IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001947
First-tier Tribunal No:
PA/50811/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 October 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

ZM (Ethiopia)
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr V. Jagadesham, Counsel instructed by Greater Manchester Immigration Aid Unit
For the Respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 8 September 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

1. The appellant is an accepted victim of human trafficking. Pursuant to the Sexual Offences (Amendment) Act 1992, she is entitled to anonymity. We consider that it is necessary to make an order for anonymity in order to ensure this decision does not reveal details that could lead to a breach of the statutory anonymity enjoyed by the appellant.

Procedural background

2. By a decision dated 18 December 2021, First-tier Tribunal Judge Dilks ("the judge") dismissed an appeal brought by the appellant, a citizen of Ethiopia born in 1987, against a decision of the Secretary of State dated 28 January 2021 to refuse her asylum and humanitarian protection claim. The judge heard the appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The appellant now appeals against the decision of the judge with the permission of First-tier Tribunal Judge Pickering.

Factual background

3. The appellant entered the United Kingdom on 25 July 2018 on a domestic worker visa, accompanying the "A" family for whom she had been working in the United Arab Emirates. On 31 July 2018 she claimed asylum. In her screening interview conducted that day, she said that she had run away from the A family. They had not paid her and had taken her passport. When asked, she said that she could not go back to Ethiopia because her father was disabled and there would be nobody to support her family. In her substantive interview, the appellant said that her father was a supporter of the OLF and that she feared being persecuted on account of her imputed political opinion. Before being trafficked to Dubai by the A family, she had been a victim of forced marriage.

4. A referral was made to the Single Competent Authority which, by a decision dated 19 November 2020, accepted that the appellant had been a victim of forced labour in the form of domestic servitude from 5 February 2017 to 25 July 2018.

5. The Secretary of State refused the appellant's asylum claim. In her decision dated 28 January 2021, she accepted the appellant to be the nationality and ethnicity she claimed, and to have been trafficked to the United Arab Emirates and then to the United Kingdom. However, she rejected her claim to have been subject to forced marriage in Ethiopia, and to have been persecuted by the Ethiopian authorities on account of her political opinion.

The decision of the First-tier Tribunal

6. In her decision, having set out the essential procedural and background details, the judge stated at para. 26 that she accepted the appellant to be a vulnerable and sensitive witness in view of the fact she was an accepted victim of human trafficking. The judge said that she had regard to the Joint Presidential Guidance Note No. 2 of 2010 and the Equal Treatment Bench Book, and that she had considered how to ensure the appellant was able fully to participate in the proceedings, including taking regular breaks.

7. From paras 29 to 35 under the subheading "*Forced Marriage*", the judge scrutinised the reasons given by the Secretary of State for rejecting the appellant's claim to be the victim of a forced marriage. She noted that the appellant's claim was consistent with the background materials concerning forced marriage in Ethiopia (para. 29). The main reasons given by the Secretary of State for rejecting this part of her case related to perceived inconsistencies in the

appellant's account on grounds which the judge did not find persuasive. For example, although in the Visa Application Form ("VAF") for her domestic worker visa, the appellant had claimed to be "single", the judge accepted that the appellant had nothing to do with the completion of that form. It had been submitted by the A family, her traffickers. The appellant was not responsible for its contents.

8. At para. 31, the judge addressed the Secretary of State's concerns arising from the entry on the appellant's Asylum Interview Record ("AIR") which also stated that the appellant was "single". That, found the judge, had been compiled from Home Office records, rather than any information provided by the appellant. It was nothing to the point, as had been claimed by the presenting officer before the First-tier Tribunal, that the forced marriage narrative featured towards the end of the AIR; the appellant's solicitors had provided details of the forced marriage claim ahead of the interview. The judge placed "no weight" on some of the remaining details in the VAF (para. 34).

9. The appellant had also said in her asylum screening interview ("SCR") that she was single. The judge addressed that at para. 35:

> "With regard to the information in the SCR that the appellant is single, I am urged to place limited weight on the SCR by the appellant's representative for a number of reasons. The SCR took place on the day she escaped from the [A] family and from an accepted situation of modern day slavery including sexual exploitation and I accept that this is a significant factor. Also, the SCR took place with an Amharic interpreter whereas the appellant's main language is Oromo."

10. The judge moved onto address the appellant's claim to fear the authorities in Ethiopia at para. 36 under the heading "*Problems with the Ethiopian Authorities due to Political Activity*". It was significant that the appellant had not mentioned this fear in the SCR, and that her focus had been the need to protect her disabled father and her siblings in Ethiopia, she found. The appellant had been inconsistent in relation to key dates across the SCR, AIR and NRM processes. The appellant's claimed motivations for supporting Oromo rights were general and vague. The judge again accepted that it was "significant" that the SCR was conducted on the day the appellant escaped her traffickers (para. 42) but found that it was "not credible" that the appellant was unable to understand the questions put to her simply on account of the interview being conducted in Amharic. She plainly understood the questions and was able to give detailed answers. At para. 49 the judge said:

> "For these reasons I place weight on the information in the SCR with regard to the appellant being single and her reason for claiming asylum, even though the interpretation was not in the appellant's main language and it took place on the day of her escape. The information in the SCR is consistent with the information given in the NRM form which was completed at a later date."

11. The judge placed little weight on a letter purportedly from the Chairman of the OLF Committee in the UK (para. 50). She found the appellant to be evasive in her oral evidence (para. 51), particularly when questioned about her relationship with her husband, and in relation to a claim to be the subject of an arrest warrant issued in Ethiopia.

12. The judge said that she had borne in mind the appellant's vulnerability and the fact that she gave evidence through an interpreter, but:

> "Having said that, it appeared to me that the appellant understood the questions put to her at the hearing and gave reasonably coherent responses to virtually all of those questions."

13. The judge was not satisfied that the appellant had been forced into a marriage as claimed, nor that she had problems with the Ethiopian authorities due to her political activity (para. 52). She found that the appellant *would* be at risk of being re-trafficked in Ethiopia (paras 60 to 63) but found that she would enjoy a sufficiency of protection (paras 64 to 73).

14. The judge dismissed the appeal.

Issues on appeal to the Upper Tribunal

15. There are three grounds of appeal. In summary, as amplified by Mr Jagadesham, they were:

    a. Ground 1 is that the judge's findings at paras 29 to 35 are inconsistent with her subsequent reasoning. On the one hand, the judge said that it was "significant" that the appellant was interviewed in a language other than Omoro and on the day she escaped her traffickers, yet on the other the judge ascribed determinative significance to the inconsistencies between the appellant's answers as given in the SCR and the AIR. The judge failed to resolve key inconsistencies in her own reasoning, thereby failing to demonstrate anxious scrutiny in her consideration of the appeal reaching findings that were "contradictory or even perverse".

    b. Ground 2 is that the judge failed to calibrate her findings of fact by reference to the appellant's vulnerability. Despite saying that she had done so at various points in her decision her operative analysis failed to take proper account of that issue.

    c. Ground 3 is that the judge erred when concluding that the appellant, whom she accepted to face the risk of re-trafficking in Ethiopia, would enjoy a sufficiency of protection from the authorities in that State.

16. Ms Isherwood submitted that the judge took into account all relevant considerations and reached findings of fact that were rationally open to her on the evidence before her, for the reasons she gave. Mr Jagadesham's submissions amounted to "cherry picking" the reasons given by the judge, by reference to a selective reading of the evidence. Properly understood, the appellant's true complaint with the judge's decision is a disagreement of fact and weight, and there is no error of law.

17. Ground 2 as originally pleaded featured a further dimension alleging procedural unfairness. The Secretary of State's refusal decision referred to details which had been given by the appellant when completing the NRM form, yet neither party had a copy of that original document. Rightly, this facet of ground 2 was abandoned by Mr Jagadesham at the hearing; the appellant had been provided with a copy of the NRM form, and a copy of it had been in her possession at all material times. It was sent in digital form to the Upper Tribunal, and the Secretary of State, shortly before the hearing.

The law

18. For reasons that will be seen, this appeal turns on ground 1, which is a challenge to the reasons given by the judge. There are many authorities on the

need for judges to give sufficient reasons. In *English v Emery Reimbold & Strick Ltd. (Practice Note)* [2002] EWCA Civ 605, Lord Phillips MR said, at para. 19:

> "It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, it may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied on."

19. In *Simetra Global Assets Limited v Ikon Finance Limited* [2019] EWCA Civ 1413, Males LJ adopted the language of the "building blocks of the reasoned judicial process" as a means to describe the essential ingredients of sufficient reasons.

20. In relation to assessing the impact of a witness or appellant's vulnerability, the Joint Presidential Guidance Note No. 2 of 2010 ("the Guidance Note") states, at para. 10.3:

> "**Assessing evidence**
>
> Take account of potentially corroborative evidence
>
> Be aware:
>
> i. Children often do not provide as much detail as adults in recalling experiences and may often manifest their fears differently from adults;
>
> ii. Some forms of disability cause or result in impaired memory;
>
> iii. The order and manner in which evidence is given may be affected by mental, psychological or emotional trauma or disability;
>
> iv. Comprehension of questioning may have been impaired."

21. At para. 14 the Guidance Note states:

> "Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity."

22. The Guidance Note was endorsed in *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123; see, for example, paras 30 to 34.

Ground 1: insufficient reasons given for rejecting the forced marriage claim

23. At the outset of our analysis, we pay tribute to the careful manner with which the judge approached the task before her. This was a thorough decision, promulgated only four days after the hearing. However, notwithstanding the general high quality of the judge's decision, we accept Mr Jagadesham's submissions that there is a disjoint in the judge's reasoning between paragraphs 29 to 35, on the one hand, and her operative analysis at paragraph 36 and following, on the other.

24. The disjoint is this. The reasoning adopted by the judge from paras 29 to 35 rejected, in comprehensive terms, the reasons relied upon by the Secretary of State for not accepting the appellant's forced marriage narrative. Moreover, the judge expressly accepted, and categorised as "significant", the fact that the appellant had been interviewed in a language other than Oromo, on the day that she had fled her captors. She was right to do so. Screening interviews are often conducted when a claimant for asylum is under extreme stress, and the experience for this appellant would have been augmented to unimaginable levels of distress in light of the fact she had only just escaped from her accepted conditions of slavery in the United Kingdom, following her recent arrival (under conditions of forced labour, following sexual exploitation) from Dubai. To say that she would have been disorientated would be an understatement of some magnitude. It was necessary, as the judge directed herself at para. 34, to ascribe significance to that feature of the circumstances under which the appellant's screening interview took place. The judge reminded herself of the significance of those circumstances at para. 42.

25. Against that background, we accept the submission that the judge's subsequent analysis at para. 49 is difficult to understand, particularly in relation to the judge's rejection of the impact of the circumstances of the appellant's interview as being a possible contributing factor to the answers she gave during the screening interview. We are mindful that the judge was a first instance trial judge who had the benefit of hearing the appellant give evidence, which she considered in light of the entirety of the evidence in the case, in the round. Ordinarily, this tribunal will be slow to interfere with first-instance findings of fact reached in such circumstances. The difficulty, however, is that the "building blocks of the reasoned judicial process" have, in our judgment, gone somewhat awry with the judge's decision to ascribe significance to the very inconsistencies which she had rightly accepted should be approached with a significant degree of latitude.

26. Bearing in mind the judge's acceptance of the significance of the traumatic circumstances of the interview, we would have expected the judge to explore in more depth what the appellant is likely to have understood by the question concerning her marital status, and her answer that she was "single". Since it was common ground before the judge that the appellant had been trafficked to Dubai and onto the UK, and since there was no suggestion that the man the appellant said she had been forced to marry had accompanied her to Dubai, it was incumbent upon the judge to view the appellant's answers to the questions put to her against that background, making appropriate allowances for her vulnerability.

27. We also struggled to understand aspects of the judge's reasoning at paras 36 to 51, for other reasons. Whereas the subheading to the preceding section of the decision at paras 29 to 35, "*Forced Marriage*", rightly implies that the subject of the discussion was that issue, the judge appeared to return to the forced marriage narrative in the midst of her discussion concerning the appellant's claim to have fallen foul of the authorities in Ethiopia under the rubric of "*Problems with the Ethiopian Authorities due to Political Activity*". It was not clear to us whether the judge's discussion of the absence of the OLF-based claim in the SCR

was limited to that part of the appellant's narrative (as the subheading and structure of the decision would suggest), or whether the judge was revisiting the forced marriage findings in the context of addressing the OLF limb of the claim, notwithstanding her earlier rejection of the Secretary of State's analysis of those aspects of the claim in the part of the decision specifically addressed to that issue.

28. Of course, the Upper Tribunal looks to substance and not form, and merely discussing one topic under the rubric of another alone would ordinarily be unlikely to amount to an error of law. However, any confusion that would otherwise be overlooked as immaterial is thrown into sharp relief by the apparent conflict between the judge's approach to ascribe significance to the circumstances of the SCR at para. 35, on the one hand, and her approach to it at para. 49, on the other. We have considered whether the judge was simply addressing factors on militating in either direction before reaching a considered view. She may have been. But this was an asylum appeal, to be assessed to the lower standard, with the need expressly to display anxious scrutiny. We accept the submission that the judge's reasoning fails to reconcile this key difference, when read as a whole.

29. Finally, with respect to the judge, we cannot see how it was rationally open to the judge to identify, as she did at para. 39, the "inconsistencies in the appellant's evidence with regard to why and when she left Ethiopia" as attracting the apparent determinative weight that they, the inconsistencies, did. It was accepted by the Secretary of State that the appellant had been trafficked *to* Dubai, from Ethiopia (see para. 30 of the refusal letter), as well as *from* Dubai to the UK. The suggestion that the appellant had an element of choice in leaving Ethiopia is at odds with her status as a victim of trafficking from that country to Dubai.

30. Ground 1 therefore succeeds. In summary, the judge's analysis in relation to the appellant's forced marriage narrative was contradictory and was premised on the footing that the appellant had an element of choice in her departure from Ethiopia to Dubai, contrary to her accepted status as a victim of modern slavery in that respect.

Not necessary to consider the remaining grounds of appeal

31. Since an assessment of the appellant's credibility must be conducted in the round, we do not consider that we can divorce the judge's forced marriage analysis from her remaining analysis of the appellant's claimed political activities. Moreover, as we have noted, the judge appeared to embed part of her analysis concerning the forced marriage issue within her broader analysis of the appellant's claimed political activities in Ethiopia. The findings in relation to the appellant's claimed political activities are therefore infected by the judge's approach to the forced marriage issue, and both findings must be set aside.

32. That being so, it is not necessary additionally to address whether the judge fell into error in relation to her analysis of the appellant's vulnerability during her analysis (although we note that she did not expressly take into account the fact that the appellant would have been a child when she was subject to forced marriage, taking her claim at its highest). Similarly, it is not necessary to address the final ground of appeal concerning sufficiency of protection. Whether the appellant would enjoy a sufficiency of protection in Ethiopia as an accepted victim of trafficking facing a real risk of being re-trafficked is an inherently fact-sensitive question which may only properly be conducted in respect of sustainable findings of fact concerning the appellant's overall claim for asylum.

33. We therefore conclude that the decision of the judge must be set aside in its entirety with no findings of fact preserved and remitted to the First-tier Tribunal for a further hearing before a different judge.

Notice of Decision

The decision of Judge Dinks involved the making of an error of law and is set aside with no findings of fact preserved.

The appeal is remitted to the First-tier Tribunal to be reheard by a different judge.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 September 2023