**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos:
UI-2024-000429
UI-2024-000428
UI-2024-000427
PA/55449/2022
PA/55450/2022
PA/55452/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 16th of May 20024**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**RE**
**SE**
**AE**
**(ANONYMITY ORDER MADE)**

Appellants

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**
For the Appellant: Mr T Thrower, Solicitor, of Broudie Jackson Cantor
For the Respondent: Ms E Blackburn, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 10 May 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. By the decision of Upper Tribunal Judge Sheridan issued on 22.3.24, the three appellants, adult siblings and citizens of Iraq of Kurdish ethnicity, have been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Jepson) promulgated 3.11.23 dismissing their linked appeals against the respondent's decision of 11.11.22 refusing their claims for international protection.

2. Mr Thrower relied on the revised grounds submitted in the renewed application for permission as his skeleton argument. Ms Blackburn relied on the Rule 24 Reply of 24.4.24.

3. Following the helpful submissions of the representatives, I reserved my decision to be given in writing, which I now do.

4. In summary, the grounds argue that the First-tier Tribunal erred by (i) using ambiguous language and failing to apply anxious scrutiny; (ii) failing to provide adequate reasoning in relation to the appellants' accounts as to their uncle and in relation to car values; (iii) making a material mistake of fact at [142] of the decision as to when it was revealed that J was given the role of observing the first two appellants; (iv) providing inadequate reasoning in addressing the expert evidence of Dr Ghobani only after making adverse credibility findings; and (v) failing to consider each appellant's account on its own merits.

5. In granting permission on all grounds, Judge Sheridan addressed only the fourth ground, considering it arguable that "*the evidence of Dr Ghobani was considered only after deciding that the appellants' had been untruthful. See paragraph 190 where the question of what difference Dr Ghobani's evidence makes is posed immediately after the conclusion on credibility in paragraph 189. Arguably, the judge's approach was inconsistent with the "Mibanga duty" as explained in QC (verification of documents; Mibanga duty) China [2021] UKUT 33 (IAC). All grounds can be pursued*."

6. In assessing the error of law issue, I bear in mind that Volpi & Anor v Volpi [2022] EWCA Civ 464 (05 April 2022) at [65]-[66] of the judgment of Lord Justice Lewison, with whom Lord Justice Males and Lord Justice Snowden agreed, the following guidance was set out:

> *"(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.*
>
> *(ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.*
>
> *(iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.*
>
> *(iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material*

*evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.*

*(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.*

*(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."*

7. At the outset of the hearing before me, Mr Thrower abandoned the first ground entirely. In my view that was prudent as on my reading of the decision the matters complained of were findings in the appellants' favour, where the judge imposed a self-direction to be cautious about giving too much weight or undue weight to various aspects of the evidence.

8. The second ground, split into two parts both relating to plausibility findings, first complains that the finding at [160] of the decision that the appellants have the capacity to defy their uncle, was based "*on a number of findings scattered throughout the lengthy determination. It is submitted that these findings amount to a decision that it is not plausible that the Appellants are at risk from their uncle*."

9. However, as to the complaint of findings being scattered throughout the decision, it was not necessary for the judge to set out the findings in any particular order, nor to repeat findings or summaries of evidence made elsewhere in the decision, provided that it is clear that the judge had assessed the evidence as a whole, in the round, before making any findings. Both representatives acknowledged that having to deal with all three appellants' cases together, the judge was presented with the difficult task of assessing each claim separately. As Ms Blackburn pointed out, it was made the more challenging by the fact that the claims are overlapping and the statements of the appellants each commented on the case for the others. I am not satisfied that the complaint as to the judge's style is justified or discloses any error of law.

10. Mr Thrower took me to various parts of the objective country evidence to demonstrate that the issue was not about the power of the uncle to physically control the appellants in every aspect but more about the steps he took to ensure that they did not bring shame on the family or threaten the family's honour, submitting that this was entirely plausible in light of the objective country evidence. He submitted that the judge set a test that was impossible for the appellants to meet: That if they feared the uncle it must be because he was all-controlling, but if he were, they would not have been able to do what they claim to have done and flee as they did. Reliance was placed on HK v SSHD [2006] EWCA Civ 1037**,** to complain that the judge based plausibility findings without reference to country background evidence as how tribal and family dynamics work in Iraqi Kurdistan. On the contrary, [150] of the decision makes clear that the judge was very much alive to the issue of shame and dishonour. At [153] the judge accepted that pressure may have been brought to bear to require the female appellants to behave in certain ways acceptable to him.

11. It is also said that the decision does not disclose how the judge reached the conclusions on plausibility. The grounds effectively demand 'chapter and verse' for every finding when that was not required. Having regard to the decision as a whole, I am satisfied that it was open to the judge to find that the power or

influence of the uncle was not as great as asserted. It was not necessary for the judge to show the 'workings out', provided it can be said that the findings were not irrational or ones that no reasonable judge could have reached. Undoubtedly, the judge had taken great care to consider the evidence as a whole and must be assumed to have borne that in mind when making such findings. The reasoning is adequately set out in the preceding paragraphs, where, for example, at [154] the judge noted that RE and SE were able to live their lives in certain ways without serious repercussions. I am satisfied that the findings were open on the evidence and supported by adequate reasoning. Furthermore, I reject the contention that the findings as to the uncle were unsustainable plausibility findings. The judge made no reference to plausibility at [160] but even if they did so, I am satisfied that it was sustainable for the reasoning provided in the decision. The grounds seek a decision of perfection rather than a summary of the findings and reasons for those findings.

12. Criticism is also made in this ground as to the finding at [178] of the decision that it was implausible that a car sold in hast some four years after purchase could only have lost $700 in value. The judge was there only expressing a common-sense view which was but a small part of the overall credibility findings. If there was an error in this regard, I am not satisfied that it was material to the outcome of the appeal.

13. The third ground, relies on an alleged error of fact at [142] of the decision where the judge stated "*It became apparent in court, for what seems to be the first time, that the friend of AE (J) who helped the Appellants after the airport incident is the same as he who was tasked by the uncle to supervise RE and SE in Erbil*." Mr Thrower submitted that it was clear that this had been the appellants' case before the hearing, as their witness statements set out. Whether the judge relied on this misapprehension is made clear by [155] where the judge stated: "*Given the late revelations abouts both J also being the one who assisted the Appellants and his being a police officer, I doubt this person even exists*." The judge wasn't assisted by the fact that J is referred to by different names in the various documents. I accept that there was an error of fact as to when J's role was first raised. However, the important point made by the judge about J's role was as set out at [155]: "*I reject the suggestion J was enrolled as an observer for the uncle. That does not fit with his apparent willingness to help the Appellants leave Iraq. If the uncle was as formidable as claimed, J would not have taken that risk. I also doubt J, if so close to the uncle to be trusted with such a task, could be simply asked not to tell anyone about the Appellants' departure. Why would he choose the Appellants over the uncle?*" The doubt as to whether J existed all came after that finding and was not material to the assessment of the apparently contradictory role played by that person when considering the credibility of the claim. In the circumstances, I am not satisfied that there is any materiality to the error of fact.

14. In relation to the fourth ground, as the respondent has pointed out in the Rule 24 Reply of 24.4.24, Dr Ghobani's report was considered before the findings were made as to credibility, the Rule 24 Reply stating, "*In reality the FTTJ makes express reference to it at [92-93] immediately after the evidence of the appellants. The FTTJ sets out a summary of the report, the context it covers and the limitations. It is in that context that the FTTJ considers what difference the view of Dr Ghorbani makes to the A for the reasons given. The references to elements of the report being supportive to a limited degree*." The respondent cites QC (verification of documents; Mibanga duty) [2021] UKUT 33 (IAC) (12 January 2021) to the effect that the manner in which the judge approaches the evidence is up to them, as long as it is considered. Mr Thrower responded by

asserting that the first 105 paragraphs of the decision were entirely descriptive and not an assessment of the evidence. For the reasons explained below, I do not accept that submission.

15. At [92] the judge explains that the expert evidence would be summarised quite briefly. Neither what follows at [93] nor from [190] of the decision demonstrates that there was a breach of the Mibanga principles in relation to the evidence of the appellants or the expert. Undoubtedly, the judge must have considered the expert evidence in order to summarise it, as Mr Thrower accepted. It is referred to again at [113] of the decision where the judge accepted the expert evidence that the Barzani family and the airline are connected, a point made in the appellants' favour. Whilst I accept Mr Thrower's submission that it would be an error to come to a negative assessment of evidence and then consider whether that conclusion could be displaced by other evidence, I am not satisfied that that is what the First-tier Tribunal Judge did.

16. The grounds and Mr Thrower's submissions make the common error of assuming that the decision and reasons document of the First-tier Tribunal is the process by which the judge assessed the evidence, the working out in linear fashion, line by line, making one finding and then moving on to make another finding. To the contrary, it is clear from a reading of the decision that the judicial process was that all evidence had been taken into consideration before any findings were made. The decision and reasons is but a summary of the findings and the reasoning supporting the findings. To make any sense, such a decision has to be set out in a logical way and not everything can be mentioned at once; the judge has to start somewhere. It would be incomprehensible if the judge had to repeat the evidence again and again when making findings. It follows from the above that the order in which matters are set out in the decision document is not necessarily the order in which the judge considered the evidence and made findings. As explained in Budhatkoki [2014] UKUT 00041 (IAC), "*it is generally unnecessary and unhelpful for First-tier Tribunal judgements to rehearse every detail or issue raised in a case. This leads to judgements becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost*." In this case, the judge has very carefully summarised the various strands of evidence, the submissions of each party, and the findings.

17. However, whilst the order in which the evidence was addressed is not necessarily relevant, what has to be considered is whether what is set out at [190] of the decision, where the judge asks "*What difference, if any, does the report of Dr.Ghobadi have on the case?*" disclosed that at whatever stage the findings were made, the Judge erred in the process of reasoning by considering whether the expert evidence made any difference to the adverse credibility findings only after those findings were made. Having considered the matter in the context of the decision as a whole, I am satisfied that addressing the expert evidence at this point in the lengthy decision does not demonstrate that the credibility assessments were made in isolation of the expert evidence but [190] was no more than a convenient section of the decision in which to address the impact of the expert evidence already summarised earlier in the decision. I am satisfied that the expert evidence was taken into account when the credibility findings were made, even if not specifically referenced at that part of the decision. Furthermore, I am satisfied that the judge provided adequate reasoning for according limited weight to the expert evidence, much of which was uncontentious and took the case little further. In summary, it cannot be said that

the treatment of the expert evidence discloses any error of law, or was otherwise irrational or betrayed an approach that no reasonable judge would or could have made.

18. The fifth ground argues that the judge failed to consider each appellant's case on their own merits. Mr Thrower accepted that the judge made a self-direction as to the need to do so and was alert to the difficulties in such a case where the evidence overlaps. I have carefully considered those passages to which Mr Thrower directed me, beginning at [166] of the decision, in which it is submitted that the judge made only a limited assessment of the case of RE, in comparison to that of the other two appellants. However, it is quite clear from a reading of the decision as a whole that there were made overlapping issues amongst the three appellants. I am satisfied that it was not necessary for the judge to repeat each of those matters for each of the three appellants. At [182] the judge confirmed that the three appellants had been assessed separately and I am satisfied that there is sufficient reasoning within the decision to confirm that is in fact what the judge did. For example, the case of each appellant was separately set out from [95] of the decision. However, given the way in which the case was presented, with overlapping claims and the three appellants each commenting on that of the others, there was bound to be a degree of overlap in the credibility assessment. Again, the grounds and Mr Thrower's submissions seek a decision of perfection in what was a factually complex case. On any view, taken as a whole, the findings made were open on the evidence and supported by adequate reasoning. It was not necessary for the judge to set out the findings and reasoning in any greater detail and one might suggest that the decision could have been a good deal shorter than it was. In all the circumstances, I am satisfied that read as a whole the decision is sustainable and discloses no material error of law.

**Notice of Decision**

The appellants' appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**10 May 2024**