giving reasons to deal with every argument and that it was sufficient if what was said demonstrated to the parties the basis on which the judge had acted. This approach was adopted and applied by the Upper Tribunal in Budhathoki (Reasons for decision) [2014] UKUT 00341. For the reasons already outlined above and those set out below, I am satisfied that the impugned decision met the requirements and the findings made were open to the judge on the evidence and for which cogent reasons have been provided.

18. At [26] of the decision, the judge noted what was considered to be a contradiction between the appellant's evidence and the statement of a witness not called to give oral evidence. The judge's observation about this witness, alleged to be a former work colleague of the appellant, was that he "refers to the appellant having been sacked from his post, which is contrary to the appellant's evidence. This contradiction damages the credibility of the appellant's claim." The appellant's evidence had been that he had been suspended on full pay whilst the investigation into missing money was temporarily put on hold because of the Kurdistan election campaign in September 2018. What the translated witness statement states is that the witness was absolutely sure the appellant was asked by Mr Amjani "to leave his position and sent him off until he (Mr Amjani) contacted (the appellant) to start work again, but (the appellant) never came back to work in Kurdsat Station." The appellant submits that there was no true inconsistency. However, the judge's interpretation of being "asked to leave his position" and "sent him off" was that this was a sacking. The witness makes no reference to the appellant being suspended on full pay, as claimed by the appellant. On reflection, there may be some difference between the two accounts but I am not satisfied that the judge was correct to characterise that difference as sufficient to damage the appellant's credibility.

19. However, if this was an error it was but a single and minor factor in the overall credibility findings, which entirely rejected the appellant's factual claim. Even if the error had not been made, I am satisfied that the appeal would nevertheless have been dismissed for the overwhelming other reasons identified by the judge for disbelieving the appellant's factual account. In the circumstances, I am not satisfied that this error alone is sufficiently material to the outcome of the appeal to require the decision to be set aside for error.

20. The grounds and submissions argue that at [21] of the decision the judge's characterisation of the appellant's claim that he was being monitored as speculation amounted to an error of law. He had been asked in interview to justify the claim that he was being monitored by being asked who was monitoring him. He admitted that he did not know and clearly speculated as to who might be behind it. The submission that "it is unclear how the appellant would know who was monitoring him" is itself speculation. The fact remains, that the appellant presented no evidence or explanation as to how he knew that he was being monitored. If he did not know who was doing this or who was behind it, the judge was entitled to characterise his claim as speculation. No error of law arises in this regard.

21. The submissions also challenge the judge's finding at [25] of the decision of not being satisfied that embezzlement by Mr Chalek would reflect badly on Hero Khan, the alleged founder of Kurdsat TV. There was no evidence to support the claim that Hero Khan founded the station but the point being made by the judge was a common-sense one, that embezzlement would no more damage her reputation than any other member of staff. I am satisfied that the statement was open to the judge to make. In any event, the judge did not rely on this finding as undermining of the appellant's credibility and thus there can be no material error in the ground claiming that the judge provided inadequate reasons for the finding.

22. Finally, at [23] the judge found it not plausible that if Mr Chalak had embezzled PUK money and felt sufficiently threatened by the appellant's position to be prepared to harm the appellant, that he would not have taken action sooner rather than waiting 3-4 months and until after the appellant had been suspended from his employment. The judge pointed out that the delay risked the appellant disclosing Mr Chalak's embezzlement to others. I am satisfied that it was open to the judge to make this observation as a matter of logic; it was not a re-characterisation based on the judge's own perception of reasonability. No error of law is disclosed by this ground.

Decision

23. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed DMW Pickup

Upper Tribunal Judge Pickup

Dated 7 July 2020