IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005135

First-tier Tribunal No: PA/55900/2022
LP/00594/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10 September 2024

Before

UPPER TRIBUNAL JUDGE LANDES

Between

MZ
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jenkins (Counsel instructed by Asylum Justice Cardiff)
For the Respondent: Ms Simbi (Senior Home Office Presenting Officer)

Heard at Field House (by CVP) on 9 August 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. The appellant has appealed, with permission granted by Upper Tribunal Judge Kebede, against Judge Lester's decision promulgated on 16 October 2023 dismissing his international protection and human rights' claims.

Background

2. The appellant is a citizen of Jordan. He arrived in the UK in September 2017 with leave as a student. On 14 June 2018 he claimed asylum.

3. The appellant claimed asylum on the basis of his political opinion and ethnicity. He said that in 2014 he had commented on an internet article about the economy and corruption in Jordan and that as a result he had been detained for two months by the intelligence services and had been called in for questioning on a further 5 occasions. He had been blacklisted since his release so that he could not find work and he had been refused a letter of good conduct which he needed to work in certain countries abroad. He had also been discriminated against because he was of Palestinian ethnicity. He feared interrogation/detention on return.

4. The respondent refused the appellant's claims and the appellant appealed. By a decision promulgated on 27 February 2019 Judge Sills dismissed his appeal. Judge Sills found that the appellant had not established that his account was credible, finding his evidence unsatisfactory and his conduct at odds with someone claiming to fear the authorities. He rejected the appellant's claim to have made an online comment critical of the government or to have been detained and blacklisted and refused a letter of good conduct [24]. He accepted that the appellant was an ethnically Palestinian Jordanian citizen but considered that none of the matters complained of by the appellant in relation to his Palestinian ethnicity amounted to persecution [26]- [27]. Judge Sills also considered the appellant's case at its highest, in case he was wrong about the appellant's credibility and found that the appellant would not have established past persecution through his claimed detention, questioning and blacklisting even taken in conjunction with his Palestinian ethnicity. He found even taking the claim at its highest the appellant would no longer be of interest to the authorities in Jordan [28] – [34].

5. After the dismissal of the appellant's appeal, he left the UK voluntarily and claimed asylum in Norway. He was returned to the UK under the provisions of the Dublin Regulations and he made further submissions in support of his asylum claim on 20 June 2019. Those were rejected as a fresh claim on 19 January 2022. On 28 February 2022, after the appellant's removal was scheduled, he made a fresh claim producing in support a court document of January 2018 sentencing him to imprisonment in absentia for slander relating to a complaint made by a businessman in December 2017 that the appellant had accused him of money laundering and corruption.

6. The appellant says that the charge of slander relates to a time in September 2017 when he was given documents implicating MPs and government officials in tender frauds showing payments by MPs (subsequently tender winners) to a businessman. He passed those documents to high-profile opposition figures outside Jordan.

7. The appellant says that the judgment in absentia and a warrant for his arrest was sent to his uncle who did not tell him about it. His sister in Jordan only learned about the judgment in January 2020 and only obtained a copy which she sent to the appellant by email in January 2022.

The grounds of appeal

8. Upper Tribunal Judge Kebede granted permission to appeal as "*The further submissions giving rise to the current appeal relied upon documents relating to events which the appellant claimed occurred after the previous Tribunal determination. The judge arguably appears to have misunderstood this and to have applied the principles in Devaseelan on the wrong basis. There is therefore some arguable merit in the grounds in so far as they challenge the judge's application of the principles in Devaseelan and it is arguable that, whilst the judge may otherwise have provided proper reasons for having concerns about the documentary evidence, he arguably failed to consider that new evidence in the correct context*."

9. There was only one ground of appeal headed "*unfair assessment of evidence and credibility"* but it split naturally into four parts, as Mr Jenkins acknowledged:

(i) The judge's treatment of the expert evidence (paras 5 – 9);
(ii) The sister's evidence and the emails (paras 10 – 12);
(iii) The judge's approach to Devaseelan and the adequacy of the judge's reasons (paras 12 – 14, 18);
(iv) The failure of the judge to take account of the new objective evidence [15].

Arguments on behalf of the appellant

10. Mr Jenkins submitted that the expert clearly had sufficient experience to be an expert. It was right that the judge had criticised the fact the report did not comply with the proper form or with Presidential Guidance and he said that it affected the weight he could give to the report but Judge Lester had not gone on to engage with the report and explain his conclusions about the report. Mr Jenkins said that we still did not know what weight Judge Lester had given to the report. Mr Jenkins agreed with me that as the professor did not claim to be an expert document examiner and did not suggest he had examined the original documents, at the highest his report could only indicate that the document was consistent with a genuine court document.

11. As far as the sister's evidence was concerned, Mr Jenkins submitted that the judge had said the appellant's sister had provided no details as to why she waited 2 years to tell the appellant, but she had provided those details in her statement; we could not be sure what evidence Judge Lester had considered and what he had not considered and therefore whether he had looked at Devaseelan in the correct context. I asked Mr Jenkins about the contention in the grounds that there was an implied concession by the respondent accepting the emails from the sister as I said that the only references in RFRL to the sister sending the document were at [22] under the heading *"Consideration"* - *"It is noted that you then received the documents from your sister who emailed copies over to you"* and at [32] *"it was noted that your sister sent this document to you"* and that there was nothing to suggest that any concession was made about the documents, rather it was setting out the appellant's case. I observed that the respondent had clearly relied on Tanveer Ahmed in the decision letter. Mr Jenkins responded that the Home Office had not made a positive issue about the emails and the main point was that the sister's evidence had not been considered correctly or at all and this was important when considering Devaseelan.

12. Judge Lester had not, Mr Jenkins submitted, considered Devaseelan properly. Devaseelan was only the starting point but the new evidence had to be considered. Judge Lester had not given proper reasons following MK (duty to give

reasons) Pakistan [2013] UKUT 641. It could not be said simply that a document had no weight or a witness had not been believed; this went to the consideration of the expert report at least.

13. So far as the objective evidence was concerned, Judge Lester had not considered it at all, he submitted. Although Judge Sills' primary findings had been on credibility, he had looked at the objective evidence when considering credibility and so it became important to consider the objective evidence.

Arguments on behalf of the respondent

14. Ms Simbi submitted that when the judgment was looked at as a whole, it may not be the best but all the points had been addressed.

15. The judge had acknowledged there was new evidence about court documents. It had been accepted at [7] that the document from Professor Malkawi was not a formal expert report and that it would be a matter for the tribunal what weight to give to the report. Judge Lester had explained at [40] the issues he had with the expert report and he had given clear reasons why he could not put weight on the expert report at [42] – the point about it being for the appellant to show the documents upon which they relied were reliable and at [44] *"in considering the evidence in the round I find that I can give little weight to the documentation".* This was not the type of case where an expert had examined an original document and certified it as authentic. There were a lot of unanswered questions. It was difficult to see what more weight could be given to the documentation when looking at it in the round and the judge gave clear reasons why he did not accept the documentation.

16. There was no concession in the refusal letter about the sister's emails and it was open to the judge to make any further point he wished to make but an email chain from the sister to the appellant would not have taken matters any further. The judge had noted at [23] the contention made by the sister at paragraph 8 of her witness statement about telling the appellant so he was clearly aware of her explanation.

17. The appellant's evidence had already been assessed at a previous hearing and found wanting. It was for Judge Lester to assess whether the documentation now provided should change that position. Ms Simbi said that the respondent's position was that the new documents provided by the appellant had not taken the matter any further and as the appellant was not credible, overall everything stood as it was. There was no reason to go behind the previous decision; even had Judge Lester added a few more lines he would still have come to the same conclusion. Any error of law was not a material one.

18. Mr Jenkins responded that the court documents were not about the incident of 2014 but were about a different incident and were new evidence. The new evidence had to be considered and weighted properly. It was not safe to say that Judge Lester would have come to the same conclusion had he properly considered the fresh evidence.

Analysis and conclusions

19. Judge Lester did not set out the scope of his task correctly. He began at [38] by saying that "*the starting point is the 2019 case. The findings are set out [12-35]. The findings were adverse to the Appellant on (sic) the appeal was dismissed. In*

this case he says that the paperwork he has been able to provide of the 2018 conviction and (sic) absence means that the decision can be properly reconsidered". He concluded at [44] and [45]:

"44. In considering the evidence in the round I find that I can give little weight to the documentation.

45. I find therefore that the findings from the (sic) 2019 are undisturbed. These findings included adverse credibility findings."

20. I observe in passing that although it is easy to make typos as I have noted above and one should not be quick to criticise, the decision was not adequately proof read and standard paragraphs were not altered. This applies not only to paragraph 2, the anonymity direction, but what one might think to be the critical concluding paragraph at 48 *"I therefore find that the Appellant does/does not have a well-founded fear of persecution for a convention reason and/or that the appellant faces/does not face a real risk of serious harm."*

21. Judge Lester approached the case as if the appellant were relying on the same incident in 2014 as he had before Judge Sills and was saying that he had subsequently been convicted based on that incident and so Judge Sills' findings should be reconsidered. The appellant's case was however that the conviction arose from a different incident which had not been the subject of Judge Sills' consideration.

22. The obligation on Judge Lester was to address the merits of the appellant's case (which included the incident of which Judge Sills was unaware) on the evidence then available, albeit that the findings at the earlier hearing were an important starting point – see Secretary of State for the Home Department v Krupaliben Sanikumar Patel [2022] EWCA Civ 36 at [37] – [38].

23. Judge Lester did not make any findings about the appellant's evidence to him or the appellant's evidence about what he had done in 2017. He treated the case as if the only question was whether the documentation about the 2018 conviction was reliable.

24. Ms Simbi's point is in essence that if the judge's conclusions on the documentation were open to him then as the appellant had not been found to be credible by Judge Sills, the outcome would be the same.

25. Judge Lester was right to conclude that Professor Malkawi's report was not in proper form for an expert report and it did not comply with Presidential Guidance. He was right to conclude that there was nothing to indicate that the Professor had expertise in document analysis and that the report does not say that he examined the documents or saw originals. However the report does say that the named judge who is claimed to have issued the decision in the appellant's case is indeed an active member of the judiciary in Jordan, that the document has a proper court case number and that the document appears to be consistent with similar decisions on the same subject matter (one of which is exhibited). Those are matters which on the face of it, the expert would be well placed to comment given his studies and experience as a professor of law in Jordan and his writings on the Jordanian legal system (see paragraph 9 grounds). Judge Lester simply did not engage with the content of the report at all as paragraph 7 of the grounds complains. Neither did Judge Lester explain the weight he ultimately gave to the report *"I find that all of this affects the weight I can give to the report"*[40].

Whilst it may be inferred that he gave the report little weight from his findings at [44], he does not explain why he slipped from matters affecting the weight of the report to giving the report little weight.

26. I consider that Judge Lester's reasoning in respect of the expert report is inadequate.

27. Contrary to the grounds, there is no implied concession by the respondent in respect of the delivery of the documents by the appellant's sister. Neither is it obvious that the emails were provided to the respondent as part of the fresh claim. The grounds submit that it was the appellant's unchallenged evidence that the emails were submitted to the respondent as part of the fresh claim, but there is nothing to indicate this in the judge's account of the oral evidence and whilst the submissions in support of the fresh claim contain a witness statement from the appellant and his sister and a copy of the court judgment, the covering letters do not suggest that any emails were attached. Nevertheless, the respondent did not take as a point against the appellant in RFRL that the emails were not provided; after all the appellant had provided a witness statement from his sister to explain how and when she supplied the documents; it is difficult to see what if anything an email would add or why the appellant would have thought to have produced evidence that he had provided the emails to his previous solicitors when no-one had raised the question of the emails before the hearing in front of Judge Lester.

28. However the lack of production of the emails is only one part of the consideration of the sister's evidence; Judge Lester also concludes that the sister provides no details as to why she waited 2 years to tell the appellant about the conviction in absence.

29. Mr Jenkins points out that paragraph 8 of the witness statement gives the explanation; however paragraph 8 is ambiguous. The sister explained at [5] of her witness statement that she learnt about the appellant's conviction in January 2020. She says in paragraph 8 *"Uncle B... did not tell anyone about M..'s conviction until January 2020. During M...'s detention at Yarl's Wood in January 2022, our uncle acknowledged to me that he had realised that M... would not face a fair trial if he were to return to Jordan. Subsequently, Uncle B... passed the court sentence and the warrant to me, whereupon I told M... about them, and emailed copies to him."*

30. It is clear that the appellant's sister is saying that she only obtained the documents in 2022 and that explains why there were 2 years between her knowledge of the conviction and her sending the appellant the documents. It is not clear that when she says "*whereupon I told M... about them"* she meant telling him about the fact of the conviction and sentence as opposed to telling him about the documents she had. Judge Lester says that on his narrative the appellant only became aware of the 2018 conviction in 2022 [41] and that when the sister knew in 2020 she did not tell the appellant [23], but then he also records the appellant's oral evidence as being that he found out about the conviction in January 2020 [27]. Judge Lester repeats at [29] that the appellant said that his sister had told him in January 2020. I observe that the appellant's witness statement of June 2022 at [39] says that he learned about the sentence from his sister in January 2020. The appellant's narrative before Judge Lester was not therefore that he only became aware of the 2018 conviction in 2022, but rather he became aware of it in 2020 and so it is not correct that the appellant's sister waited 2 years before telling the appellant.

31. When looked at in that light, as Mr Jenkins submits, the sister's evidence has not been correctly analysed. This leaves the judge's reasons for giving little weight to the sister's evidence as being the lack of production of the emails. That on its own is not an adequate reason for giving little weight to the sister's evidence bearing in mind the point about lack of production of the emails was only raised at the hearing. Accordingly I consider that Judge Lester gave inadequate reasons for giving little weight to the appellant's sister's evidence.

32. Consideration or failure to consider background evidence could in principle be material as the grounds suggest. Whilst Judge Sills' primary findings were that the appellant's account was not credible, he considered country evidence when considering the credibility of the appellant's account [16] and there was now rather better evidence of the risk for political opponents than there had been before Judge Sills. However Judge Lester cannot be criticised for not having considered the up to date background material when the appellant's skeleton argument said that the primary reason for Judge Sills' refusal was the lack of corroborative objective evidence. Clearly that was not the primary reason for Judge Sills' dismissal of the appeal. The skeleton argument did not invite Judge Lester to look at the up to date background material in a more nuanced way, neither was there an argument that the appellant would be at risk on return on HJ (Iran) principles.

33. I have thought carefully about Ms Simbi's submission that there was no material error of law. After all, it is difficult to see how taken at its absolute highest Professor Malkawi's report could do any more than conclude that the documents were consistent with the form of genuine court documents and signed by a judge who was indeed a current judge. There was no evidence from the appellant's uncle, so that Judge Lester was reliant for the provenance of the court documents on the evidence of the appellant's sister and the evidence of the appellant himself who had been found by Judge Sills to be unreliable. Whilst Judge Lester should have assessed the evidence of the appellant himself about the 2017 sending of documents to opposition figures and truly looked at the evidence in the round rather than seeing if the documents about the different 2017 incident "*disturbed"* Judge Sills findings from 2019, Judge Lester's summary of the oral evidence shows that the appellant produced no evidence beyond his word to support what he said he did in 2017 and he had not mentioned the 2017 sending of documents to Judge Sills, although at the time of course on his case he would not have appreciated the adverse consequences for him.

34. As was explained in ASO (Iraq) v Secretary of State for the Home Department [2023] EWCA Civ 1282 the test of materiality is whether it is clear on the materials before the First-Tier Tribunal that any rational tribunal must have come to the same conclusion. The appellant faced a difficult task before any tribunal given Judge Sills' clear previous findings which were the starting point, and some gaps or curious features of the subsequent evidence. Nevertheless the documents produced by the appellant related to a different incident which Judge Sills did not consider. It is hard to say particularly in the asylum context that it is inevitable that any rational tribunal would come to the same conclusion when the conclusion turns on the combination of analysis of the expert report, the sister's evidence and the appellant's evidence, and ideally background evidence seen in the light of the starting point of Judge Sills findings.

35. Not without some hesitation, I conclude that although a rational tribunal might well have dismissed the appellant's appeal, it would not have been bound to

dismiss the appellant's appeal, and accordingly the errors I have found relating to inadequacy of reasoning in the analysis of Professor Malkawi's report and the consideration of the appellant's sister's evidence were material.

36. Judge Lester's decision must therefore be set aside. The representatives were agreed that the appeal should be remitted to the First-Tier Tribunal for rehearing, and I consider that to be the appropriate course given the extent of fact-finding necessary.

Notice of Decision

The Judge's decision contains errors of law and is set aside with no findings preserved. The appeal is remitted to the First-Tier Tribunal at Newport to be heard by a Judge other than Judge Lester.

A-R Landes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 August 2024