



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006368
First-tier Tribunal No: PA/00272/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 2 May 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

MA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr P Haywood, counsel instructed by Duncan Lewis Solicitors Ltd

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 29 March 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. This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Oxlade promulgated on 13 December 2022.

2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.
3. Permission to appeal was granted by First-tier Tribunal Judge LJ Murray on 23 January 2023.

Anonymity

4. An anonymity direction was made previously and is reiterated because this is a protection claim concerning a vulnerable appellant with mental health diagnoses.

Background

5. The appellant, who is a national of Iraq, entered the United Kingdom clandestinely and applied for asylum on 7 September 2017. He had previously made an asylum application in Austria.
6. During November 2018, the appellant was convicted of sexual activity with a child, sentenced to ten months' imprisonment, and ordered to sign the Sex Offenders Register for ten years. A deportation order was signed on 12 December 2018 and a decision to deport the appellant was made on 13 December 2019 however, as the appellant made further submissions and was interviewed in respect of his asylum claim the process was delayed. In October 2021, the appellant was convicted of three counts of failing to comply with notification requirements and sentenced to a total of 24 weeks' imprisonment. Ultimately, the respondent refused the appellant's protection claim in a decision dated 29 March 2022.

The decision of the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, the appellant relied on protection grounds on the basis of his bisexuality and that he was at risk from honour-based violence, Article 3 ECHR on mental health grounds and owing to being an undocumented Iraqi national as well as Article 8 ECHR.
8. The appeal was allowed as the judge found that the appellant is a bisexual man who had been persecuted in Iraq, would be at risk of further persecution in Iraq, that there was no national protection available to him and that it was unreasonable to expect him to relocate to avoid persecution. The Article 8 appeal was allowed because the appellant's removal would breach his family life and that of his partner. The judge reached no findings on a threat to kill the appellant made by his brother, his ability to redocument nor the Article 3 mental health claim.

The grounds of appeal

9. **Ground 1 - Making a material misdirection of law/inadequate reasoning - criminality**
 1. It is respectfully submitted that FTTJ Oxlade has failed to consider the seriousness of the appellant's index offence having been served with a decision to deport under section 5(1) of the Immigration Act 1971 pursuant to section 3(5) of the Immigration Act 1971 as his presence is not deemed to be conducive to the public good nor the public interest.

2. On 6 November 2018, the appellant received a 10 month prison sentence at Bradford Crown Court following his conviction for sexual activity with a female child under 16 and was ordered to sign the Sex Offenders Register for 10 years. He also has a subsequent conviction issued on 22 October 2021, at Greater Manchester Magistrates' Court, for failing to comply with notification requirements and was sentenced to 24 weeks' imprisonment, comprising two 10 week concurrent sentences to be served concurrently with a 24 week sentence.

3. There is no evidence that the appellant has shown remorse for his actions [27] and the FTTJ has undermined at [68] the seriousness of the offence by stating 'that sexualised violence is often not about sex, but power' despite him being described as 'predatory' by the Offender Manager'. The FTTJ has not addressed in any detail the impact of the appellant's offence to the victim or the fact that the appellant himself has not taken his offence seriously by failing to report as required which is significant given the deportation decision. No reference was made to the OASYS report regarding his level of risk to the community given he is a predator and likely to reoffend.

4. It is submitted that the FTTJ has erred materially in failing to give the appellant's offence any weight but focused predominantly on his asylum claim which centres on his credibility.

Ground 2 - Making a material misdirection of law/inadequate reasoning - asylum claim

5. It is submitted that the FTTJ has not shown balanced or proportionate reasoning which is central to the appellant's asylum and human rights because of his credibility, having been untruthful and admitting to having lied at his initial screening interview and subsequent two asylum interviews, despite the FTTJ concurring with the concerns raised by the respondent in [61], having highlighted at [60] that 'The credibility of the Appellant's claim is at the heart of this appeal.' Yet judge has attributed the appellant's deception largely by relying on the medical evidence regarding his mental health issues and has accepted the evidence of scarring as being consistent with trauma and persecution from his family because of his sexuality [61] - [65].

6. It is a fact that given the appellant's unreliable evidence because of the numerous lies told and changes to details regarding his nationality, documentation and sexuality, judge has given weight to the report of Dr Munro that the scarring on the appellant is consistent with having suffered past persecution because of his sexuality [63]. This is at odds with the details given at his initial asylum screening interview where he had stated that he had been kidnapped with his father and brother by militia and had been subjected to torture [refusal letter of 29th March 2022], which judge has justified again by reliance on the medical evidence [66]. It is submitted that scarring and other sustained injuries could have presented by other means which was not fully explored.

7. The medical evidence has not provided any detail as to the extent of the trauma or any form of remedial therapy for his mental illness. There is no indication that his mental state is at a critical level or that he could not access medical treatment and support in Iraq.

8. At [72], the FTTJ has acknowledged that the appellant has a 'propensity to lie/mislead' and his claim could equally be taken as a complete fabrication, which the FTTJ has not considered as a possibility. It is of note that the FTTJ has stated at [72] that 'I find that he is Iraqi, had a CSID card, and had a passport on which he travelled', yet has not considered the possibility of relocation to another part of Iraq given he remains in contact with his mother and could seek the assistance of his brother in Belgium and other siblings still living in Iraq for replacement documentation.

9. It is not accepted that the appellant is at risk of persecution because of his sexuality, and it is considered that his deportation is conducive to the public good and in the public interest given the type of offence committed and likelihood of reoffending.

10. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the First-tier Tribunal Judge failed to consider whether the Appellant could internally relocate in Iraq given that it is arguable that gay men are not persecuted per se (Country Policy and Information Note Iraq: Sexual orientation and gender identity and expression, 2021). Although the other grounds are less arguable I do not refuse permission.

11. The appellant filed a detailed Rule 24 response on 28 March 2023, in which the appeal was opposed. The point was made that the grounds raised no challenge to the appeal being allowed under Article 8 ECHR.

The hearing

12. Neither Mr Tufan nor the Tribunal had received the Rule 24 response and time was taken to consider it. When the hearing commenced, Mr Tufan applied to amend the grounds to add an Article 8 argument. When invited to expand on this ground, Mr Tufan stated that he had nothing further to add. Mr Heywood resisted the application, mainly because this would disadvantage the appellant. I refused this application on the basis that the respondent had ample opportunity to seek to amend the grounds given that it had been over three months since the application for permission to appeal was made and two months since permission was granted.

13. Thereafter Mr Tufan, as well as relying on the grounds, made the following succinct submissions. The judge noted that the appellant lied, he had done so throughout the process and the medical evidence did not suggest that this was a symptom of his conditions.

14. Mr Tufan added that the judge had allowed the protection appeal simply on the basis that the appellant was a bisexual man and that this part of the decision was completely lacking in reasons.

15. In reply, Mr Heywood relied on his Rule 24 response, stating that it was clear that the judge accepted the appellant's primary account of an incident involving a same-sex partner in Iraq which had led to past persecution and that the appeal was not allowed simply because the appellant was bisexual. The internal relocation point picked up by the judge granting permission did not form part of the Secretary of State's case before the First-tier Tribunal and it was not argued in

the grounds. Mr Heywood argued that there were clear reasons why the appellant could not relocate including that he would not be able to obtain an identity document without putting himself at risk, that he would be unable to live openly as a bisexual man as well as his serious mental health issues which include a risk of further attempts at self-harm. He urged me to dismiss the Secretary of State's appeal and to note that the appeal remained allowed on Article 8 grounds.

16. At the end of the hearing, I announced that there was no material error of law contained in the decision of the First-tier Tribunal and that the decision was upheld.

Decision on error of law

17. The first ground is misconceived. Complaint is made that the judge failed to consider the seriousness of the offending as well as the appellant's lack of remorse and instead 'focused predominantly on his asylum claim which centred on his credibility.' The judge was required to assess the appellant's protection claim, with a focus on the credibility of that claim. This she did. At the outset of her reasons, the judge recorded that the credibility was 'at the heart of this appeal.' At [61], the judge summarised the respondent's concerns with the credibility of the protection claim, including references to the appellant having been untruthful with the United Kingdom authorities. Thereafter, at [62-66], the judge assessed the unchallenged conclusions from a consultant psychiatrist as well as an expert country report and considered the appellant's credibility against that backdrop before concluding that the appellant's failure to make a full disclosure of the basis of his claim did not undermine his claim. Returning to ground one, it is unexplained as to why the respondent considers that matters relating to the seriousness of the appellant's offending are relevant to the judge's findings on his protection claim. It follows that the judge made no error in focusing on the refugee Convention issues without reference to the particulars of the appellant's convictions.
18. The second ground revisits the credibility issue referred to in the first ground. Contrary to what is argued, the judge's consideration of the appellant's credibility was balanced and proportionate. As set out in the preceding paragraph, the judge grappled with the issue of the appellant's initial failure to tell the truth at his screening interview. In addition, with reference to paragraph 8 of the grounds, at [72], the judge revisited the issue of credibility in considering the appellant's nationality and went on to prefer the conclusion of a language report that the appellant had more linguistically dominant Iraqi features than Syrian on the basis that the appellant's account of his time in Syria did not explain the language analysis.
19. The grounds criticise the judge for placing weight on the medical evidence but provide no reasons why the judge ought not to have done so. Paragraphs 5 and 6 of ground two amount to little more than a series of unexplained disagreements with the judge's decision. The grounds also attempt to make submissions relating to the appellant's injuries which were not made at the hearing before the First-tier Tribunal.
20. In paragraph 7 of the grounds, criticism is made of the judge's reliance on the medical evidence, and it was argued that there was a lack of detail as to the appellant's trauma, therapy, the level of his mental state or the availability of treatment and support in Iraq. The difficulty with this submission, as opposed, to argument, is that there was no challenge to this evidence on behalf of the

respondent at the hearing, including to the appellant's diagnosis, as recorded by the judge at [23] of the decision and reasons. Furthermore, the matters mentioned in the grounds demonstrate a lack of understanding that the appeal was not allowed on an Article 3 health basis.

21. In paragraph 8 of the grounds, it is suggested that the judge failed to consider the possibility of internal relocation which was said to be relevant because the appellant was in contact with his mother and siblings who could assist him with replacement documentation. The judge granting permission commented on this point. While the issue of internal relocation was mentioned in the decision letter and the respondent's review, no submissions were made on the respondent's behalf at the hearing as the presenting officer based his submissions on credibility as seen from [39] onwards. In addition, Mr Tufan made no detailed submissions on this point. Had detailed submissions been made to the judge on this matter, there was background and expert evidence before the Tribunal which strongly indicated that the appellant could not reasonably be expected to internally relocate in Iraq. That evidence is set out in the respondent's CPINs dated September 2021 and July 2022. To summarise Mr Haywood's submissions, the judge found that the appellant had neither a passport nor CSID, he was not from Baghdad but from Samara and that according to the CPIN, the appellant cannot travel to this area without a document. Furthermore, the appellant's fear of persecution at the hands of his family owing to his sexuality is a relevant factor, as is the potential risk from the public, discrimination by the authorities as well as the absence of protection available from the Iraqi authorities for LGBTI people. Particularly relevant for the appellant, is the unchallenged medical evidence which raises a risk of completed suicide if he is removed to Iraq. The appellant twice attempted to hang himself in prison.
22. There is no material error of law in the decision of the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 March 2023

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