Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-001797
On appeal from PA/50498/2021
[IA/03686/2021]

THE IMMIGRATION ACTS

Heard at Field House
On the 5 October 2022

Decision & Reasons Promulgated
On the 02 November 2022

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

MMAQ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms U Dirie instructed by Turpin Miller LLP
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Jordan. He appealed to the First-tier Tribunal against the respondent's decision of 27 January 2021 refusing his claim for asylum and humanitarian protection.

2. The judge found his claim to lack credibility and as a consequence dismissed his appeal.

3. He claimed to be at risk in Jordan on account of a relationship with a fellow student, named Eman. He claimed that someone took a photograph of them together, on 25 December 2018, and she ran off and he was unable to contact her subsequently. He believed that her family found out about the relationship and was told that her family were looking for him and that the photograph was circulating on WhatsApp. A couple of days later his family home was raided by 50 men and he believed that this was because his origins were Palestinian and the relationship was not acceptable to Eman's tribal culture. He was not at home at the time of the raid. He believed that her family members were in the Royal Guards and government positions and in the police. He did not report the threats made against him to the police. He said that since arriving in the United Kingdom, where he came in July 2019, his family had been threatened.

4. As I say, the judge did not find the appellant's evidence to be credible. A particular matter that concerned her was that she did not find it credible that the appellant, given his evidence on the danger of the relationship being discovered, would have a photograph of him kissing Eman on the cheek. He said that they had always met in public places which were not crowded and where people would not see them. There was no evidence before the judge that he had attempted to find out who the man was by asking university friends to whom the photograph was sent on WhatsApp. He said that he did try to contact Eman but her phone was switched off. The judge found that he had not explained credibly how he could be targeted in the United Kingdom, which he claimed to fear. She found that he had made no attempts to telephone Eman from a different telephone number perhaps belonging to a friend or by withholding his number, nor had he attempted to contact her through any of her friends to find out about her safety and welfare.

5. He had said that his brother told him the photograph was being circulated on WhatsApp and social media but he had not produced this photograph. He had said his brother deleted the photograph from his WhatsApp messages as he did not want their mother to see it and become upset, but the judge did not find it credible that the mother would look at her son's telephone messages. The failure to provide the photograph was found to damage his overall credibility.

6. The judge also found it to be adverse that the appellant did not claim asylum on arrival. He said in evidence that he hoped the matter might be resolved but there was no evidence that there had been any efforts of mediation between the families. She found his delay in claiming asylum to cast further doubt upon his overall credibility.

7. Although he gave evidence that he and Eman had communicated through WhatsApp messages, no such messages had been produced. He said that he changed his telephone two days after arriving in the United Kingdom. The judge found that the old telephone and SIM card were in his possession and he could have provided copies of the WhatsApp messages which were central to his claim that he had a relationship with Eman.

There was no credible evidence that the appellant had been unable to access Eman's social media accounts to provide further evidence about her identity and other photographs to show she was the same person as the one in the photographs that he relied on in the bundle. He had not produced any evidence from those accounts showing that he made any references to having a girlfriend.

8. There was no evidence that he had ever told the police about the raid by 50 men from Eman's tribe. At the time of the raid he said he did not know about the influence of the tribe. He gave evidence that he had researched the tribe only when he arrived in the United Kingdom. The judge found that if he were genuinely concerned that he was involved in a relationship with a Jordanian girl from an influential family, who he hoped would one day accept him as a son-in-law, he would have researched who they were and their level of connections and influence in Jordan.

9. The appellant relied on statements from his brother who referred to Eman's family members repeatedly coming to his home and making threats including attacking him on one occasion and that the harassment had continued even after the death of his father on 10 October 2020. The appellant relied on WhatsApp messages between him and his brother, those messages dating from 10 March 2020. He had claimed asylum on 9 March 2020. The judge found the appellant's messages were self-serving to support his claim for asylum, and likewise the messages from his cousin.

10. The appellant also relied on a letter from Mayor Al Lozi stating that the appellant was under threat of murder from the Council of the Jaradat Clans due to a case of honour. The judge attached very limited weight to the letter, not finding it remotely credible that the family would dishonour their own daughter by naming her and stating that she was in a relationship with the appellant and the mayor gave no indication as an official as to what steps he intended to take as a result of being made aware of the threats. The judge found the letter to be contrived and written at the behest of the appellant's family.

11. She went on to state that she took into account all the objective evidence in the bundle and took the evidence as a whole on the lower standard of proof and found the appellant not to be a credible witness. She dismissed the appeal.

12. In the grounds of appeal it was argued first that there had been procedural unfairness at the hearing in that some of the judge's questions had amounted to cross-examination of the appellant and her approach was one which was hostile. In asking leading questions she had developed her own theory of the case rather than adjudicating upon the issues between the parties, and examples purporting to show that this was the case were provided. It was argued that the judge's interventions were hostile and again purported examples were given, and also it was contended that the judge had prevented the appellant's representative from fully advancing

his case in that she had interrupted the representative, stating it was not necessary to go through everything in detail and suggesting submissions should conclude unless there was anything new to add. The representative had not been able to present submissions in the depth intended which had actively prevented the appellant from advancing his case in a full and adequate manner.

13. It was also argued that the judge's findings on the documentary evidence were irrational. It was said that it was irrational simply to find that the WhatsApp messages between the appellant and his brother and between the appellant and his cousin were self-serving, without more. The timing of the messages from the brother did not support the judge's conclusion. No separate reason for finding the messages from the cousin were self-serving had been provided. The credibility assessment had been made in a vacuum, and assumptions had been made as to the findings on the documentary evidence in the light of evidence that was absent. This went contrary to the respondent's own policy on credibility. It was argued that the judge had been irrational in placing weight on the lack of evidence of mediation between the families. The appellant had never said that he expected the problem would be solved by mediation. Also, given that his claim was based upon having to keep the relationship secret and fearing repercussions, it was unsustainable to suggest that he would have made references to Eman on social media. Also it was not open to the judge to find that the appellant still had his own phone and SIM card in his possession.

14. It was further argued that it was irrational to find that the appellant had not left Jordan earlier as being adverse to his credibility. It was also an error of logic to suggest that he would have researched his previous girlfriend's family before leaving the United Kingdom and the judge had made assumptions as to what a genuine refugee would do in considering the appellant's explanation as to why he did not assiduously try to track Eman down.

15. Permission to appeal was granted on all grounds.

16. In her submissions Ms Dirie relied upon the grounds and also upon the statement of Counsel who had appeared at the hearing and the transcript of the hearing that had been provided. In addition the judge had been asked for, and had provided her own comments on the grounds and on the witness statement.

17. Ms Dirie argued that when one looked at the transcript it could be seen that on a number of occasions there were difficulties with the interpreter and that perhaps gave a context to the judge's interventions. It was a question of the appearance of unfairness rather than any actual bias. The judge did not dispute having put the questions but said it was a matter of clarification and not cross-examination. It was argued that in fact what she had said at times went beyond that. For example, the Secretary of State had never taken a section 8 point but the judge clearly regarded that

as being a relevant factor to credibility that the appellant had not applied immediately for asylum. It was accepted that if there were interpreter issues were raised then they needed to be raised at the time of the hearing and that had not been done here. It was explained by Counsel in her statement that clearly there were issues of procedural unfairness arising from interpretation. This had led the judge to assume the role of a cross-examiner.

18. Grounds 2 and 3 were detailed and Ms Dirie, helpfully, did not seek to say any more than was contained within them. Full reliance was placed on them.

19. In his submissions Mr Whitwell argued that there was no challenge to the interpretation at the hearing nor in the witness statement and effectively the appellant was bringing a new ground of appeal on the day and it should not be considered. One could not cherry-pick favourable paragraphs in the transcript for further reasons as to why the hearing was fair or unfair. Overall a fair hearing of the transcript did not show the judge descending into the arena. There had been no challenge alleging breach of the Surendran guidelines. The main point was that the issue of fairness had only arisen after the appeal had been determined. A fair-minded observer would not find grounds for concern. Mr Whitwell adopted the judge's comments on the grounds and the witness statement. It appeared the judge had allowed full submissions though there was a reference to repetition.

20. As regards ground 2, it was the case that in the refusal letter section 8 was not raised but that did not mean that the judge if concerned at the time of the hearing could not take delay in applying for asylum into account as it was relevant to credibility. The challenge in grounds 2 and 3 was an irrationality challenge. It was the case that all evidence was self-serving and the judge was saying it was not independent. It lacked weight. As regards the argument that the evidence was considered in a vacuum, it was a question of what background evidence was being relied on. The self-direction at paragraph 18 that the judge took all the evidence into account should be borne in mind. She had noted evidence favouring the appellant, for example at paragraphs 22 and 46. She had pointed to an absence of evidence and in doing so that meant the evidence could not satisfy the burden of proof. None of the points otherwise relied on where irrationality was contended made that contention out. Matters of weight were for the judge and the challenge was one of disagreement only.

21. By way of reply Ms Dirie argued that the issue about interpretation was within ground 1 or at least gave context to it. There was a good reason for the delay in raising the matter and then the delay in obtaining the transcript and getting the copies of the recording and the overriding objectives purposes were met. On any reading of the transcript there were issues. Mr Whitwell had not said there were not issues with the interpretation, rather in the manner it was raised.

22. I reserved my decision.

23. As noted above, in respect of ground 1, we have the points made in the grounds amplified in the witness statement of Counsel, Ms Hasan, who appeared below, and the transcript of the hearing, and we also have the judge's comments on the grounds and the witness statement. Having read all these through carefully, I consider that no actual law apparent bias or unfairness is made out. The judge sought clarification at a number of points, and it is clear, as Ms Dirie argued, that there were issues of interpretation which may have led the judge into taking a more assertive role in the hearing than she might otherwise have done. The questions she asked appear to me to be essentially matters, as she herself said in her comments, desiring clarification rather than seeking to find evidence to support a theory. It was not unreasonable to remind Counsel about points that had already been made, and though the judge may have been to a degree robust in her managing of the hearing, I do not consider that what is shown in Counsel's witness statement is such as to show actual bias or the appearance of bias. Accordingly I do not accept that ground 1 is made out.

24. As regards ground 2, which may conveniently be taken with ground 3, as it was by Mr Whitwell, there are clearly a number of points of weakness in the appellant's evidence to which the judge rightly drew attention and placed weight, in particular the matters which are challenged at paragraph 24 of the grounds. Noting evidence that has not been provided is clearly relevant since, as Mr Whitwell pointed out, it tends to show that the burden of proof has not been made out rather than demonstrating any weakness in the judge's reasoning. There were relevant issues as set out at the six subparagraphs to paragraph 24 of the grounds which were matters about which the judge was properly concerned.

25. However, I am concerned more about the finding of self-servingness with regard to the WhatsApp messages between the appellant and his brother and between the appellant and his cousin. It was not in my view a sufficient reason to reject the evidence of the brother as being self-serving simply because of the timing or the date on which the messages came, and no reason was given at all for finding the messages from the cousin to be self-serving. I do not however consider that the point at paragraph 23 about the credibility assessments being made in a vacuum to be of any materiality. There appears to be nothing in the background evidence that would show that the judge erred in not finding it credible that the tribe would put up notices looking for the appellant three years after he left the country. The judge did however make an assumption about the absence of mediation which was not borne out in the appellant's evidence, and nor is it logical to suggest that the appellant should have been able to show references to having a girlfriend given, as is argued at paragraph 26 subparagraph (b) of the grounds, that the whole point was that the relationship was being kept secret.

26. I am also concerned that the judge in effect made a finding that the appellant still had his old phone and SIM card. It does not appear that it was put to him that he still had the phone and the SIM card, and the finding in that regard is lacking in reasoning. The points made at ground 3 are essentially neutral.

27. Bringing these matters together, I consider that overall on balance, and by quite a narrow margin, it has been shown that the judge's adverse credibility findings are flawed to the extent that there will need to be a rehearing. Given that it goes to the credibility of the claim as a whole, that matter will have to be done by way of a full rehearing in the First-tier Tribunal, and accordingly I direct that there be a full rehearing of this appeal at Taylor House. To that extent the appeal is allowed.

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 Date 13th October 2022

Upper Tribunal Judge Allen