IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000401

First-tier Tribunal No: PA/50709/2021
IA/01590/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 March 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

HM (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Vokes, instructed by Halliday Reeves Law Firm
For the Respondent: Mr C Williams, Senior Presenting Officer

Heard at Birmingham Civil Justice Centre on 2 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant, a national of Iraq who was born on 4 August 1995, appeals against the decision of First-tier Tribunal Judge Fowell ("the judge"). By his

decision, the judge dismissed the appellant's appeal against the respondent's refusal of his claim for international protection. Permission to appeal was refused at first instance but granted, on renewal, by Upper Tribunal Judge Keith.

2. The outcome of this appeal is agreed between the parties and my decision is in short form as a result of that agreement.

Background

3. This is the appellant's second appeal. He entered the UK in August 2017 and claimed asylum. His account was that he was at risk from ISIS and, in particular from a man called Akam. The appellant stated that he had overheard some men talking about ISIS and had reported them to the authorities, whereupon he had been targeted by these men. The respondent disbelieved the appellant's account and he appealed to the First-tier Tribunal. On 19 June 2018, his appeal was dismissed by First-tier Tribunal Judge Watson, who found that the appellant's account was reasonably likely to be true but that Akam was not 'in a position of power within the country' and that there was in any even no extant threat from Akam or his associates.

4. The appellant made further submissions which were accepted by the respondent to pass the test for a fresh claim for asylum. The claim was nevertheless refused in a refusal letter dated 25 January 2021. The respondent did not accept that the evidence provided by the appellant established that there was an ongoing threat from Akam. The photocopied CCTV stills were of poor quality and did not establish the identity of those featured and the arrest warrant for Akam was deserving of 'very little appreciable weight'.

The Appeal to the First-tier Tribunal

5. The appellant appealed for a second time and his appeal was heard by the judge on 17 June 2021. The parties were represented by Mr Vokes and Mr Williams, as they were before me. The appellant gave evidence and was cross-examined by Ms Williams. The advocates made submissions, after which the judge reserved his decision.

6. In his reserved decision, the judge expressed concern about the timing of the more recent incidents, expressing disbelief at [19]-[23] at the claim that matters would 'flare up again after several years'. At [24], the judge noted that the appellant had claimed for the first time in oral evidence that Akam had been present at the attack in the petrol station which featured in the CCTV stills. At [25], the judge noted that the petrol station incident pre-dated the hearing before Judge Watson but had not been mentioned to her. At [27], the judge noted that the arrest warrant only named Akam, whereas the incident upon which it was based involved multiple assailants. He attached significance at [28] to the lack of medical evidence. The judge concluded at [29] that the arrest warrant was not reliable and that the two attacks had not taken place. He considered the risk arising to the appellant as a result of his *sur place* activities at [32]-[34], finding that there was no risk arising from those limited activities. So it was that the judge dismissed the appeal.

The Appeal to the Upper Tribunal

7. As Judge Keith noted when granting permission, he was not assisted by the grounds of appeal. He nevertheless considered it arguable that [27] of the

judge's decision was incomplete; that the judge's findings were inconsistent with Judge Watson's decision; and by a failure to consider relevant material.

8. The respondent filed no notice under rule 24 but Mr Williams indicated at the outset of the hearing that he intended to oppose the appeal.

9. Mr Vokes submitted, firstly, that the judge had erred in treating as 'entirely new' the appellant's assertion that Akam had been involved in the attack on the petrol station or that he was part of a group from ISIS. Whilst that had not been said in terms in the appellant's further submissions, it was the obvious inference from those submissions, and from the decision of Judge Watson, both of which the judge had failed to come to grips with. The appeal had been 'positioned as' a case in which Akam was present and central to the risk to the appellant, and the judge had erred in expressing concern about the appellant's oral evidence in this respect. If it was the appellant's case that Akam had not been present at the petrol station attack, it made no sense for him to have adduced an arrest warrant for Akam in connection with that attack, Mr Vokes noted.

10. Mr Vokes criticised [27] of the judge's decision, which ends mid-sentence. He accepted that this was potentially a small matter but it reflected, he submitted, on the thoroughness of the decision. A further concern about that paragraph was that the judge seemingly attached weight to the absence of reference to any medical treatment on the arrest warrant but it was by no means clear why he thought that a warrant would make any reference to the medical treatment received by the victim.

11. Mr Vokes' third submission related to the judge's criticism of the appellant for failing to make further submission more promptly, when he was supposedly aware of developments in Iraq. This point had not (as Mr Williams confirmed) been raised with the appellant at the hearing. Had it been, there was a ready explanation for what appeared at first blush to be a delay; due to the pandemic, there had been a delay of five months in the respondent permitting the appellant to make further submissions in person. (Mr Williams helpfully confirmed, at my request) that the Home Office systems showed that the appellant had asked for an appointment to make further submissions on 19 August 2019 but that he was not given an appointment until 9 January 2020.

12. Mr Vokes' fourth submission was also a point about procedural impropriety, in that another point taken against the appellant had not been put to him by the judge. The judge expressed concern about the fact that the appellant had not mentioned the attack at the petrol station to Judge Waston, despite the fact that it pre-dated that hearing. Had the point been put to the appellant, he would have responded that he had had difficulty contacting his family.

13. Having listened to Mr Vokes' submissions, Mr Williams indicated that he was not able, on reflection, to oppose the appellant's appeal. He accepted in particular that the judge had taken points against the appellant which had not been put to him, and that the decision was vitiated by procedural impropriety.

14. I was able to announce at the hearing that I agreed with Mr Williams' concession and that I would set aside the judge's decision and order that the appeal be remitted to the First-tier Tribunal for hearing afresh.

Analysis

15. Given Mr Williams' perfectly proper concession, it is not necessary to say much more than that I agree with the submissions made by Mr Vokes. It is very unfortunate that the grounds of appeal were not set out with the same clarity as the oral submissions. Had they been, this appeal to the Upper Tribunal might well have been resolved by consent.

16. It is apparent that [27] of the judge's decision is incomplete. It ends in this way: "and no real explanation for how Mr M's grandfather was able to g". That is indicative of a lack of care on the part of the judge, although it does not establish in itself that the decision is vitiated by legal error.

17. Turning to the remainder of the decision, however, it is apparent that the judge took points against the appellant which were not put to him. That is not fatal, of course, for the reasons explained by Ouseley J in WN (DRC) [2005] INLR 340, but these were not obvious points which should have been anticipated by Mr Vokes. In fact, they were points which were either based on an erroneous assumption or capable of easy explanation.

18. Into the former category falls the point taken by the judge about the appellant delaying in making further submissions. As Mr Williams was able to confirm when he considered the Home Office system, the delay was nowhere near as significant as the judge had thought, and the appellant had been delayed in attending the Further Submissions Unit because of the delays brought about by the pandemic.

19. Into the latter category falls the point taken by the judge about the appellant's failure to mention the attack at the petrol station to Judge Watson. Whilst the judge was correct to note that the attack is said to have pre-dated that hearing, the appellant had stated previously that he had difficulties in contacting his family and this was the explanation he would have given if only the point had been put to him.

20. A further error is disclosed by the judge's conclusion that the involvement of Akam in these matters was 'entirely new'. Having been taken through the relevant documents by Mr Vokes at the hearing, I accept his submission that the case had always been 'positioned as' one in which Akam had been involved throughout. That is clearly the import of the further submissions which were made. And, as Mr Vokes noted in his able submissions, it would have been peculiar for the appellant to adduce an arrest warrant in connection with Akam's involvement in these events if Akam was not said to have been involved.

21. Taken together, these errors serve to undermine the judge's assessment of the appellant's credibility to the extent that it cannot stand. Mr Williams was quite right to recognise that, and to concede that the proper course was for the appeal to be remitted to the FtT for consideration afresh. Considering the extent to which the judge's findings were premised on matters which were not put to the appellant, and applying the recent guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I am satisfied that the proper course is as urged upon me by both advocates, and I shall remit the appeal to be considered afresh by a judge other than Judge Fowell.

Notice of Decision

The appeal to the Upper Tribunal is allowed. The appeal is remitted to the FtT to be considered afresh by a different judge.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 February 2023