Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2024-001262
First-tier Case Number: PA/50557/2023

THE IMMIGRATION ACTS

Decision & Reasons Promulgated

On 5th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

G.O.R.
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Hayward, Counsel
For the Respondent: Ms S Nwachuku, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 25 June 2024

The Appellant

1. The appellant is a citizen of Iraq born on 30 September 2005. He appeals against the decision of Judge of the First-tier Tribunal S J Clarke dated 22 November 2023. That decision dismissed the appellant's appeal against a decision of the respondent dated 19 January 2023 to refuse the appellant's claim for international protection. The appellant left Iraq in September 2021 and entered the United Kingdom on 8 October 2021.

Anonymity.

2. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials GOR. 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.

The Appellant's Case

3. The appellant comes from Qala Dizeh in the administrative area of Sulaymaniyah in the Kurdistan Region of Iraq (KRI). He fears a blood feud against him. He worked at a gravel pit initially doing light duties but eventually was trusted to run the machinery at the site. An accident occurred one day when the son of one of the supervisors a boy called Aryan, took a tipper truck without the appellant's consent and drove it into the river where Aryan drowned. Although the police released the appellant without charge the appellant received threats from Aryan's family by way of telephone calls and text messages and in person.

4. The appellant's family decided it was not safe for the appellant to remain and the appellant went to stay with a paternal uncle for around two months then to another uncle for another two months. Negotiations with Aryan's family did not produce an agreement and the appellant's family understood that Aryan's family wanted blood revenge. The people smugglers approached by the appellant's family to help the appellant escape gave the appellant a mobile phone which they said had come from the appellant's paternal uncle. The phone contained photographs which the appellant submitted with his claim for asylum.

The Decision at First Instance

5. The judge did not find the appellant to be a credible witness and pointed to a number of inconsistencies in the appellant's account. At one point the appellant had said that the supervisor at the site was a man called Kamaran who was the father of Aryan and the appellant did not speak to any other supervisor on the day of the accident. Later on however the appellant said that Kamaran was not there and he had spoken to another supervisor called Hakim. The appellant produced two photographs one which he said was of himself and Aryan but he could not explain how his appellant's uncle had got hold of the photograph which was taken on Aryan's mobile. The second photograph was a blurred one which the appellant said showed the tipper truck in the river but due to its appearance the judge did not consider that anything in particular could be observed from that photograph.

6. The appellant had also contradicted himself by saying on the one hand he had had no contact with his family since arriving in the United Kingdom but on the other hand saying that he had telephoned his father to say he had arrived in the United Kingdom safely.

7. The appellant had made no mention in his first statement of shots being fired as a result of which the appellant said he had been forced to leave a neighbour's house to go to an uncle's house some 30 km away. The appellant gave as his reason for not mentioning the shots that he was tired after the journey to the United Kingdom. However the judge did not accept that such an important incident would not have been mentioned by the appellant when he came to make his first statement. His failure to mention the gunshots contrasted sharply with the appellant mentioning threats made over the phone. This indicated in the judge's view that the appellant was aware of the importance of informing the UK authorities of threats and would therefore be aware of the need to report gunshots.

8. The appellant said that the death of Aryan was reported on television and he became aware of these reports through Facebook but the judge noted that no supporting evidence of any of this had been provided to the respondent or the tribunal. The judge had before her an expert's report which dealt with the prevalence of honour killings in this region of Iraq. In view of the inconsistencies in the appellant's account and what the judge referred to as the "selective production of evidence" the claim itself was not true, see [23] of the determination. The appellant had not produced a trail of evidence to show how the photographs passed from one mobile (Aryan's) to another (the uncle's). Although the appellant was 15 at the time of the incident, the judge came to the view that the appellant had sufficient knowledge of technology to be able to have produced evidence of a trail of evidence if one was available.

9. The appellant had contacted the Red Cross to attempt to make contact with his family but they had been unable to do so. The judge found that the Red Cross would have been dependent on what information the appellant gave them and the judge had no confidence in the reliability of that information. On the issue of return to Iraq, the appellant had produced a copy of his IND document. The judge found that the appellant would also have the original of that document thus he could be returned to his home area. There were no very significant obstacles to the appellant's reintegration into Iraq. She dismissed the appeal.

The Onward Appeal

10. The appellant appealed this decision on three grounds settled by Counsel who had appeared at first instance but who did not appear before me. The grounds took issue with certain of the judge's findings of fact but they did not appeal the judge's finding that the appellant could return to Iraq and had the necessary documentation to enable him to do so.

11. Ground 1 argued that the judge was wrong to find the appellant was inconsistent regarding the supervisor in charge of the site on the day in question (when the accident occurred). In interview the appellant had been asked whether he had spoken to any other supervisor on that day ”with details of what happened” and the appellant had replied no.

12. Ground 2 argued that the judge had failed to take into account why the appellant was operating the tipper truck when he was ostensibly employed as a teaboy. The appellant had explained in his first statement that he was so employed but gradually learnt about the machinery that was used on the site until the point when he was trusted to drive the machinery. The respondent had expressed scepticism about this and when the appellant made a further statement for the appeal hearing the appellant said that he drove a tipper truck because he was afraid he would lose his job if he did not. The grounds denied there was any inconsistency in the appellant’s account.

13. Ground 3 took issue with the judge’s finding that no supporting evidence (such as threats made in text messages) had been transferred by the uncle on the mobile phone. This finding had not taken into account the age of the appellant and the appellant could not be expected to explain why the uncle had failed to transfer the threatening messages.

14. The First-tier Tribunal granted permission to appeal. In respect of Grounds 1 and 2 it was arguable that the judge made mistakes of fact and/or gave inadequate reasons for her findings. In relation to Ground 3 it was not entirely clear from the grant of permission what the arguable error was said to be. The grant stated: “Whilst the judge took into consideration the appellant’s age at [11] it is arguable that the judge appears to have taken issue with the lack of corroborative evidence”. I assume from that wording that what was meant was that the judge was arguably in error to take issue with the lack of corroborative evidence.

The Hearing Before Me

15. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.

16. Counsel for the appellant who had not appeared below, relied on his skeleton argument. This said that the judge had rejected the entirety of the appellant’s account. If therefore there were mistakes of fact made by the judge in the determination then arguably the judge might have come to a different conclusion if she had found matters correctly. As to ground 3 the appellant could not be criticised for what the uncle had provided to the appellant. As to ground 1, the appellant had not said which supervisor he was talking to but the question in the interview was

predicated on the basis that any conversation would have been at the end of the day in question. It was not clear what point was being taken by the judge against the appellant concerning the appellant's employment as a teaboy at the site. The skeleton argument then went on to refer to the claim of shots being fired although this was not in the original grounds of onward appeal and counsel withdrew this paragraph at the hearing before me.

17. In oral submissions counsel argued that the judge's findings amounted to a wholesale rejection of the account. It would be better for the judge to have avoided a generalised credibility assessment since if there were errors in the approach that affected materiality. Without the errors the judge would not come to an overall rejection of the claim. The appellant had presented his ID card which detracted from his case. He was being candid in providing a copy of it. If he had wanted to mislead he could have concealed it. The judge was prepared to accept the identification evidence.

18. The appellant should not be held responsible for his uncle's behaviour. The mobile phone had photographs on it which were given to the respondent. The appellant could not say why other things were not on the phone that was for the appellant's uncle to explain. The appellant's oral evidence could not be rejected just because there was no corroboration for it. There was no inconsistency in the appellant's evidence about the presence or absence of Aryan's father Kamaran.

19. In reply for the respondent it was argued that the appellant had not dealt with the contradiction between not speaking to another supervisor and speaking to Hakim who was another supervisor. Ground 1 thus had no merit. As to ground 2, at [14] of the determination the judge was rehearsing the evidence which had been given to her, she was not making an adverse finding about why the appellant would have been driving a tipper truck when employed as a teaboy. As to ground 3 the threats made to the family would have been in the possession of the appellant's family and it was therefore open to the judge to make an adverse finding that evidence of these threats was not produced.

20. The judge had taken issue that there was no trail of evidence. The photograph of the appellant Aryan was said to have been taken on Aryan's phone but the appellant could not say how his uncle had obtained this picture. The appellant had also claimed the incident was on a TV channel and he had read about it on Facebook posts. The judge found that was evidence which would have been available to the appellant to produce. It was not that the judge was expecting the appellant to give an explanation but this was evidence which the appellant could have provided but did not. The appellant's age would not of itself have prevented the appellant from providing such evidence. The respondent relied on the case of **TK Burundi [2009] EWCA Civ 40** and the more recent Court of Appeal decision in **MAH Egypt [2023] EWCA**

Civ 216. There was no error of law if the judge took an adverse view when independent supporting evidence could have been obtained and there was no credible reasons for its absence. The judge had begun her determination and reasons at [11] saying she had considered matters with care. It could not be said the judge had acted unfairly.

21. In reply counsel argued that if it was being said the judge was not making findings then there was no basis to reject the plausibility of the appellant's account. What was accepted by the judge was not clear. There was evidence in the CPIN about dealing with blood feuds. I indicated that that had not been raised in the grounds of onward appeal and permission to appeal had not therefore been granted on that issue. Following the conclusion of submissions I reserved my decision.

Discussion and Findings

22. In this case the appellant makes a reasons based challenge to certain of the findings of fact made by the judge. Overall the judge did not find the appellant to be a credible witness pointing to inconsistencies in the appellant's account and a lack of supporting evidence.

23. Ordinarily there is not a requirement on someone seeking international protection to provide supporting evidence. Where such evidence however can be relatively easily obtained it is open to a judge to make an adverse finding against an appellant who nevertheless does not produce such supporting evidence. That is what has happened in this case. The appellant produced photographs said to be from a mobile phone given to him by people smugglers on behalf of the appellant's uncle. The judge found no evidence trail to show how the photographs of the appellant with Aryan (taken apparently on Aryan's phone) managed to get to the appellant's uncle and thereafter to the people smugglers. This was in circumstances where Aryan's family were threatening a blood feud because they sought revenge from the appellant.

24. The judge considered it a problem in this case that the appellant would have some documentation which either did not help his case for example the IND documentation or did not take his case any further such as a blurred view of a truck in the water. That photograph did not appear to show anything significant which could link it to the appellant's appeal. On the other hand obviously relevant evidence such as the threats sent by mobile phone that the appellant had talked about were not present on the uncle's phone. They had not apparently been forwarded by the uncle to the appellant.

25. It may be that the purpose of the uncle in giving the appellant a phone was so that the appellant could phone his family once he arrived safely in the United Kingdom. If that were so there would not necessarily be evidence of threats on the mobile phone since that was not its purpose. However it was for the appellant to explain why he had been given the

phone it was not for the judge to speculate on why that was so. The judge was conscious of the appellant's age at the date that the events in question were said to have occurred in Iraq but was also aware of the appellant's knowledge of mobile phones and other technology. The appellant argues that he cannot be held responsible for what the uncle put on the phone, but he can explain why he had the phone in the first place. The judge came to the conclusion that the appellant could reasonably be expected to have produced supporting evidence if such evidence existed. It was open to her to find that this undermined the appellant's credibility.

26. The main thrust of the appellant's argument appears to be that because the judge did not find the appellant to be a credible witness and did not accept the appellant's account as credible, if the judge made any mistakes of fact or gave inadequate reasons that would undermine the judge's overall conclusion on credibility. The argument is that the judge might have come to a different view but for what is said to be mistakes of fact and/or inadequate reasons. The difficulty with that argument is that the appellant has to show that the judge did indeed make mistakes of fact of such materiality that had the mistakes not be made the outcome of the case could have been different.

27. The appellant got his account into something of a muddle over who was or was not supervising on the day in question. If on the one hand the appellant said he had not spoken to anyone else but on the other hand he said he had spoken to a man called Hakim that would be an inconsistency. He had either spoken to this person or he had not. The grounds of onward appeal suggest the possibility that there might have been a conversation with Hakim at the end of the day but that was not how the appellant originally put his case. The issue over why the appellant was driving a tipper truck at all when he was employed as a teaboy was used by the judge to illustrate how the appellant's account had changed over time. Initially the appellant had said he was employed as a teaboy and nothing else. The respondent expressed scepticism over why a teaboy would be driving a tipper truck and the appellant then said he was driving it because he was forced to do so.

28. Whether or not that was a direct contradiction was not the point. The judge was indicating that the appellant was embellishing his account as he went along. The appellant put forward that the incident was of such general importance that it featured on Iraqi television. The appellant might or might not have had access to a video of the programme but the appellant went on to say that he found out about that through Facebook. That meant there was something in writing confirming an aspect of the appellant's account. In those circumstances the judge was entitled to draw an adverse inference from the failure to produce supporting documentation, in this case Facebook entries, which the appellant had claimed was in existence.

29. At the end of the day the judge had to assess the credibility of the evidence being given to her. She had the benefit of seeing the witness give evidence and of being questioned on his account and in particular on the inconsistencies in his account. How material those inconsistencies were was a matter for the assessment of the judge. The inconsistencies coupled with a failure to produce relevant evidence that could otherwise have been easily obtained was sufficient for the judge to reject the account.

30. As this is a reasons based challenge, I bear in mind the Practice Direction issued by the Senior President on 4 June 2024 which said:

> "Judges and members in the First-tier Tribunal should expect that the Upper Tribunal will approach its own decisions on appeal in accordance with the well settled principle that appellate tribunals exercise appropriate restraint when considering a challenge to a decision based on the adequacy of reasons, **TC [2023] UKUT 164]**. As the Court of Appeal has emphasised, a realistic and reasonably benevolent approach will be taken such that decisions under appeal will be read fairly and not hypercritically[ibid]."

31. I agree with the submission made by the respondent that in the grounds of onward appeal are no more than a disagreement with the findings of the judge. They are an attempt to reopen the appeal. Reading the determination fairly and not hypercritically, I do not find there is any material error of law in the determination and I dismiss the appellant's onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

Signed this 3rd day of July 2024

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Judge Woodcraft
Deputy Upper Tribunal Judge