



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001658

First-tier Tribunal No: PA/51148/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

11th January 2024

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

ARA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timson of Counsel, instructed by Adam Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 4 January 2024

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. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Mack promulgated on 6 April 2023, in which the Appellant's appeal against the decision to refuse his protection and human rights claim dated 22 February 2022 was dismissed.
3. The Appellant is a national of Iraq, born on 1 May 1997, who first entered the United Kingdom on 11 October 2019 and claimed asylum the following day on the basis that he would be at risk on return to Iraq of an honor based killing because of a relationship he had there. The Appellant's original claim was refused on 28 January 2020 and his appeal against that refusal was dismissed by Judge Hillis in a decision promulgated on 28 January 2021. The Appellant made further submissions on 11 September 2021.
4. The Respondent refused the application the basis that the further documents submitted by the Appellant were not credible, including a letter from a Mukhtar in Iraq, the Appellant's brother and a death certificate for the Appellant's father. None of the documents submitted were originals, they had not been officially translated, there was a lack of credentials for the authors and the contents of the documents were vague. In these circumstances, the Appellant had not established the core of his claim and was not at real risk on return to Iraq. In any event, there was a sufficiency of protection available to the Appellant and he had the option of internal relocation. The Appellant would be able to redocument himself on return to Iraq.
5. Judge Mack dismissed the appeal in a decision promulgated on 6 April 2023 on all grounds. A preliminary issue as to representation was dealt with in paragraphs 12 to 17 of the decision, namely that the Appellant's representative was not in attendance when the case was listed for 10:30am and not in attendance when the case was called on between 11:35am and 11:45am. The issue of fairness was considered in paragraph 16 as follows:

"I wanted to ensure fairness for the appellant. There was no HOPO so he would not be cross-examined and I said I would deal with his appeal by considering the entirety of the evidence on the papers. I had previously checked that there was an ASA and statement from the appellant in the digital file. As the protocol is clear, in that the statement should stand as evidence in chief, the procedural rules are clear in that the issues are to be identified prior to the substantive hearing, then, in the absence of a presenting officer, the appellant, I found, a representative would be likely limited to closing argument. The appellant has had a previous appeal and thus be had some experience of the appeal process."

6. As to the substance of the appeal, the starting point was the previous findings of Judge Hillis, followed by a consideration of what had changed since that decision two years prior and the new documents submitted. There is reference to both the Respondent's position as to the documents and the Appellant's explanation in relation to them; much of which is set out in relation to each of the documents which are considered in turn. There were concerns raised that documents were not originals, nor were they official documents and that there was no evidence that the translations had been certified by a Home Office approved translator, within an approved framework. The documents were also considered against the backdrop of previous comprehensive adverse credibility findings against the Appellant as well as the lack of detail in the specific documents, the latter of which was said in paragraph 71 to remain a legitimate credibility point even if there were approved translations. In the absence of finding the new documents

credible, Judge Mack concluded that the Appellant's claim was the same extremely weak one as it was in his previous appeal and he had not established that he would be at risk on return to Iraq nor that he would be unable to document himself on return.

The appeal

7. The Appellant appeals on the sole ground that it was a breach of fairness for the First-tier Tribunal to essentially determine the appeal on the papers without a short adjournment for the Appellant's solicitor to attend. There is evidence of a diary mix-up on the day of the hearing with the Appellant's solicitor being double booked for two different cases in two different locations, with detail as to how this was handled on the day. This included information given to the First-tier Tribunal about what had happened and when the Appellant's solicitor was estimated to arrive to deal with the present appeal – expected by 2pm on the day.
8. At the oral hearing, Mr Timson relied on the written statements of the Appellant's solicitor and members of staff within Adam Solicitors as to what happened on the day of the hearing and reiterated that the sole issue in the appeal was one of fairness. By reference to rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, it was submitted that the First-tier Tribunal had not had sufficient regard to all of the aspects of the overriding objective and in particular to the clear information given to the Tribunal after a mistake was made and the need for the Appellant to be able to participate fully in proceedings, as well as reducing overall delay (by avoiding the need for the appeal to reach the Upper Tribunal). In this appeal, credibility was at the core of the claim and the importance even of closing submissions should not be underestimated.
9. There was a separate issue which Mr Timson recognised could be categorised as a new ground of appeal, albeit he presented it as an example of materiality, which is that there were repeated references to and reliance on the need for a 'Home Office approved translator' which was an error by the First-tier Tribunal when not attaching weight to documents for this reason. If the Judge had had concerns about the documents or quality of translation, then these could have been addressed by the Appellant's legal representative at the hearing and an explanation given that translations do not need to be by a 'Home Office approved translator'.
10. On behalf of the Respondent, Ms Everett opposed the appeal. It was submitted that on the particular facts of this case, the grounds of appeal fail to deal with the materiality of not adjourning the hearing. It is clear that there was no punitive element in the decision to proceed and in paragraph 16 of the decision there is specific consideration of the relevant factors as to the fairness of proceedings. In this appeal, there was no Home Office Presenting Officer such that there would be no cross examination of the Appellant and no further submissions; only closing arguments on behalf of the Appellant. The substance of the case on both sides was already in evidence in writing before the First-tier Tribunal to consider. Whilst it is possible that another Judge may have waited until 2pm to hear the case, there is no suggestion in the present appeal that the Judge misunderstood any aspects of the case and no areas have been identified where the Judge could have been assisted in oral submissions on any aspect. The position is likely to

have been different if the Home Office were represented in the appeal, but that was not the case.

11. Ms Everett considered the documentation point raised for the first time in oral submissions as a new ground of appeal and as such it was not possible to identify precisely what 'Home Office approved translator' referred to; it is well known that translations must be certified.

Findings and reasons

12. The sole issue in this appeal is one of procedural fairness, which was considered in Nwaigwe (adjournment:fairness) [2014] UKUT 00418 (IAC) as follows:

"If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refuse is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?"

13. This is a rather rare case in which I do not find that the requirements of fairness were such that an adjournment should have been granted because all of the relevant material was before the First-tier Tribunal and the limited oral submissions that could have been made could not conceivably have altered the outcome of the appeal. In paragraph 16 of the decision, all of the relevant factors are considered as to what fairness required and the conclusion reached was consistent with what was required and consistent with the overriding objective. The particular circumstances of the hearing itself were such that the only live aspect of an oral hearing could have been closing submissions on behalf of the Appellant as there was no representative for the Home Office and as such there would be no cross-examination or further submissions.
14. The parties cases were respectively set out in the reasons for refusal letter, the Appellant's skeleton argument and evidence (on which the Appellant's written statement would stand as evidence in chief in any event) and the Respondent's review. Whilst theoretically there could have been further exchanges in the course of closing submissions, there was nothing new to which a response was required (the Respondent's review primarily continuing to rely on the reasons for refusal letter) and the Judge need not have asked any further questions at all. As such, all of the relevant evidence was before the First-tier Tribunal to proceed with the hearing and fairness did not require an adjournment to allow the Appellant's solicitor to attend later than the listed time. There is nothing identified in the decision which suggests that the Judge misunderstood either of the parties' respective cases and no new points were taken which would have required an opportunity to respond.
15. On the particular issue raised by Mr Timson as to documentation, this was more akin to a separate ground of appeal beyond the fairness point upon which no

permission to appeal had been sought or granted. However, in an abundance of caution, I have considered it as part of whether fairness required an adjournment or whether an oral hearing could have realistically made any difference on this point by way of an example of materiality.

16. Whilst Mr Timson submitted that he was unaware of the origin of what is a 'Home Office approved translator'; within the context of this appeal the origin and reliance on the requirement clearly comes directly from the Respondent's reasons for refusal letter. It is, along with a number of other factors also directly referred to in the First-tier Tribunal decision as part of the Respondent's case and accurately reflecting her position. In the Appellant's skeleton argument, there are partial responses to the list of points in the reasons for refusal letter; which include a reference to the translator's NRPSI number (National Register of Public Service Interpreters) which is said to demonstrate the level of qualification he has (although no further information is given as to what that is); that formal headed paper is not expected and it is not the Appellant's fault if the letters lack detail. The Respondent's review disputes these matters and notes that not all of the points relied upon had been addressed. In particular, I would note that there was no response on behalf of the Appellant as to the point now relied upon was to whether a translation needed to be by a 'Home Office approved translator', when there was an adequate opportunity to do so in the skeleton argument.
17. These points on both sides were all expressly considered in the First-tier Tribunal decision and a number of reasons were given as to why the Appellant had not established that the documents could be relied upon. Even if the reliance on the documents not certified being certified by a 'Home Office approved translator' was in error (which Mr Timson did not establish, beyond submitting that this part of the decision was odd and not understood); there were numerous other reasons given for the lack of weight given to the documents and as to why the Appellant had not established that they could be relied upon. These included viewing the documents through the prism of the earlier adverse credibility findings; that documents were not 'official' nor originals; that one document was not entirely legible and overall lacked detail (said expressly to be a legitimate credibility point even if there was an approved translation) and that the envelope produced did not confirm its contents as being these documents. The Appellant's explanations as to the documents were not accepted. In addition, the Judge found a lack of evidence as to the Appellant's claimed relationship and that the Appellant had failed to address the issues from his previous appeal and from the reasons for refusal letter. In these circumstances, even if there was an error as to whether a translator had to be approved by the Home Office, for the wealth of other cogent reasons given by the Judge, there is no prospect that the documents would have been given sufficient weight to affect the outcome of the appeal.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4th January 2024