IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002982
First-tier Tribunal No: PA/53166/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

M C
(anonymity order in place)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr D Katani, of Katani & Co, Solicitors, Glasgow
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 21 March 2024

DECISION AND REASONS

1. FtT Judge Buchanan dismissed the appellant's appeal by a decision promulgated on 16 February 2023.

2. The FtT refused permission to appeal to the UT.

3. The appellant applied to the UT for permission on ground 1, "procedural unfairness", set out at (i) – (iv), and 2, "arrest warrants / letter from lawyer", (i) – (vi).

4. On 10 November 2023 UT Judge Owens granted permission:

> 1. It is arguable that the judge has erred by taking into account immaterial considerations at [17], [21] and [23.1] when evaluating the evidence of the "My Case Files" online Turkish court records. It is not clear why the judge found that proceedings in 2019 should mention an earlier arrest warrant dating from 2016.

> 2. It is also arguable that the judge failed to put his concerns over discrepancies in the documentation to the appellant to give him an opportunity to respond.
>
> 3. Finally, it is arguable that the judge has applied a higher standard of proof than that of a "real risk" or "serious possibility" by referring repeatedly to the lack of expert evidence.

5. I note firstly that the FtT's decision, running to 19 pages, is at pains to catalogue and analyse all the evidence, improving in places on the presentation for the appellant; see, for example, [18 – 19], identifying missing items, and bringing order.

6. The criticism in ground 1 cites *HA & TD v Secretary of State for the Home Department* 2010 SC 457 at [4-16]. The parts of that opinion which may bear on this case are: at [4], fairness is "essentially an intuitive judgement" to be made on the circumstances of the case; at [6], where the tribunal identifies an issue not raised by the parties, it "will be unfair, ordinarily at least" not to give parties the opportunity to address it; at [10], "there is, on the other hand no general obligation to give notice to the parties … of all the matters on which [the tribunal] may rely in reaching its decision"; and at [11-13], there is no obligation to point out inconsistencies, or to provide a list of concerns about evidence.

7. Ground 1 at (i) – (ii) says that the hearing began on 5 October 2022 and continued on 19 January 2023, and that at the conclusion of submissions the Judge was "asked if he wished to be addressed on any other points and said no". Mr Katani confirmed that this was background narrative, not a criticism in itself.

8. Ground 1 continues at (iii): …

> at paragraphs 22 and 23.20 the FTT comments that there is no update on what has happened with the Court proceedings between the hearing being adjourned in October 2022 and the resumed hearing in January 2023. Had the FTT judge allowed the appellant or the appellant's representative an opportunity to explain, the explanation would have been that there was no update.

9. The Judge observed a gap in the evidence: nothing about what happened at a rescheduled trial date in November 2021 (or since) when it should have been easy to obtain this from the lawyer instructed. I cannot see that an "explanation that there was no update" might have improved the appellant's case.

10. Ground 1 (iii) goes nowhere.

11. A better point is made at 1 (iv): …

> at paragraph 21.2 the FTT comments on the different investigation numbers … Had the appellant been given an opportunity to comment on this he would have explained that there were 2 separate arrest warrants under different investigation numbers. In particular the documents at pages 82-89 of the Home Office bundle and page 6 of the appellant's second bundle related to the arrest warrant stemming from the incident in 2016. Those have the reference number 2019/1386. Pages 1-5

> and 7-29 related to incidents in 2019 and related to the 2019 arrest warrant. Those have the reference number 2021/57. There is no inconsistency.

12. Mr Mullen submitted that the Judge was entitled to note the various discrepancies he did, and that the appellant offered no answer to most of them. However, he did not try to rebut this specific point, and did not refer to the evidence underlying it.

13. This sub-ground discloses a slip.

14. There are many other reasons in the decision, so the matter becomes one of degree.

15. Ground 2 overlaps with ground 1, and makes some rather mixed points.

16. Ground 2 (i) is only another formulation of ground 1 (iv).

17. Ground 2 (ii) says: …

> at paragraphs 17 and 21 the FTT states that the lawyer in Turkey does not make any references to the events in 2016. However the evidence was that the computer printout showing the outstanding warrant relating to the 2016 incident had been given to the family by the lawyer (see appellant's father's statement at item 4 in appellant's second bundle). In those circumstances the informed reader is left in real and substantial doubt as to why the FTT expects the lawyer in Turkey to make reference to the arrest warrant arising from the incident in 2016 when he had already provided evidence of that.

18. At [17], under the heading "documentary evidence", the Judge gave limited weight to the lawyer's letter because it did not mention risk from events in 2016. The comment is adopted, and not added to, at [21].

19. Mr Mullen did not seek to rebut this specific point.

20. Ground 2 (iii) says: …

> the FTT states at paragraph 23.1 that there is no mention in the case file enquiry about any arrest warrant arising out of events in 2016 (see pages 86-89 of Home Office bundle). The informed reader is left in real and substantial doubt as to why that is where the case reference given on the case file enquiry (2019/ 1386) refers back to the events in 2016.

21. This sub-ground makes another specific point, not rebutted by the respondent.

22. Ground 2 (iv) says: …

> the FTT misapplied the law as the low standard of proof does not require the appellant to speculate on matters that he cannot answer such as the criticisms made by the FTT at paragraph 23.2 (*Shizad* (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC) at paragraph 31).

23. The Judge's point at [23.2] is that Turkish online court records say that all case files to which a person is party should appear, but the record does not show an alleged case against the appellant in Kahranmanmaras.

24. It is correct that an appellant is not required to speculate on matters he cannot answer, but that principle does not prevent a tribunal from perceiving a deficiency in evidence, simply because the appellant cannot explain it.

25. Reliance on *Shizad* is misconceived. It is reported for the proposition that succinct reasons may suffice, and says nothing to suggest error in [23.2].

26. Ground 2 (iv) shows no error.

27. Ground 2 (v) says: ...

> the FTT erred in law when refusing the appeal where no reasoning is provided as to how the appellant or the Turkish lawyer could have infiltrated forged material into the court records, particularly since there is no suggestion that the lawyer has been involved in any discreditable conduct (*PJ (Sri Lanka) v Secretary of State for the Home Department* [2015] 1 WLR 1322 at paragraph 42 per Fulford LJ).

28. *PJ (Sri Lanka)* was mainly concerned with when the SSHD may have a duty to verify documents produced by an appellant. Such a duty (advisedly, no doubt) has not been argued in this case.

29. It is generally of course for an appellant to show, to the lower standard, that his evidence is reliable, rather than for the respondent to prove fraud, or for a tribunal to construct an explanation. *PJ*, however, is instructive. The FtT in that case engaged in a lengthy analysis of documents relating to alleged court proceedings in the country of origin and did not accept their validity. The UT found the FtT to have made an error about the status of a lawyer, but adopted its analysis of the documents. The Court of Appeal at [41] thought that "without an adequate explanation" it was "difficult to understand" how the appellant could have engineered the situation, and that this feature "required detailed analysis and explanation". Fulford LJ went on at [42] to say that the UT had misdirected itself in concluding that documents had been falsely prepared "without providing any reasoning as to how the appellant could have infiltrated forged material into the court records, particularly since there is no suggestion that the lawyers had been involved in any discreditable conduct".

30. I doubt if that analysis of a particular case was intended to place an onus on a tribunal, rather than as a reminder of the need to bear in mind the difficulty of falsification of official records. However, Mr Mullen did not suggest that the comments of Fulford LJ might not be apt to show error. Applying that approach, there is substance also in ground 2 (v).

31. Another side of this coin is the suggestion by the Judge granting permission, at [3] of her decision, that the FtT (although it directed itself

correctly about the standard of proof) may have expected too much of the appellant, in looking to him to provide an expert explanation of the Turkish legal system.

32. The grounds say finally at 2 (vi): …

> as a result of this ground and the preceding ground the remaining findings of the FTT are vitiated. The consequence of the errors is that there were 2 arrest warrants outstanding for the appellant both of which related to his political opinion, or imputed political opinion, which was adverse to the Turkish regime. That is sufficient to show the appellant is at real risk.

33. The grounds at 1 (iv) and at 2 (ii) (iii) and (v) show that the FtT's decision, although carefully considered, contains error. Parts of its analysis are undermined, but not all.

34. The grounds are sufficient for the decision of the FtT to be set aside, but not to justify the conclusion sought at 2 (vi). The grounds do not show that the tribunal was bound to find that there were warrants outstanding for the appellant and he was entitled to protection.

35. Accordingly, the decision of the FtT is set aside, other than as a record of what was said at the hearing, and the case is remitted for fresh hearing by another Judge.

36. The FtT's anonymity order, is observed herein.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
26 March 2024