



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004738
First-tier Tribunal Nos:
PA/54200/2021
IA/12388/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

GL
(ANONYMITY ORDER MAINTAINED)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms C Zapata-Besso, Counsel; Duncan Lewis Solicitors
For the Respondent: Mrs S Nwachuku, Senior Home Office Presenting Officer

Heard at Field House on 13 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Hillis dismissing his protection and human rights appeal promulgated on 17th October 2022. The Appellant applied for permission to appeal which was granted by First-tier Tribunal Judge Karbani in the following terms:
 - “3. The second ground is that the FTJ erred in his approach to untested evidence and made a material error of fact. The third ground is that the material error in finding of fact infected the approach to the expert evidence.
 - ...
 5. The FTJ concluded that the appellant’s oral evidence was wholly inconsistent with the written statement from his wife [36], and he attached no weight as she had not been cross-examined. It is an arguable error of law that in view of the positive trafficking finding which is consistent with the contents of both witness statements, the FTJ has made a material error of fact in finding that it was ‘wholly inconsistent’ without further reasons. This in turn has arguably infected the consideration of the expert evidence as to risk on return.
 6. Permission to appeal is granted on grounds 2 and 3.”
2. As may be seen, the grant of permission was a limited one, permission being granted on Grounds 2 and 3 alone. Before turning to those arguments, I note that no Rule 24 response was provided by the Respondent. However, Ms Nwachuku indicated that the appeal was resisted.

Findings

3. At the conclusion of the hearing I reserved my decision, which I now give. I do find that the decision demonstrates material errors of law, such that it should be set aside in its entirety.
4. Concerning the erroneous approach to untested witness evidence and a material error of fact, the complaint in short is that the Respondent accepted virtually every part of the Appellant’s claimed history, as reflected at paragraph 19 of the judge’s decision, including that he has an outstanding debt to his traffickers who are in China in his home area. The Appellant effectively challenges the judge’s finding at paragraph 36, which reads as follows:
 36. The Appellant was quite clear in his cross-examination that his wife is currently living in their home province of China and openly working as a cleaner, a nail technician and a shop assistant in open view of the public. His two children are at school. His daughter is studying to become a nursery teacher and his son is studying to be a primary school teacher. In my judgment, both these circumstances are effectively in the public arena and not indicative of the Appellant’s relatives being in hiding. Additionally, their mother is funding the children’s school fees which, in my judgment, is incompatible with the loan sharks harassing and abusing her to pay the outstanding loan as claimed by her. The Appellant’s oral testimony is wholly inconsistent

with the contents of his wife's witness statement which has not been the subject of cross-examination. I, therefore, conclude that I can place no weight on its contents.

5. In addressing the oral submissions Ms Zapata-Besso took me to the decision, which reflected at paragraphs 14 to 17, the extent of the cross-examination, which the judge found at paragraph 36 was apparently inconsistent with the wife's witness statement. Examining those paragraphs with great care, and in particular, looking at what mention there is of the Appellant's wife at paragraph 15 of the decision, the evidence recorded there is as follows: where the wife is from in China, that the wife still lives there and works doing various jobs, including cleaning, doing nails and in a clothing shop. It is also confirmed that the daughter is training to be a nursery teacher and the son is training to be a primary school teacher and that the Appellant last spoke to them a few days ago. There is however no mention that the wife is in hiding and not working in public. Therefore, I turn now to see whether there is anything inconsistent with the testimony I have summarised from the Appellant. Having considered the wife's witness statement with care, I cannot see that there is anything in it which suggests she was not working openly and was living in hiding.
6. In all fairness to the judge, I note that the mention of some of the family being in "hiding" does however arise in the Respondent's review but that is not evidence given by the Appellant but is merely the Respondent's case. I have also equally considered the Appellant's witness statement (as opposed to his oral testimony alone) which also does not disclose any mention of the Appellant's wife being in hiding and not working. The closest one can find to mention of the wife being in hiding is the end of the second paragraph of the Appellant's witness statement of 29th October 2020 which states, amongst other matters that "My wife and children used to live with parents, but when the threats started she moved out with the kids to a hidden address. No-one knows where she lives now ..." This was said by the Appellant because he did not know where they were whilst he was in the UK. However, there was a second witness statement of February 2022 which updated the situation once he had re-established contact which confirmed that the Appellant's wife was working in public, which was discussed at paragraphs 105 to 107 of that witness statement. After reading the decision and perusing the extensive bundle several times, I am unable to find where the Respondent has formed the view that the Appellants were living "in hiding", such that the judge would make this finding which formed an important part of the judge's credibility assessment and risk on return.
7. Therefore, I cannot find any lawful basis for the judge's finding at paragraph 36 where it is stated that the Appellant's oral testimony is wholly inconsistent with the contents of the wife's witness statement, and it appears that this is a material misapprehension of the evidence before the judge. I find this is a matter that goes to the heart of the judge's decision, given that, at paragraph 38, the expert opinions are described as "carefully set out" however the expert reports from Dr Tran, Ms Montier and Dr Khisty have been discounted due to what the judge describes, at paragraph 38, the "highly significant oral testimony of the Appellant" which resulted in the Appellant failing to show the low standard required that he would be at risk of persecution and/or trafficking on return and that he can instead take up his married life with his wife in their own home (notwithstanding that the wife was no longer living in their own home, as stated in her witness statement, which the judge also may have overlooked).

8. I also note with concern that the judge made these findings, notwithstanding that the Respondent had accepted that the Appellant was credible and reliable in his account of his having two children, in breach of China's one child policy and being fined and needing to borrow money from loan sharks to pay the fine to enable his children to attend school. I also note that the Respondent accepted the Appellant was trafficked from China to the UK and was a subject of modern slavery following his arrival in the UK where he worked illegally from October 2006 until his arrest on 25th July 2018 (see the Refusal Letter at paragraphs 41 to 78). I also note that the judge discounted the applicability of Section 8 of the Immigration and Asylum (Treatment of Claimants, etc.) Act 2004 as having anything more than little weight in his assessment of the Appellant's credibility and reliability. I set out these findings from the judge at paragraphs 19 to 20 because it is all the more significant that an objective reader considering the decision of the judge should understand what the highly significant evidence from the Appellant was in oral testimony and the inconsistency identified, such that it could discount the above positive findings, and his being at risk on return and result in his appeal being dismissed, notwithstanding the acceptance that he was trafficked and owes money to loan sharks, and was a subject of modern slavery in order to repay debts from his work in the UK.
9. Therefore, as the judge has not identified the inconsistency and as I cannot find one on the face of the documents giving anxious scrutiny to the documentation before me, I find that Ground 1 has been established and demonstrates a material error of law in the judge's assessment of the Appellant's credibility and his factual account in affecting the judge's findings on risk on return and in turn, impacting upon the judge's discounting of the expert evidence, in preference and reliance upon the inconsistency apparently identified, but identifiable to both parties and myself in the Upper Tribunal.
10. Turning to Ground 3, which concerns the erroneous approach to the expert evidence, albeit I have already set out my findings in relation to the risk on return which was incorrectly assessed owing to the inconsistency that cannot be identified, and given the impact that had, as is apparent from paragraph 38 of the judge's decision in discounting the opinions from both expert reports, I also find that the judge failed to give consideration to the trafficking expert report from Ms Montier which was consistent with the accepted facts and that, notwithstanding that the Appellant's wife was working openly, the trafficking expert still concluded that the Appellant would be at risk on return to China. In short, the judge gave no reasons for impugning the reliability of Dr Trans' country expert report and having considered Ms Montier's trafficking report to be comprehensive and reliable and given Dr Khisty's expert evidence was not challenged by the Respondent, this was evidence that was capable of having a material impact upon the judge's decision, which was rejected without reason. I therefore find that the judge has not given sufficient or adequate reasons for departing from the expert reports, which were not challenged and which are consistent with the Appellant's and his wife's account and gave reasons for why the Appellant would be at risk on return, on the factual matrix (including the wife working and not being in hiding) which the judge has failed to grapple with and give reasons for rejecting.
11. I therefore find that the judge has materially erred for the reasons given above.

Notice of Decision

12. The Appellant's appeal is allowed.
13. The appeal is to be remitted to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Hillis.

Directions

14. The appeal is to be remitted to IAC Birmingham.
15. A Mandarin interpreter is required.
16. Given the volume of the evidence in this appeal, I recommend that the Tribunal set this matter down for half a day, given the volume of evidence, which the judge will need to consider in preparing for the appeal and given the lengthy submissions that are likely to occur, given that volume of material and the complexity of the evidence and the issues at stake.
17. Upon remittal, each party is at liberty to seek any further direction that may assist in the further management of this appeal.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2024