Upper Tribunal
(Immigration and Asylum Chamber)

Appeals PA/06833/2019 (P)
PA/06105/2019 (P)
PA/06106/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons Promulgated
On 14 July 2020

Before

UT JUDGE MACLEMAN

Between

S, A & S S

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. This determination is to be read with:

   (i) The respondent's 3 decisions, dated 13 June 2019.

   (ii) The appellants' (triplet brothers) grounds of appeal to the First-tier Tribunal.

   (iii) The decision of FtT Judge Watson, promulgated on 31 December 2019.

(iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed on 14 January 2020.

(v) The grant of permission by the FtT, dated 14 and issued on 25 February 2020, with usual directions.

(vi) The note and (further) directions of the UT issued on 1 May 2020 with a view to deciding without a hearing whether the FtT erred in law and, if so, whether its decision should be set aside.

(vii) The appellants' written submissions and request for an oral hearing, dated 14 May 2020.

(viii) The SSHD's submissions, dated 1 June 2020.

(ix) The appellants' reply, dated 5 June 2020.

2. In light of the explanations tendered, time for making submissions is extended until their dates of receipt.

3. The first question is whether to proceed "on the papers" or to direct an oral hearing.

4. The appellants' submissions at pp.2-4, [4-13], cite authority on the value of oral argument, and argue that this is an asylum appeal "with potentially extreme consequences" calling for "a nuanced argument which requires very careful and detailed analysis of the FtT's approach at every instant", such that an oral hearing, by video if not in person, should be held. Submissions on the merits of the grounds follow at pp.4-10, [14-34]. At [35-36] the appellants conclude by asking for a remit to the FtT.

5. The SSHD raises no objection to decision without a hearing, and argues for the appeal to the UT to be dismissed.

6. The appellants' reply comments that the SSHD has not objected to the suggestion of a remote hearing, and founds upon this being "a factually involved case (including references to the record of proceedings) and … an asylum claim by three very young men".

7. Although this issue is preliminary, it has been resolved only after considering the details of the case, as discussed in its substantive resolution.

8. I accept that oral arguments are sometimes "game-changing". However, fair resolution of issues such as the present on written materials is common in this and in other jurisdictions, and well within professional and judicial competence, in asylum as well as other cases. The appellants' citations are not good authority for never deciding error of law without an oral hearing, a course available to the tribunal within its rules. Contrary to their submission, the facts which the appellants sought to establish, and their supporting evidence, are not complex. The claim is straightforward.

The evidence has been led. Parties have had ample opportunity to explain their positions on it. The appellants have done so at length and in detail. I find no feature of this case such that it cannot now fairly be resolved without an oral hearing.

9. The appellants claim that while they were in the UK, their maternal aunt warned them by telephone that their father had sent videos of them producing and consuming alcohol to the authorities, resulting in the detention of their mother and maternal grandfather, and in risk to them, if they were to return.

10. The respondent declined to accept their account as credible, for these principal reasons:

    (i) if their father had a high reputation as a strict Muslim to uphold, he would not ruin his standing by reporting his wife and children;

    (ii) if their father wished to cause them trouble with the authorities, he would not make his report while they were out of the country;

    (iii) as a strict Muslim, it was not plausible their father would permit his children to consume alcohol;

    (iv) not plausible their father would permit video recording of the gathering at which alcohol was taken;

    (v) the appellants contradicted each other over whether their parents' arguments led to their moving to their grandfather's house;

    (vi) the appellants contradicted each other over the date of the telephone call;

    (vii) the appellants contradicted each other over whether their father first discovered their alcohol consumption in 2017 or in 2018, and whether he was at first angry;

    (viii) the appellants contradicted each other over whether their father knew of their involvement in their grandfather's alcohol production since they were children; and

    (ix) if their father produced videos to the authorities of alcohol consumption at the party, it would be reasonable to expect that he would also be detained.

11. The FtT's decision records at [21] that it was common ground that as one of the interview records was not produced, discrepancies between the interviews could not be relied upon. The principal reason given for dismissing the appeal is stated at [26], "the very many and clear inconsistencies" in the appellants' account. The main specific points taken at [27-32] are:

(i) oral evidence of taking alcohol on two occasions, inconsistent with statements of greater involvement in drinking and distribution;

(ii) three different descriptions in oral evidence of first drinking occasion, its duration and those present;

(iii) inconsistency over whether they drank alcohol in the UK;

(iv) explanation by S for not drinking in UK, consciousness of weight, implausible;

(v) appellants living together would know each other's drinking habits, around which their whole case revolved;

(vi) one brother would know that two others drank regularly, if that was the case;

(vii) major discrepancy over second drinking occasion, how many present - 9 named relatives, or "a lot", more than 15, names unknown;

(viii) no information from mother's lawyer; claimed inability to provide information without her consent not accepted;

(ix) expert opinion accepted that scenario plausible, but undermined by appellants' "inconsistency with their witness statements and with each other";

(x) on core incident of being filmed by father not being made out, rest of account falls away;

(xi) implausible strict father would accept his sons "going to a western country with all the liberal attitudes he decries shortly after he has discovered them drinking for the first time".

12. The substantive points in the appellants' grounds are (following their numbering):

[3] no holistic assessment; inconsistences noted, but "complete silence on consistent aspects", which are specified;

[4] not shown *how* Judge bore in mind appellants' age and intoxication;

[5a] error in rejecting A's evidence of not drinking as conscious of his weight, when he also said this was due to legal age for drinking in the UK, with which judge did not deal; no reason why not plausible he might not drink due to weight concerns;

[5b] evidence of 2 brothers did not amount to saying they drank "fairly regularly";

[6] no engagement with significance of summons, which did not depend on disclosing whereabouts of mother.

13. The FtT granted permission on the view that only ground [5b] had arguable merit, but did not restrict the grounds which might be argued.

14. The appellants' written submissions contend, in summary, using their headings:

    (i) *Events of when they first drank alcohol in Iran:* inconsistency does not always lead to incredibility; lip service only, and no intelligible explanation, of how age and intoxication were taken into account;

    (ii) *Whether the appellants drank alcohol in the UK:* inconsistency over drinking in the UK, S said he drank not very much but only once in a while; A clarified his initial "yes" to "maybe once in a blue moon … [not] every week or every month"; this did not amount to drinking "fairly regularly"; no engagement with evidence of S that he also did not drink due to the legal age limit, and he had turned 18 only 5 months before the hearing; inadequate reasoning on explanation of weight concerns; implausibility of father allowing travel to UK amounted to judge "imposing her view of how the father should behave", and overlooked the evidence of S that he wished to keep them away from their maternal family, "a cogent reason";

    (iii) *Failure to conduct a holistic credibility assessment:* consistencies overlooked; even if appellants had lies, failure to consider that might be of no great consequence, given strengths of other aspects or oral and documentary evidence;

    (iv) *Weight on summons from lawyer:* error in failing to engage with its contents.

15. The SSHD submits:

    (i) on lack of holistic assessment, no specification of the alleged error; [22] and [29] of the decision confirm all evidence considered in the round;

    (ii) on failure to consider age and intoxication, not lip service, but fully set out at [18] and [26];

    (iii) on error of fact, A's explanation unfathomable, when he drank in Iran where this was not only illegal but a personal risk; weight aspect the same in Iran as in UK; substantive point correct, that no sensible explanation for drinking in Iran but not in UK;

    (iv) whether evidence correctly taken as "drinking regularly" immaterial, in light of other findings;

    (v) not speculative to find actions of lawyer implausible; the appellants' mother being his client, no reason to withhold information.

16. The main points in the appellants' reply are on S's explanation for not drinking in the UK: "It is disingenuous to suggest that the Judge's mistake in recording [this] evidence, which very visibly formed a substantial part of her adverse credibility finding, was immaterial"; and materiality is a modest threshold.

17. The appellants' case has been doggedly pursued; but their grounds and submissions have not persuaded me that there is any error in the decision, such as to amount to error of law, or such as to require the decision to be set aside.

18. Judges of course have to observe their self-directions, and not to treat them as mere matters of form. However, the appellants have not specified anything by which the Judge should not be taken at her word when she says more than once that she takes youth and intoxication into account, and that she considers the evidence as a whole.

19. The Judge cannot specify the allowances she makes as an arithmetical percentage; and the only outcome which would avoid this line of criticism is to accept all that the appellants say, despite its shortcomings.

20. A judge does not have to mention every dot and comma of the evidence before her, or to list all its consistencies.

21. It was well within the Judge's reasonable scope to take S's evidence as disclosing no sensible reason for not drinking in the UK, as compared with Iran.

22. On whether the two other appellants said that they drank in the UK, the Judge's typed record is that S said that he did not drink in the UK, and he did not think his brothers did. He knew he was allowed to drink, "But I was under 18 and decided I wanted to lose weight". S S said that he drank here, "If there is a celebration or at weekends", and his brothers did not. A S said that he drank here, "Wine and scotch". In re-examination it was put to him that his brother had said he did not drink and he replied that he was "… not a regular drinker … maybe once every few months … I don't drink every week".

23. The evidence in re-examination, giving A S the chance to back-track, has to be read with his first response in cross-examination.

24. The high point of the grounds, as identified in the grant of permission, is at [5b]. I do not think the judge made any significant error in construing the appellants' description of their drinking into the decision. The phrase "fairly regularly", although vague, perhaps pitches the matter rather high; but there was inconsistency among the appellants about drinking in the UK and the Judge was, within reasonable limits, entitled to take that as a point against them.

25. I have sought to summarise the specific points in issue, to put any error about the facts into context. The exercise has led me to the view that the

grounds and submissions for the appellant burrow industriously for disagreement, but they look for reasons upon reasons, and for reasons on minute points. At best, they disclose a marginal error in summarising the evidence on one aspect. It is never possible to resolve the facts beyond every possible quibble. The overall issue is whether the judge has given a legally adequate explanation for not finding the evidence, as a whole, probative to the lower standard.

26. The judge was entitled to find that the evidence that the appellants' father plunged his sons' mother and grandfather into serious trouble with the authorities, and sought to do the same to his sons, did not reach that standard. Naturally, some of her reasons are not so strong as others; but some of them are strong indeed. Those are not only inconsistencies, which are always present in some degree. The decision was also founded on the absurdity of the appellants' mother not disclosing details of her case, and on the absurdity of a strict Islamist making a video to cause drastic problems with the authorities for his sons, other relatives, anyone else in the video (and indeed himself), while encouraging his sons to study in the west. The apparently absurd may of course be true, but it does not always have to be believed.

27. The appeal is dismissed. The decision of the FtT stands.

28. The FtT made an anonymity direction. Neither party has addressed that matter further. Anonymity is preserved.

29. The date of this determination is to be taken as the date it is issued to parties.

Hugh Macleman

UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.