IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001238

First-tier Tribunal No: PA/51209/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

24th January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

KS
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Yeo, Counsel instructed by Migrant Legal Project
For the Respondent: Ms Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 13 December 2023

DECISION AND REASONS

Order Regarding Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted by the First-tier Tribunal. I have not been asked to rescind that order. I have considered the principles of open justice. I am of the view that it is in the interests of justice that order continues. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Introduction

1. The Appellant is a national of Lebanon. He claimed asylum in the UK on the grounds that he had a well-founded fear of persecution in Lebanon on the basis of his religion and imputed political opinion. His appeal against the Respondent's decision dated 25 February 2021 refusing his protection claim was dismissed by First-tier Tribunal Judge G Wilson on 7 December 2021.

2. Permission to appeal was granted on grounds on renewal by Upper Tribunal Judge Kamara on 12 June 2022.

3. The matter came before me to determine whether the First-tier Tribunal (FTT) had erred in law, and if so whether any such error was material and the decision should be set aside.

Error of Law – Grounds of Appeal

4. There are eight grounds of appeal. I do not set them out here but deal with individually in my conclusions below. No concessions are made by the Respondent in the Rule 24 response.

The hearing

5. Mr Yeo expanded on grounds 1 and 6 of the grounds of appeal but relied on all grounds. He submitted that the FTT had misunderstood the Appellant's case and this error ran through the determination in many places. The claim was based on a family dispute and the risk was from his uncle. The FTT attached 'little weight' to the attorney's letter and the decision to attach 'little weight' continued throughout the determination. The FTT referred to the behaviour of Hezbollah generally at paragraph 40 (g) and considered the plausibility of the Appellant's account. He accepted that the Appellant was Lebanese and that he had an optic shop. Ground 6 related to photos of the Appellant's shop. There was no reason to doubt it was his shop and it seemed fanciful to suggest that he would have googled photos. There was nothing to suggest that there was a deceitful fabrication of evidence. The FTT said that there was nothing to link the Appellant with the shop and did not engage with the Appellant's evidence that it was his shop. The comment that the photos did not bear a date stamp was an irrelevant consideration as photos had not born a stamp since the mid-1990s. The photos were not a trump card but they did add something. To say that there was nothing on the face of the photos to link them to his shop was to go too far when the evidence was neutralised. There was no weighing of corroborative evidence and the approach was blinkered and one-sided. It was characteristic of what was more broadly an unreasonable approach to the Appellant and that could be seen in particular at paragraph 40 (f) where the Judge said that medical evidence should, and could have been obtained. Given that all of the corroborative evidence was rejected it was not a good faith reason for rejecting the Appellant's claim. Finally, the Judge had employed a very

peculiar use of the word “incoherent” at paragraphs 40, 40 b and 41. The aspects of the account were not incoherent and the use of the word indicated an assessment that was not ‘in the round’.

6. Miss Rushforth submitted that the decision was detailed, well-reasoned and balanced. She addressed each ground of appeal in turn. In relation to Ground 1, the FTT clearly did not misunderstand who the agents of persecution were. At paragraph 17 the FTT accurately recorded the Appellant’s claim noting that the main fear was from his uncle but the attack on the shop was caused by three unknown people who were shouting abuse including that the Appellant had insulted Hezbollah. The FTT referred to a risk from family and Hezbollah in paragraph 40 and 41. He referred to the risk from both and ultimately rejected risk from either.

7. Ground 2 argued that the FTT failed to make findings as to whether the Appellant’s uncle was a member of Hezbollah but this was immaterial.

8. Ground 3 asserted that the FTT’s findings on the expert report were perverse but the Judge had accurately recorded the expert evidence and the FTT looked at the Appellant’s specific circumstances.

9. Ground 4 alleged discrepant findings but the FTT made separate findings. The Appellant remained in the country for 2-3 months. It was open to the Judge to find that it was relevant that the Attorney failed to mention part of the Appellant’s claim.

10. The impugned adverse credibility findings in relation to the voter list at ground 5 were open to the FTT as it was the Appellant’s evidence that his uncle had such an interest in his conversion that he had to leave.

11. In relation to Ground 6 the FTT was entitled to and correct to find a lack of evidential link between the photos and the Appellant and found in the alternative that causation was not proved. These findings were open to him.

12. Ground 7 did not demonstrate any misdirection or inconsistency and it was open to the Judge to decide how to structure the decision.

13. Ground 8 correctly found that the Appellant’s possession of a false document engaged section 8 and affected his credibility. The argument was a matter of semantics. The FTT was entitled to find that the absence of medical evidence adversely affected the Appellant in view of the fact that the Appellant had obtained other corroborative evidence (TK Burundi v SSHD (2009) EWCA Civ 894). It was open to the Judge to find that the Appellant could have reasonably obtained it.

14. I reserved my decision.

Conclusions – Error of Law

15. The first ground of challenge asserts that the FTT misunderstood the Appellant’s claim and the expert evidence of Dr Fatah and assumed that

the Appellant was targeted by Hezbollah whereas the Appellant's case was that it was his uncle who took exception to the Appellant's religious conversion and used Hezbollah members as a tool to threaten and attack the Appellant. It is argued that his findings are perverse.

16. On reading the decision as a whole it is clear that the FTT did not misunderstand the Appellant's case. The FTT summarised the Appellant's case accurately at paragraph 17:

> "The Appellant asserts that he managed to conceal his conversion for many years until a change in law meant that additional information, such as voter sect, were published on boards in the 2018 election. As a result, the Appellant asserts that his conversion came to the attention of his family which resulted in the Appellant being harassed, pressured and threatened by his family to convert back to Shia. The Appellant asserts that after being threatened by his uncle, three men came to his shop caused damage and beat him. The Appellant asserts that the three men were shouting abuse, including that the Appellant had insulted Hezbollah."

17. It is apparent from this passage that the FTT understood that the Appellant's case was that he was threatened by his uncle. At paragraph 40, the FTT considered the claim to be at risk due to religious conversion. Again, it is clear from both his summary of the Appellant's case and his findings, that he was aware that the Appellant's case was that he was at risk from his family including his uncle. At paragraph 40 a. he states:

> " The Appellant's evidence is that his family including his uncle had a significant interest in the Appellant's religious sect such that conversion prompted threats and violence."

18. In finding the Appellant's account inconsistent at paragraph 40 b, the FTT states:

> "On the one hand his family, in particular his uncle, had such a significant interest in his religious sect that he was willing to use threats and instigate violence against the Appellant. However, between May 2018 to March 2019 the Appellant's account is that he resisted family requests to convert back to Shia by agreeing with his family and saying that he would convert at a later date. The Appellant's account that he was simply able to placate his relatives by saying that he would change to sect a later date is inconsistent with and incoherent within the context of the Appellant's evidence that his family felt so passionately about his conversion that they were willing to use threats and violence".

19. It is manifest, when reading the decision as a whole, that the Judge fully understood that the Appellant's case was that he feared his family and Hezbollah members. When assessing his account, he repeatedly assesses the risks from both at paragraph 36, 37, 40 and 41. Again, in his conclusions he assesses the credibility of the "account of the adverse attention of his family and Hezbollah as a result of his religious conversion" and at paragraph 41 he finds his account contains:

"elements which are internally inconsistent; inconsistent with the risk that he claims to face upon return from his family and Hezbollah, are incoherent and are inconsistent with and are not supported by the objective evidence."

20. The grounds of appeal have simply picked out the paragraphs of the FTT decision in which the Judge assesses the risk from Hezbollah in particular and have ignored the numerous paragraphs where the risk from both Hezbollah and his family are considered.

21. I find that the Judge also did not misunderstand or make perverse findings in respect of the country expert's report. He set out the passages of the expert's report that he was directed to at paragraph 23, accurately summarised the content of the report as it pertained to the Appellant's case at paragraph 25, including the evidence of the expert that Hezbollah generally don't threaten or interfere with people on an individual basis, and noted that the expert only provided one example from 2009. Again, the grounds of appeal have picked out passages of the judgment where the Judge considers the expert evidence in relation to Hezbollah. However the Judge specifically notes the expert's evidence that family pressure or disapproval may hinder/prevent conversion at paragraph 40 d of the decision.

22. It is further argued in Ground 1 that the FTT erred in his reasoning for placing little weight on the letter of the Attorney which stated that the uncle was causing the issue and was consistent with the Appellant's claim.

23. The reasons given by the FTT for placing little weight on the Attorney's letter are given at paragraphs 39 and 41. He found that the letter read as if the Attorney was simply reciting an account told to him by the Appellant. He further found that the timing of the letter and the omission from the letter of the Appellant's account that his attackers came to his house is significant and undermines the credibility of this element of his account. He gives cogent reasons for not accepting the Appellant's explanation in his witness statement that the omission was due to the Attorney's fear of mentioning Hezbollah, namely, that the Attorney was able to describe the attack without mentioning Hezbollah and therefore could have described the Appellant's attendance in the Appellant's house in similar terms.

24. An appeal court can only set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration if the judge's conclusion was rationally insupportable (Volpi v Volpi [2022] EWCA Civ 464). In placing little weight on the Attorney's letter, the FTT gave reasons which were rational and open to him on the evidence in the case.

25. I have considered Mr Yeo's oral representations in relation to Ground 1. I have found that the FTT did not fail to consider relevant evidence in relation to the threat to the Appellant from Hezbollah and his uncle. He

provided reasons for his findings in relation to both, and those reasons were rational and adequately reasoned. What weight he gave to each piece of evidence was a matter for him. The decision was a palpably balanced one. He directed himself correctly with regard to the approach to the documents at paragraph 29, accepted that a number of them were reliable and gave adequate reasons for finding that the documentary evidence set out at paragraph 33 did not corroborate the Appellant's account. I find that not only did he properly direct himself that he was considering the evidence in the round at paragraph 34 but he demonstrably did so. He clearly understood that it was the Appellant's case that the photographs showing damage to an optics shop were of his shop and his conclusion that there was nothing in the photographs to show that the shop belonged to the Appellant was factually correct. It was also entirely open to the Judge to find that in circumstances where he had been able to provide a significant amount of corroborative evidence and had a wife and family in Lebanon who had provided evidence, it could reasonable be expected that he could have obtained medical evidence of the fact that he was attacked (TK (Burundi v SSHD (2009) EWCA Civ 894). The word 'incoherent' has a number of synonyms including inconsistent, confused and unintelligible. As stated in Volpi, a judgment should not be subjected to a narrow textual analysis and it cannot be said that the use of the word undermines the FTT's conclusion.

26. Ground 2 asserts that the FTT erred in failing to resolve whether the Appellant's uncle was a member of Hezbollah and failing to explain, if at all, the reasons for believing or disbelieving the same. I find that there is no error of law disclosed by this ground. The FTT gave a number of cogent reasons for finding that the Appellant would not come to the adverse attention of his family or Hezbollah at paragraphs 40 and 41 which were open to him on the evidence as he found it to be and led to his adequately reasoned conclusion that the Appellant had failed to establish that he would be at risk from either on return.

27. Ground 3 asserts that the FTT erred in making adverse findings in respect of the expert evidence. It is asserted that the Judge failed to decide upon the question of "family pressure". I find that the Judge neither mischaracterised nor omitted to consider any of the relevant expert evidence, the relevant parts of which he set out in the decision. He gives clear reasons, grounded in the evidence, for finding that the Appellant's account was both inconsistent with the objective evidence, not supported by the expert evidence, that his alleged fear of his family's threats and violence was inconsistent with his account that he was able to placate them by saying he would change sect at a later date and that there were other aspects of his account that were not plausible (paragraph 40).

28. Ground 4 also asserts that the FTT made perverse findings which are at odds with both one another and the expert evidence. The findings at paragraph 40 (g) and 39 are contrasted. I find that the two findings are

not inconsistent with each other but are two separate findings both of which are justified by adequate reasons. The Judge finds at paragraph 39 that the Attorney could have described the attendance at the Appellant's house without mentioning Hezbollah and therefore the Appellant's explanation in his witness statement that the omission was due to the fear of Hezbollah was not plausible. He did not find, as is asserted in the grounds, that "the Attorney would have been unconcerned to name Hezbollah in a statement". There is therefore no inconsistency between this finding, and the separate finding, that the Appellant's ability to remain in the country for 2 to 3 months following an attack, albeit in hiding, was inconsistent with the risk he claims to face, particularly as he asserted that Hezbollah were everywhere and Lebanon was a very small country.

29. Ground 5 asserts that the Judge erred in his finding regarding the law on voter information. The Judge found that it was implausible that the Appellant would have been able to conceal his conversion for a period of almost 16 years against the background of the objective evidence which indicated that official documents recorded his sect and that certain publicly available records available prior to the 2018 election (such as online voter records) would also record his sect. The grounds assert that the Tribunal erred in failing to consider that the Appellant's uncle would have had to conduct an active search. It is asserted that the Judge erred in noting that the expert evidence did not comment on the likelihood of a person accessing the records or how he/she could do this. It is asserted that the relevant elections changed how voter lists were displayed and it is "reasonable to assume that this was the cause of the uncle's discovery".

30. The Judge recorded the expert evidence in relation to the electoral law at paragraph 23 of the decision. He noted that the law was first active during the 2018 elections, that it stated that voter lists should include, inter alia, the voter's sect and that the lists with the details are displayed at polling stations. He also noted that voters' lists were displayed publicly before this law and it was not clear whether all of the same details were displayed and that details of registered voters, including sect, were also available online. He further recorded the expert's conclusion that it was plausible that the Appellant's family were able to see his sect and learn of his conversion at a polling station.

31. The Judge notes at paragraph 25 of the decision that there is no evidence to suggest that that the information displayed at polling stations in advance of this law would *not* have included the sect of voters *and* that the expert confirmed that the information including sect was available online.

32. I find that the Judge did not fail to take material evidence into account, nor were his findings perverse. He took the expert evidence into account and correctly found that there was no evidence as to whether details of a voter's sect were publicly displayed prior to the new law. The expert did not conclude at paragraph 78 of the report that the

Appellant's family were only able to ascertain his sect after the new law came into force, but that it was plausible that his family were able to "see his sect and learn of his conversion at a polling station". In light of the expert evidence, it was not, as the grounds contend, incumbent on the Judge to consider whether the Appellant's uncle made an active search online nor are the grounds correct to assert that it was "reasonable to assume" that the new law was the cause of the uncle's discovery. There is also no evidential basis for the speculation in the grounds that "it was more likely that not that voter lists would have been displayed in alphabetical order so that a family's information was listed together".

33. Ground 6 further asserts that the Judge's conclusion that he accepted that the Appellant owned an optic's shop but did not accept that the photos of a damaged optician's were of his shop is perverse. The threshold for demonstrating perversity is a high one. I find that it has not been demonstrated that no reasonable decision-maker could have come to the conclusion that the photos did not corroborate the Appellant's account. The finding was not wholly unsupported by the evidence. It was open to the Judge to find that there was nothing in the photos to link them to the Appellant save for the fact that they were of damage to an optics shop and he gave adequate reasons for this conclusion.

34. Ground 7 asserts that the Judge "made little to no mention" of the Appellant's responses during cross-examination and the arguments of the representatives and "there is now no record of the Appellant's responses". This is said to be a "reckless disregard of proceedings". Contrary to the high-handed assertions made, the record of proceedings is a record of the hearing and the Appellant's representatives could have requested it if they believed there to be any procedural or other irregularity (see paragraph 6 of the Practice Statement no 1 of 2022). Ground 7 does not, in any event, assert that the Judge made a material mistake of fact in relation to the evidence or submissions at the hearing. At paragraph 13 of the decision the Judge states that the oral evidence and submissions are fully set out in the record of proceedings and have been considered. He was not required to do more than this. The principles in Budhathoki (reasons for decisions) [2014] UKUT 00341 were fully observed.

35. Ground 8 asserts that the Judge did not correctly apply section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. It is asserted that the Appellant did not intend to mislead the Home Office and he never sought to rely on a French ID card. The Judge found that the Appellant produced a document which was not a valid travel document as if it were and his credibility was damaged because the "use of false documentation was indicative that he is willing to use deception where it suits his purposes". It is argued that the Judge erred in using the word "deception" because the word used in section 8 is "mislead".

36. Section 8 provides:

> 8 Claimant's credibility
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> (1)In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies. (2)This section applies to any behaviour by the claimant that the deciding authority thinks— (a)is designed or likely to conceal information, (b)is designed or likely to mislead, or (c)is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant

37. The Respondent relied in the refusal letter on sections 8 (3) (b) which provides that the production of a document which is not a valid passport as if it were should be treated as designed or likely to conceal information or mislead. According to the refusal letter the Appellant presented a French ID card to immigration officers. They were not satisfied with the document and then conducted a search of his baggage and found documents including credit cards and photocopies of a Lebanese passport in the Appellant's name. It was following the discovery of these documents that the Appellant said he was Lebanese and wished to claim asylum and stated that the French ID card had been falsely obtained. The Respondent notes in the refusal letter that the Appellant's explanation that this document was organised from Lebanon and received in Amsterdam was not reasonable as he presented it to immigration officers on arrival.

38. The Appellant did not take issue with the fact that he presented a false document to the immigration officers in his witness statement. In the circumstances, it was entirely open to the Judge to find that section 8 was engaged and that his behaviour damaged his credibility. The Appellant had not taken issue with the fact that he presented a false French ID document as if it were valid.

39. The Appellant further asserts that the Judge failed to mention that the Appellant's credibility "would and should have been viewed favourably" in accordance with paragraph 399L of the Immigration Rules. The Judge expressly directs himself in accordance with paragraph 339L at paragraph 19 of the decision and gave adequate reasons for finding that a satisfactory explanation had not been provided for the lack of medical evidence (see paragraph 25 above). I conclude that the Judge approached credibility in accordance with the proper approach as described in Karanakaran v Secretary of State for the Home Department [2000] EWCA Civ 11 and considered all the evidence, giving appropriate weight to each item of evidence and reaching a decision in light of the totality of the evidence.

40. There is no error of law in the decision of the First-tier Tribunal.

Decision:

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

2. I do not set aside the decision.

L Murray

Deputy Upper Tribunal Judge
Immigration and Asylum Chamber

15 January 2024