Upper Tribunal
(Immigration and Asylum Chamber)

LP/00199/2020
[PA/50314/2020]

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
On 22 December 2021

Decision & Reasons Promulgated
On: 18 January 2022

Before

UT JUDGE MACLEMAN

Between

T N F

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms H Cosgrove (appearing by video link), of Latta & Co, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Buchanan dismissed the appellant's appeal by a decision dated 19 January 2021.

2. The appellant has permission to appeal to the UT on 4 grounds, headed as (1) error in giving weight to immaterial matters when assessing the core of the claim (2) error in criticising AS [the appellant's wife] for posting an Instagram photograph (3) error in criticising certified translations and (4) error in respect of the proceedings in Iraq.

3. When granting permission, UT Judge Blundell was concerned by a point which did not favour the appellant, but which might become relevant if error of law was established. An asylum claim by the appellant's wife, focused on the same risk, had previously been dismissed by Judge Clough but that decision was not taken, as it should have been, as the starting point. Representatives before me concurred that this was an oversight by Judge Buchanan, but also that it had no bearing on whether the grounds on which permission was granted disclose any error of law. I have given this aspect of the case no significance.

4. The grounds are set out in considerable length and detail. The theme of ground (1) is that this was a claim based on risk from the family of AS, a single question, and that it was irrelevant for the Judge to consider:

   (i) whether, on marriage, Iraqi women change tribe;

   (ii) ethnic make-up of tribes;

   (iii) whether this was an inter-tribal dispute;

   (iv) AS's reasons for not returning to Iraq while pregnant;

   (v) whether AS would give birth in the UK;

   (vi) AS's health during pregnancy;

   (vii) whether the "right to kill" AS extended to a right to kill the appellant;

   (viii) the appellant's disregard for his wife during their engagement;

   (ix) why, when the matter was drawn to their attention, the Leicester police only directed AS to claim asylum.

5. The grounds recognise that the UT "will be reluctant to find error in a lengthy and detailed decision"; but it is said that "giving such weight to immaterial matters is a material error of law". In submissions Ms Cosgrove (who also appeared in the FtT but is not the author of the grounds) said that the claim could have been resolved by the Judge without referring to any of those matters.

6. The details would not have been dealt with in the decision had they not been part of the materials placed before the Judge, mainly by the appellant. If the Judge had ignored them entirely, or described them as irrelevant without further comment, it is easy to imagine other grounds of appeal being advanced.

7. Family, tribal and inter-tribal aspects of the claim, and her personal history, were all prominent in the evidence from the appellant.

8. The Judge might have disposed of those matters more shortly than he did, but narration in detail, even if it is unnecessary, is not "giving weight".

The Judge is not shown in his ultimate resolution of the case to have given any matter greater significance than was within his rational scope.

9. Ground (1) is not established.

10. Ground (2) is said to be an error because the Judge "implicitly criticises AS for doing something that any woman in the UK is entitled to do: post a photograph of herself without fear of who might see it".

11. I do not find that to be an accurate characterisation of the decision at 18.2. The Judge's point was not that AS was obliged to restrict her self-expression. It was that if her account were true it was not likely she would risk an adverse reaction to an image on Instagram which she was in a position either not to post at all, or to keep relatively private, using internet settings.

12. In other words, the Judge was not asking, "Should the appellant refrain from self-expression?", but, "Is this account reasonably likely to be true?"

13. Ground 2 is not established.

14. At 19.8 the Judge notes that translations of text messages had explanations interpolated in brackets, of which he gives two examples. He notes that he is not told the identity of "the person providing the explanations which purport to set out the true construction to be put on the messages". He considers this to be advocacy rather than independent translation. He therefore gives the translations no more than minimal weight.

15. Ground 3 says that the translations complied with procedural requirements for foreign language documents and with "accepted means" of ensuring that meaning is not lost by a literal rendering, and that the Judge's findings are "without any proper basis and are irrational".

16. The Judge did not doubt that the translations were in the correct form in terms of the procedure rules; that is beside the point.

17. The appellant has not tendered any evidence of professional standards and practices in translation. However, I accept for present purposes that interpolation in square brackets for purposes of clarification is a common practice, which enables the reader to see where strict word for word translation is departed from. No doubt, the Judge was aware of that practice. He says that the insertions were "explanations about how the contents ought to be construed" – which is rather different. The two examples he gives are that "she is still following our rearing customs" is rendered as "she is still following our [Islamic] rearing customs " and that "do not let your daughter lose her afterlife like you" becomes "do not let your daughter lose her afterlife [by going to Hell] like you". The grounds say that the Judge cannot know whether these insertions "are anything more than necessary to make the original Arabic meaning clear and grammatically correct in English" and his findings are irrational; but the

translations are clear and grammatical in English prior to any interpolation or explanation.

18. The challenge goes too far. The Judge's point did not lack a clear and rational basis.

19. Ground 4 is directed against the decision at 24.9.- 24-14, where the Judge finds it difficult to understand and reconcile documents and information relating to a court process in Iraq. This is said to go against the principle of being "cautious making findings in respect of foreign practices that appear to British lawyers to be implausible". However, the challenge does not place the consideration of this aspect in perspective. The Judge obviously has difficulties with the evidence, which he explains; but he takes the matter no further than that.

20. The challenges in the grounds must be put in context of the decision. The heading, "Considering the evidence in the round" is followed from 28 – 33 by the sub-headings "background country information", 28.1 – 28.5; "inconsistency", 29.1 29.12; "unsupported by medical evidence", 30.1; "no supporting evidence", 31.2 – 31.3; "lack of detail", 32 – 32.4; and "lack of independence", 33; and then by the overall conclusion at 34 that the appellant has not discharged the burden of proof.

21. The point on translations at 33 (ground 3) is a relatively small component in that final reaching of conclusions. Most of the matters listed in ground 1, and difficulties in following the court process (ground 4) do not feature at all. The bulk of the reasoning is not challenged in any respect.

22. The grounds resolve into no more than selective disagreements. The decision, read fairly and as a whole, is not shown to be anything less than a legally adequate explanation to the appellant of why her case has failed.

23. The decision of the FtT shall stand.

24. The anonymity direction made in the FtT is maintained at this stage.

23 December 2021
UT Judge Macleman

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.