



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10340/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons Promulgation
On 12 August 2020

Before

Upper Tribunal Judge Macleman

Between

B S A

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. This determination is to be read with:
 - (i) The respondent's decision dated 10 October 2019.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of a panel of the FtT, Judges Tully and Curtis, promulgated on 19 December 2020.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated on 2 March 2020.
 - (v) The grant of permission by the FtT, dated 27 March 2020.
 - (vi) The directions of the UT, issued on 9 June 2020, with a view to deciding without a hearing whether the FtT erred in law, and, if so, whether its decision should be set aside.

2. The UT's directions also gave parties the opportunity to submit on whether there should be a hearing.
3. Time for submissions has expired. To date, no response is on file from either party.
4. The grounds are fully expressed, running to over 8 pages, as a challenge to a decision of 11 pages.
5. The UT may now fairly and justly decide the above questions without a hearing, in terms of rules 2 and 34.
6. Ground 1 complains that the FtT did not make an anonymity order. As the judge granting permission noted, that was a procedural error. It is of no consequence. Decisions of the FtT are not regularly published. There is no reason for this decision to attract adverse notice to the appellant from anyone. The presence of his name on a decision finding his claims to have no substance is not a reason to set aside that decision. It has no bearing on whether his appeal might have had another outcome.
7. Ground 2 criticises the panel's view of one matter as "second guessing". However, it is well within the province of a fact-finding tribunal to consider various possibilities. That involves no error of law, subject to the tribunal always assessing the overall claim by the lower standard of proof.
8. Ground 3 is that the panel "failed to consider things that they should and things that they shouldn't". The significance of a discrepancy over dates was, within reason, for the panel to decide. The ground sets out lengthy quotations from case law, but it does not rise above insistence and disagreement on a matter of fact.
9. Ground 4 alleges error of fact by finding a significant aspect of the claim "inherently implausible". It is incorrect to say that no reasons are given for that view. Reasons are clear from [21]. The ground is also incorrect in saying that the appellant's account is dismissed "solely on that basis". The panel expressly states that the matter is "not determinative". It gives several other reasons for rejecting the claim, some of which are unchallenged in the grounds. Decisions are to be read fairly and as a whole. The FtT is well aware that inherent implausibility may be a dangerous guide. The doctrine to be extracted from the cases cited is not that the inherently implausible must always be accepted as the truth.
10. Ground 5 is that the panel "failed to take account of the appellant's reasoning". This ground also relies on the principle that people of different nationalities and cultures may behave in ways judges might not expect. That is another principle well known to the FtT. The appellant cited no evidence that persons of his background were more likely to act as he did. This ground is only another form of insistence and disagreement on an issue of fact, the resolution of which was within the panel's rational scope.

11. Ground 6 complains of application of “a higher standard of proof”. The use at [27] of the words “not conclusively” should not be taken out of context. Particular matters may be established with degrees of likelihood from complete certainty to the slightest possibility. The final evaluation is overall. If anything, the expression used at [27] tends in the appellant’s favour. The panel might easily have said that the existence of a photograph of a car with bullet holes established nothing at all for the appellant. It would have stretched reason to find that such a photograph, without more, was conclusive proof that the appellant was in that vehicle when shots were fired through it.
12. Ground 7 continues the theme of selective disagreement on the facts.
13. Ground 8, based on country guidance, does not show that there was any guidance which, on application to the facts found by the panel, required a grant of protection.
14. The grounds resolve into no more than disagreement. They do not treat the decision of the panel as a whole, and they do not show that it is wrong in law. That decision shall stand.
15. It may well be an unnecessary precaution, but in light of ground 1, and as decisions of the UT are published, the appellant is now granted anonymity. Unless and until a tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify him or any member of his 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.

Hugh Macleman

UT Judge Macleman
7 August 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.