IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006317
First-tier Tribunal No:
PA/51787/2021
IA/05348/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 May 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

V I R V
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Slatter, Counsel, instructed by Irvine Thanvi Natas Solicitors
For the Respondent: Mr E Terrell, Senior Presenting Officer

Heard at Field House on 14 April 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 the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant, a citizen of Honduras, appeals with permission against the decision of First-tier Tribunal Judge Cary ("the judge"), promulgated on 22 June 2022 following a hearing on 15 June 2022. By that decision, the judge dismissed the appellant's appeal against the respondent's refusals of his protection and human rights claims.

2. The appellant claimed that he was at risk on return to Honduras from a named criminal gang who had allegedly targeted him in the past and against whom he had made reports to the police. There were no materially distinct issues arising under Article 8.

3. Having considered the arguments put forward by both parties in this appeal, I have concluded that the judge did not commit any material errors of law and that the appeal to the Upper Tribunal must be dismissed. I now set out the analysis by which I have come to that conclusion.

Decision of the First-tier Tribunal

4. The judge identified the central issues in the case to be the appellant's credibility, together with the sufficiency of state protection and internal relocation: [11] and [46]. The appellant's evidence was summarised, setting out specific incidents which he asserted had taken place and which demonstrated that he would be targeted by the gang on return: [13]-[25]. Evidence from the appellant's father (who resides in the United Kingdom) was also summarised. He had purported to corroborate one aspect of the appellant's claim, namely that his son had called him in November 2019 soon after a claimed threat by the gang: [26]-[28].

5. Under the heading "Decision and Reasons", the judge reiterated several aspects of the appellant's claim and directed himself to potentially relevant matters relating to credibility, namely whether the individual was vulnerable (which he was not), that the provision of an account is not

a memory test, and that credibility was not necessarily an essential component of a successful claim for protection: [36]-[49]. The judge found that the appellant's account engaged the Refugee Convention: [44].

6. The material section of the judge's decision runs from [51]-[72]. The judge summarised the country information relating to the prevalence of gang violence in Honduras (much of it contained within the respondent's CPIN) and then, at [59]-[71] highlighted a number of issues which ultimately led the judge to conclude that the appellant's claim had been "concocted". A number of the points can fairly be described as plausibility concerns, i.e. apparent inconsistencies between the appellant's account and the country information. In addition, the judge deemed that a police report carried "little" weight. Finally, the judge found that the appellant's credibility had been damaged by his failure to have claimed protection on arrival in this country.

7. The judge found the appellant not to be credible and dismissed the appeal on protection grounds for that reason alone.

8. At [73], the judge recorded that no free-standing Article 8 claim had been pursued before him.

The grounds of appeal

9. Two grounds of appeal have been put forward and can be summarised as follows. Under the rubric of a failure to provide adequate reasons, ground 1 contends that the judge erred in placing little weight on the police report because he had already found that the appellant had in fact reported the incident to the police. Further, the judge was wrong to have found the appellant's claim to be implausible because country information either supported the claim, and/or the appellant had not been given opportunity to address certain matters of concern, and/or the appellant could not have been expected to answer for the actions of the gang.

10. The second ground contends that the judge failed to give reasons for the conclusion that the appellant's claim had been "concocted" and that it was not in any way credible. Further, the judge failed to make a finding on the father's evidence.

11. In granting permission, the First-tier Tribunal found no merit in ground 1, but did not properly limit the grant. Thus, both grounds of appeal were before me.

The hearing

12. I received concise and helpful submissions from Mr Slatter and Mr Terrell, for which I am grateful. I intend no disrespect by not setting out the submissions at this stage. I deal with the relevant points when setting out my reasons, below.

Conclusions

13. At the outset, I remind myself of the need for appropriate restraint before interfering with a decision of the First-tier Tribunal, particularly where the judge below has heard and assessed a range of evidential sources relating to the reliability of an account. Not every evidential issue need be specifically addressed and there is no requirement to provide reasons for reasons.

14. I intend to take the appellant's arguments slightly out of order. It is appropriate to initially address the first element of ground 2. Mr Slatter submitted that the judge's conclusion that the appellant's claim had been "concocted" and was not "in any way credible" was entirely unreasoned. I disagree with the interpretation afforded to that specific conclusion. On a holistic and sensible reading of the judge's decision, the point he was making at [71] was simply that, *in light of the preceding analysis*, the appellant's account was not reliable (use of the term "credible" has its critics, but it makes no difference in this case). It was not, as seems to have been asserted by Mr Slatter, a stand-alone finding. Further, the

judge's agreement with the respondent's representative's submission that the appellant was untruthful did not in any way entail a wholesale agreement with the points put forward by her in the reasons for refusal letter and/or oral submissions. On a proper reading of the passage in [71], the judge was agreeing with the overarching submission that the appellant's claim was unruthful, and nothing more than that.

15. In light of the above, I reject the challenge set out at paragraph 9 of the grounds of appeal.

16. I turn to ground 1. In respect of the police report, it is plain that the judge considered the document in light of the evidence as a whole, as he was bound to do: [69]. In addition, and in respect of the document itself, adequate reasons were provided for the finding that it was essentially unreliable: [66]-[68].

17. The appellant's contention that the judge had effectively found that the appellant had in fact reported the incident to the police is, in my judgment, misconceived. At [66] the judge said as follows:

> "It is also difficult to understand why the Appellant would go to the time and trouble of reporting the alleged incident on 15 November 2019 to the police even though it appears he knew they would take no action. In any event, even though he seems to have reported what occurred to a police station located away from his home area any report to the police might carry potential risk in view of what are said to be the close links of certain police officers to the various criminal gangs that operate in Honduras and the threats he claims had been made to him when he was first approached."
>
> [Emphasis added]

18. Mr Slatter submitted that the term "seems" equated to a finding of fact in the appellant's favour. I disagree. Reading [66] as a whole and in the context of its surrounding passages, it is sufficiently clear to me that all the judge was saying was that the report to the police was part of the claim, not that it had in fact occurred. In other words, "claimed" could quite properly be substituted for "seems". Even if I were wrong about that interpretation, a finding that the appellant had gone to the police

would not, of itself, have meant that the document in question was reliable as to its contents.

19. It is clear from the judge's decision that a good deal of the credibility assessment related to the country information and what might be described as a plausibility analysis. Plausibility is very often an important element of assessing whether an account is reliable. There are of course concerns when basing findings on plausibility, as indeed the judge was well-aware when he directed himself to HK v SSHD [2006] EWCA Civ 1037 at [50]. The judge conducted a careful assessment of the country information on Honduras. That indicated that the appellant's account was not wholly outwith the general country situation illustrated by the contents of the CPIN. However, it did not follow that the judge was bound to accept that account, even on the lower standard of proof.

20. In respect of [59], the judge was entitled to conclude that a particular point made by the respondent's representative and relating to the types of trainers worn by gang members carried little weight, but was also entitled to hold a concern that a specific brand was not mentioned at interview.

21. The more significant element of the plausibility analysis relates to [62]-[65]. I do not accept that the judge was obliged to have specifically asked the appellant for his views on why the gang might have tried to recruit him. If the appellant had anything to say about this issue, it could and should have been led in his own evidence (written and/or oral). Beyond that, although I acknowledge the difficulty inherent in an individual being able to answer for the actions/inactions of potential persecutors, the judge was entitled to assess what the appellant said against the country information. On that basis, the judge was then entitled to find that, in light of the evidence as a whole, the appellant specific account of what had occurred did not fit sufficiently with country information to make it reasonably likely to be reliable. His analysis must of course be seen in light of his self-direction to HK v SSHD earlier in his decision.

22. I emphasise that I am exercising caution in two differing respects here. First, I should certainly not be too ready to interfere with the judge's decision simply because a different outcome could have been arrived at on the same evidence. Second, as indeed recognised by the judge himself, questions of plausibility in protection claims call for careful scrutiny. In the present case, there are additional matters which form part of the context in which the country information was assessed by the judge. For example, at [70], the judge addressed a number of inconsistencies arising beyond those contained in the respondent's refusal letter. Those matters have not been the subject of any challenge. They relate to specific aspects of the appellant's account, as opposed to a contrast between that account and the country information, and the judge was entitled to conclude that they were adverse. Finally, the judge was fully entitled to find that there had been no reasonable explanation for the appellant's delay in making the protection claim after arriving in the United Kingdom.

23. In summary, ground 1 is not made out.

24. This leads me to the final issue, arising as the second element of ground 2. It is right that the appellant's father had given evidence to the effect that the appellant had apparently telephoned him following the claimed incident in November 2019: [27]. It is also the case that the judge did not make a specific finding on this evidence. As a general proposition, judges should make findings on the most important aspects of the evidence before them, whether that emanates from an appellant or a witness. The question here is whether the judge's omission constitutes a material error of law.

25. Having considered the matter with care, I am satisfied that there is no such error in the judge's decision. I find that the judge had regard to the evidence as a whole and that this included what father had said. I take into account the fact that the father's evidence was accurately summarised at [27] and that the judge subsequently confirmed at [71] that he had considered all of the evidence. I acknowledge that the

father's evidence was potentially corroborative of one specific aspect of the appellant's account, namely threats made by the gang in November 2019. Having said that, the judge was clearly aware that the father had not been an eye-witness to the claimed incident. Importantly, in my judgment, the judge was also assessing the evidence as a whole. In this regard, at [71] he makes specific reference to the fact that the father had not mentioned a particular claimed incident (the appellant telephoning him after a visit to a police station). In my view, this provides two indications: first, it supports my view that the judge had the father's evidence in mind generally; second, it illustrates a lack of consistency between the appellant's evidence and that from his father. Further, as mentioned earlier in the my decision, [71] includes sustainable criticisms of the appellant's account, including the particular element relating to what the father had said (i.e. the claimed November 2019 threats). Overall, I am satisfied that the judge's failure to have made a specific finding on one aspect of the father's evidence does not constitute a material error on his part.

26. Read sensibly and holistically, the judge's decision is sustainable.

Anonymity

27. For some reason of which I am unaware, the judge declined to make an anonymity direction in the First-tier Tribunal. This case involves a protection claim and, in line with current guidance, I make a direction in the Upper Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

The appeal to the Upper Tribunal is accordingly dismissed.

Case No: UI-2022-006317
First-tier Tribunal No: PA/51787/2021

H Norton-Taylor

Judge of the Upper Tribunal

Immigration and Asylum Chamber

Dated: 17 April 2023