Upper Tribunal
(Immigration and Asylum Chamber) PA/11571/2019 (V)

THE IMMIGRATION ACTS

Heard by "*Microsoft Teams*"
On 14 July 2021

Decision & Reasons Promulgated
On 2 August 2021

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

DAROWAN ISMAIL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision of FtT Judge Buchanan, promulgated on 25 February 2021. The 5 grounds are set out in the appellant's application dated 9 March 2021. I deal with each ground, and the submissions thereon, in order.

2. Ground 1, "differences arising from the country expert report", is that the judge erred by noting discrepancies in the evidence arising from a "draft statement" by the appellant which had apparently been before the expert but was not produced or adopted as evidence in the FtT.

3. Mr Winter drew attention to the relevant passages in the decision, identifying discrepancies. He accepted that some were given no great weight, but others were, at 119.1. He said that the matter was therefore material; even if a "draft statement" was before the expert, it was no more than that; the judge speculated on how differences arose; there was nothing to show their source; and although the expert gave oral evidence, no clarification arose from that.

4. Mr Bate said that the appellant tendered and relied upon the whole of the expert report, not on selected parts; the inconsistencies were put to the appellant in cross-examination, as well as being the subject of oral evidence from the expert; the inconsistencies were an open issue at the hearing, covered also in submissions; and there was nothing speculative in the judge founding, in part, on inconsistencies which the appellant had the opportunity to explain, and left hanging.

5. I accept the submission of Mr Winter that if ground 1 disclosed error, it was material. The judge had other reasons for rejecting the claim, but the inconsistencies which emerged in this way were given significant weight.

6. Beyond that, I prefer the submissions for the respondent on ground 1. The appellant chose which evidence to present, including a report bearing to derive from his "draft statement". He did not distance himself, in advance of being examined, on anything in the report. He elected not to produce the "draft statement" to the tribunal. He was given the chance to explain, both in evidence and in submissions. There was no error of law (or unfairness) in the judge's analysis of the case put before him.

7. Although this is not quite how the ground was presented, it is also clear that there was no inadvertent error or unfairness through anything which was *not* before the judge. The appellant had ample opportunity to rectify matters at the hearing, but even since then, he has tendered nothing to show that he might have instructed an expert on the basis of a statement containing imperfections for which he was not to blame. He cannot complain of "speculation" when he is the source of the inconsistencies and the only party who could offer any explanation.

8. Ground 2, "manner in which evidence construed", is that the judge erred by (i) by too narrow a construction of whether threats were made directly to the appellant or through text messages; (ii) too narrow a construction of the appellant being asked to send "any documents" to the FtT; and (iii) failure to assess whether mental health issues explained weaknesses in the appellant's evidence.

9. Ground 2 (i) focuses on the decision at 33 – 39 and at 119.2. At 33 - 39 the judge observed a distinction between the appellant's oral evidence of threatening texts from an unknown source, and evidence through a psychological report that he had been "directly threatened by the family of his girlfriend". The judge thought it was unclear whether the report was referring to direct or indirect threats. At 119.2, moving towards his conclusions, the judge finds the appellant's evidence about threats "vague … on a central aspect". The ground says that there was "a reasonable inference that the threats emanated from the girlfriend's family".

10. Mr Winter's criticism was that the judge's interpretation was too narrow, or overly literal, on whether threats were through texts or in person, as a threat made by text was made directly to the appellant.

11. This sub-ground says that "the same FtT has been criticised for the manner it interpreted evidence – see *AR* [2021] CSOH 10". Mr Winter submitted that it was relevant to note that the same judge had been found to take a legally deficient approach (or at least that it was strongly arguable that he had done so).

12. Mr Bates said that it was not overly narrow for the judge to note that the appellant alleged threats from his girlfriend's family, but in oral evidence watered that down to texts from a party or parties unknown; it was obvious that the suggested ultimate source was the same, on which the judge had no misapprehension; any judge might err in one case; and such a finding did not imply that error was to be read into all other decisions by that judge.

13. In *AR*, the Court reduced the UT's refusal of permission to appeal against a decision of the same judge. It did no more. The report does not purport to be an authority that all resolutions by this judge of factual matters are likely to be marred by legal errors. This part of the grounds is not a sound proposition of error on a point of law.

14. The judge at 33 – 37 found difficulty in reconciling what the appellant appeared to have said about threats to the psychologist with what he said in oral evidence. That analysis is realistic, not over-refined. In any event, what the judge said when moving towards his conclusions at 119.2 was that the appellant's evidence was "vague in relation to what was said, by whom and when", and that if threats had been made, he would have "been able to give detailed evidence". That view is plainly not based on a narrow or over-literal distinction.

15. Ground 2 (ii) alleges similar error, based on the decision at 91, finding difficulty in reconciling dates concerning documentary evidence, and at 119.7, finding evidence in that respect vague, and to disclose embellishment. This sub-ground was not pressed, and I see nothing in it.

16. As to ground 2 (iii), the judge at 11 – 12 noted the diagnosis of "generalised anxiety disorder" and said that he bore it in mind in reaching conclusions. At 126 he found there to be no medically explained reason for the garbled and confused state of the evidence. The appellant says there is a gap, but fails to specify error in declining to give the report any greater weight. I find this sub-ground to amount to no more than disagreement and a search for reasons upon reasons.

17. Ground 2, as a whole, discloses no error.

18. Ground 3, "arrest warrant", is that the judge erred (i) at 69 – 73 by "making certain criticism" but failing to identify anything in the arrest warrant which itself rendered the document unreliable, and (ii) at 120.1 by finding the warrant not to be central to the claim when that finding was not supported by the evidence; an approach inconsistent with *AR* [2017] CSIH 52**,** in which the respondent undertook verification

checks, which vitiated the finding in this case that there was no such obligation on the respondent.

19. Mr Winter referred to *AR* at [35]:

> We remind ourselves of the need to examine the facts with care (sometimes referred to as "anxious scrutiny"), and of the low standard of proof applicable in cases of this nature. We are persuaded that these factors have been given insufficient weight and attention in the more recent decisions. We recognise that there may be cases where the concerns over the veracity of a claimant's account may be so clear-cut that the decision-maker is driven to rejection of supporting documents, even though on their face they appear to be authentic; but even then, given what is at stake, we would expect some consideration to be given to easily available routes to check authenticity. There is no question that these documents are at the centre of a request for international protection. The decision-maker should stand back and view all of the evidence in the round before deciding which evidence to accept and which to reject, and on the proper disposal of the appeal.

20. At 69 -73, the judge notes the appellant's oral evidence that he failed to appear at court, and that he heard an arrest warrant was given to his family; the absence of any detail about failure to appear in earlier witness statements; and the expert's evidence that he had not commented, and could not comment, on the document. The grounds do not suggest error in any of that. It contains no "criticism", objectionable or otherwise.

21. The appellant has not shown error through absence of consideration of whether the document appeared reliable on its face. Further, he has not referred to anywhere in the decision where the document is thought to have any other appearance.

22. The FtT's decision does not turn on a finding that the arrest warrant is inauthentic.

23. Mr Bates referred to the terms of the document as translated at page 80 of the appellant's FtT bundle. At 4 of the document the "law article" under which the appellant is charged is "393 Q. E. E.". There is a translator's note , "no definition for abbreviation could be found". At 5, under the heading "description", there are no details of the appellant or of the alleged offence, only the words, "Bring him promptly before us, as he is charged in a report filed with the police".

24. At highest, the document lends very little support to the appellant's case; and as Mr Bates further observed, this was a claim based primarily on risk from non-state agents, not from the authorities.

25. Cases where the respondent has the obligation to verify documents are exceptional, not the rule. The appellant does not show that this should have been found to be a case where failure to verify weighed in favour of the appellant. There was no clear-cut decisive issue by which verification of the document might have turned the case in his favour.

26. Ground 4, "newspaper report", is that the judge erred because (i) there was no evidence that the report identified the family involved and so it was unclear what relevance the judge's findings at 98 & 122-123 had and (ii) the findings had "no evidential base… in light of the country expert [report]".

27. At 98, the judge thought it unlikely that the police would disclose to the press a matter embarrassing to a powerful family.

28. The report does not name the family but, as Mr Bates observed, it says that both families were approached for comment, so according to its terms, the police must have told the press who they are.

29. In his reply, Mr Winter said that if names were given, but not published, that might reflect power and influence.

30. At 122, the judge thought that it was material that the police would not give the press such detail. At 123, in light of the exert report, he gave "limited weight to the evidence because of its inherent limitations".

31. Neither (i) nor (ii) of this ground shows that the judge's view of the newspaper evidence involved any error on a point of law.

32. Even if some slip occurred, and despite the use of the word "material" at 122, it has not been suggested that anything in the report shows that it must relate to the appellant.

33. Taking 122 and 123 together, and in context, this is a fruitless debate; and I cannot discern that analysis of the newspaper report had any real effect on the outcome.

34. Ground 5, "the envelopes", is that the judge erred at 112 because there was no foundation for his "impressions as to what the various copies meant"; he "did not demonstrate any expertise in relation to how TNT operate nor is it a subject within judicial knowledge".

35. This ground, rightly, was not pressed in submissions. The judge from 107 to 113 mused upon the paperwork about transmission of documents, as the appellant invited him to do, without trespassing on matters which should have been confined to a technical specialist. The appellant does not show that those musings were of any great moment, or that they contain any legal error.

36. The decision of the FtT shall stand.

37. No anonymity direction has been requested or made.

Hugh Macleman

15 July 2021
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.