IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000984
UI-2024-001463
First-tier Tribunal No: PA/52065/2023
LP/02115/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd September 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AFA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood of the IAS.
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 30 July 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 appeals with permission a decision of First-tier Tribunal Judge Green ('the Judge'), promulgated following a hearing at Manchester on 17

January 2024, in which he dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other basis.

2. The Appellant is a citizen of Iraqi of Kurdish ethnicity.
3. Having considered the documentary and oral evidence the Judge sets out findings of fact from [16] of the decision under challenge.
4. At [17] the Judge did not find the Appellant to be a reliable witness, referring to several occasions when he avoided answering straightforward questions and on other occasions simply did not answer the questions he was asked.
5. The Judge provides reasons for why he found the Appellant's account not credible at [19 (a) – (f)]. The Judge therefore found the Appellant had not established he was persecuted as claimed [20].
6. The Judge also notes the Appellant's evidence that he had not sought protection from the Iraqi authorities and could, therefore, see no reason why there would be insufficient state protection available if he needed it. Having also noted the claim was a fear of persecution by a non-state agent, the Judge considered whether the Appellant could in any event internally relocate. At [21] the Judge finds the Appellant could reasonably relocate without it being unduly harsh as he has family members in Iraq who could support him on return, and he has a CSID and INID to enable him to travel in Iraqi and get access to employment.
7. In relation to documentation, the Judge notes the Appellant's evidence in cross-examination that he has a CSID which he claimed was at the family home in Iraq. He also claimed that he had an INID which his parents obtain for him, but he claimed to have lost contact with his family. The Judge did not accept that that was credible in light of general concerns about lack of credibility in his account, and finds there was no reason the Appellant could not contact his family and asked them to send his CSID and INID to him, which he could use to facilitate his return.
8. The Appellant applied for permission to appeal asserting (i) the Judge permitted a procedural unfairness, and, (ii) made a material misdirection in law relation to the assessment of the Appellant's evidence about his Iraqi documentation, which are said to be material as without such errors the outcome may have been different.
9. Permission to appeal to the Upper Tribunal was granted by another judge of the First-tier tribunal on 11 March 2024 on limited grounds. An application was renewed to the Upper Tribunal, which explains the two case numbers above, in relation to which permission was granted on the remaining grounds by Upper Tribunal Judge Macleman on 9 May 2024.
10. The Secretary of State opposes the application in a Rule 24 reply dated 24 May 2024, the operative part of which is in the following terms:

> 2. The grounds of appeal are opposed as they are a mere disagreement.
>
> 3. It is asserted in the grounds; First Tier Tribunal Judge (FTTJ) Green was procedurally unfair as he failed to put his concerns on discrepancies to the Appellant.
>
> 4. It is asserted this argument is dependant wholly on what is asserted in the grounds as the witness statement submitted by Miriam Ballard, does not prove their case. Paragraph 4 – 6 of the statement is not conclusive. For instance, paragraph 5 states "I do not recall it being put to the Appellant". This does not indicate with certainty questions were not asked as possibly counsel simply forgot. Also, paragraph 6 states "I cannot find any note within my record of proceedings". This also does not prove their case as counsel possibly failed to record them. Neither of these paragraphs in the statement support the grounds. Further, paragraphs 7 and 8 of the witness statement simply show the FTTJ's assessment of the Appellants claim and findings, which the FTTJ is entitled to do.

5. Further, the Respondent relies on paragraph 6 of Secretary of State For the Home Department v Maheshwaran [2002] EWCA Civ 173 (14th February, 2002) (bailii.org) and paragraphs 8 – 10 of HA AND TD v. SECRETARY OF STATE FOR THE HOME DEPARTMENT (scotcourts.gov.uk).

6. In summary both caselaws show fairness are very much based on the facts of each case and an assessment of all the circumstances before the Tribunal. Also, there is no obligation on the Tribunal to give notice to the parties during a hearing of all the matters on which it may rely when reaching its decision.

7. The Respondent asks the UT find no error of law exists and an oral hearing is requested.

Discussion and analysis

11. It was accepted by Mr McVeety that the Judge's findings in relation to the inability to snap the Sim card are speculative, but no further, and that any error in this regard is not material.
12. In relation to Ground 1, Mr Wood argued that the matters relied upon by the Judge were not put to the Appellant i.e. relating to the telephone number, ability to leave the property. It is claimed the Judge's findings in relation to security are in a section of his findings and that it was not implausible for the Appellant to walk out of the property as claimed.
13. The obligation upon the Judge was to assess the evidence with the required degree of anxious scrutiny and to make findings upon the same supported by adequate reasons. It goes without saying that the manner in which a hearing is conducted by a judge, and how he or she determines the merits of the appeal, is underpinned by the interests of justice and the right of parties to have a fair hearing.
14. If matters arise during the course of a hearing, or thereafter at the deliberation stage, that were not relied upon by either party to the proceedings, which are likely to have a material impact upon the decision, it is always open to a judge to give a direction for written observations to be made or for the hearing to be relisted. A judge is not restricted to considering only those matters set out in a refusal letter, subject to fairness.
15. Proceedings within the immigration Tribunals are adversarial in nature which, due to the nature of the decisions to be made and volumes of country information and other evidence, are ordinarily reserved, with further detailed consideration of the written and oral evidence taking place at a later date with a view to arriving at a sustainable decision. That is what Judge Green did.
16. At [19 (a)] Judge Green refers to an issue that arose in cross examination in which the Appellant would not respond to questions he had been asked. The Appellant was therefore given the opportunity to deal with concerns that arose from his evidence in chief but did not take the benefit of that opportunity. The Judge's finding he had avoided answering the questions he was asked is the Judge's assessment of the manner in which the Appellant gave his evidence, having had the benefit of seeing and hearing the evidence being given. Judge Green in fact gave the Appellant the opportunity to respond where it is written in this paragraph "I had to remind the appellant to answer the question that he had been asked". No unfairness therefore arises. The Appellant answered the question after intervention by Judge Green which resulted in a further adverse finding arrived at having considered what weight could be given to that evidence, which is a finding supported by adequate reasons.

17. Judge Green's finding in the final sentence of that paragraph is neither speculative nor unfair. It was not unreasonable for Judge Green to find that if the Appellant was faced with a situation in which he had been propositioned by the female in question, having been invited to the house on a false pretext, he could just have left. That is not an arguably perverse or irrational conclusion in light of there being no evidence to support an alternative finding.
18. In [19 (b)] Judge Green deals with another issue arising from the Appellants written and oral evidence. The Judge identifies a discrepancy in the evidence when considering the same as a whole. That finding is neither speculative nor unfair and the Judge was not required to return to the Appellant for further submissions after the conclusion of the hearing in Manchester.
19. At [19 (c)] the Judge records an issue arising from the Appellant's own evidence. It is claimed the woman's husband, HA, has prominence in Kurdish society. It was not arguably irrational for the Judge to conclude that if such a degree of security was required as claimed for the property in question (their home), even if there was only one guard at the time HA was away and his wife was at home, it lacked credibility to claim the rear of the property was left totally unsecured. The Appellant claimed that having been allowed into the property by the guard through the front door he was able to leave via the rear door without any difficulty. It is not irrational for the Judge to have concluded that even if HA was not in the property, the fact a guard was still employed to protect the property and his wife would indicate that other basic security measures would have been taken. To claim an individual is able to just walk out of the property within encountering any such measures contradicts what had been said elsewhere. Even if the Judge's actual finding that the rear of the property would not have been unguarded is considered speculative by Mr Wood, in light of the context in which this statement is made it is not plausible that the rear of the property would have been left insecure. That is a finding within the range of those reasonably open to the Judge on the evidence. The Judge's comments that what the Appellant was claiming meant anybody could gain access to the rear of the property and thereby circumvent the guard at the front is a perfectly rational comment.
20. [19 (d)] relates to the Sim card. The Judge rejected the appellant's claim for two reasons. The first is that if the Appellant did not want to be tracked, he could simply have switched of his phone or removed the battery. That is a finding within the range of those reasonably open to the Judge. The Appellant stated that he broke his Sim card and threw his telephone away as he did not want to be tracked by HA on GPS, in which case switching it off and removing the battery would have achieved the desired result. The second reason that in light of the fact a Sim card is very small it was not found plausible/credible the Appellant would have been able to snap it in half given its dimensions is speculative, with no evidence to suggest such finding was reasonably open to the Judge on the evidence, as conceded by Mr McVeety. I do not find, however, is that error in relation to the second aspect is material.
21. At [19 (e)] the Judge again refers to the matter that arose in cross examination. The Judge's finding that it was surprising that such a material aspect of the Appellant's claim was only first mentioned when he was being cross-examined, with no reference to it in his substantive asylum interview or his witness statements, is an observation by the Judge in relation to the nature of the evidence provided. The Judge also noted a discrepancy between a reply to an earlier question in which the Appellant claimed he had not been in contact with his family and also that they had told him that they had been threatened. The fact the Appellant failed to raise a point that he relied upon in answer to a question put in cross examination, when he had ample opportunity to raise this

point before if it was true, such that it undermined his credibility and suggests an attempt to embellish the claim, is a finding within the range of those reasonably open to the Judge on the evidence.

22. It [19 (f)] the Judge refers to social media evidence provided by the Appellant to substantiate his claim HA is a person of influence and power in the Kurdish region of Iraq. The Judge clearly considered this evidence with the required degree of anxious scrutiny and makes specific reference to where in a supplementary bundle the evidence was to be found, that most of the photographs of HA date back 2015 and 2014, although it is accepted there are also photographs for 2017, 2018, 2019 in 2021. The observation by the Judge that even if the photographs corroborate the claim HA may have been and continues to be a person of influence and power, that is only relevant if the Appellant established that he dishonoured HA as claimed and is in danger of retribution, is a conclusion reasonably open to the Judge. The finding that in the absence of dishonour there was no risk of retribution making HA's status irrelevant, is a finding reasonably open to the Judge on the evidence. As the Judge gives ample reasons why the Appellant's claim was not credible, which have not been shown to be conclusions outside the range of those reasonably open to the Judge when all the evidence is considered in the round, the finding the Appellant had not established he was persecuted as claim, or faces a real risk of persecution from HA on return, has not been shown to be rationally objectionable.
23. In relation to Ground 2, in which it is asserted the Judge materially misdirected himself in law in relation to the assessment of the Appellant's evidence about his Iraqi documents, Mr Wood submits that more was required to be done by the Judge. At [10] of the Grounds it is submitted the Judge materially misdirected himself in law by rejecting the Appellant's evidence about his lack of Iraqi ID documents on the basis he rejected other aspects of account, and that the error of approach must vitiate the adverse findings at [22] of the decision and render the conclusion on the risk to the Appellant from lack of documentation unsafe.
24. At [21] the Judge finds the Appellant has a CSID and INID which will enable him to travel to Iraq and get access to employment. At [22] the Judge gives his reasons for such finding. These are, again, based in part upon the Appellant's own evidence given in cross examination in which he claimed that he had a CSID which was at the family home in Iraq and that he also had an INID which his parents obtained for him. That is a finding within the range of those available to the Judge as it is based upon the Appellant's own evidence.
25. The core issue in relation to documentation is the Appellant's claim to have lost contact with his family. The Judge was entitled to assess the truth or otherwise of this statement by considering the evidence as a whole. The Appellant had been proved to lack credibility and to have lied in relation to his claim for international protection for the reasons set out in the determination. Although it is settled law that a person can tell the truth about one matter even if they are found to be lying about other matters, the actual finding of the Judge is that the Appellant had not established what he was claiming is true. That is a finding within the range of those available to the Judge having assessed the evidence as a whole. The Judge finds there is no reason why the Appellant should not contact his family and ask them to send his documents to him which he can use to facilitate his return. That is a finding within the range of those available to the Judge in light of his not accepting the claim to have lost contact is credible.
26. Mr McVeety in his submissions referred to a case relied upon in the grounds seeking permission to appeal which he submitted did not apply as it us a criminal case in which the burden and standard of proof is different. He also submitted that the Judge obtained replies to questions as part of the evidence

so there was no need to go back to the Appellant once the Judge had formed a view on that evidence. An example given of this was that questions were asked of the Appellant by the Presenting Officer on the day about how he could get out of the back of the house, indicating this was an issue that was addressed and no unfairness arises. It was submitted that issues were put to the Appellant and it is not suggested the Judge's reference to the replies given is in anyway mistaken.

27. I do not find there is any merit in this appeal. There was no obligation upon the Judge, in the interests of fairness or otherwise, to have stated in court that he did not find the Appellant lacked credibility when that was not the phase the proceedings in which the Judge would have sat back and considered the evidence as a whole. It is not made out the Judge relied on matters of which the Appellant had not been given the opportunity to respond. The Judge clearly assessed the documentary and oral evidence and the findings in the determination are those that reasonably flow from that evidence.
28. Whilst the Appellant disagrees with the Judge's decision and will clearly prefer a more favourable outcome to enable him to remain in the United Kingdom, the Grounds fail to establish legal error material to the decision to dismiss the appeal.
29. As I said above a number of occasions above, the findings are clearly within the range of those reasonably open to the Judge on the evidence.

Notice of Decision

30. The First-tier Tribunal have not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 August 2024