IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001980
First-tier Tribunal Nos:
PA/55975/2022
LP/00982/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

MS
(ANONYMITY ORDER MAINTAINED)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Moriarty, Counsel; J D Spicer Zeb Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 13 June 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. The Appellant appeals against the decision of First-tier Tribunal Judge J. C. Hamilton dismissing his protection and human rights appeal promulgated on 18th September 2023.

2. The Appellant applied for permission to appeal, which was granted by First-tier Tribunal Elliott in the following terms:

> "2. The grounds assert that the Judge erred in setting too high a standard of proof and in failing to make sufficiently clear or reasoned findings.
>
> 3. It is arguable that the Judge's assertion that he placed little weight on inconsistent aspects of the appellant's account due to his age and vulnerability and the fact that some information was lacking, is inconsistent with the Judge's finding that those same inconsistencies, and implausible nature of the appellant's evidence, were the basis for rejecting the appellant's account.
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> 4. It is arguable that the Judge has also failed to explain with sufficient clarity, particularly at paragraph 36, why the appellant's account of his escape was inherently implausible and why, notwithstanding his finding that the appellant's account overall lacked consistency and plausibility why he accepted parts of the appellant's account and rejected others.
>
> 5. Permission to appeal is granted on all grounds argued."

3. Ms Isherwood confirmed that there was no Rule 24 response but indicated that the appeal was resisted.

Findings

4. At the conclusion of the hearing, I reserved my decision, which I now give. I do find that the decision demonstrates material errors of law, such that it should be set aside in respect of the protection claim, and/or humanitarian protection and/or Article 3 ECHR.

5. In respect of the Grounds of Appeal, there is no subdivision of grounds but there are several issues that appear to arise in this case which I shall attempt to take in turn. The first complaint is that the judge has erred in relation to the question of whether or not the Appellant is a refugee to the lower standard by setting the bar too high and failing to make sufficiently clear and reasoned findings on the Appellant's evidence. Mr Moriarty argued that at paragraph 44 of the decision, the judge found that in light of the Appellant's age and vulnerability, he would give very limited weight to the inconsistent aspects of the Appellant's account and missing information (I note that the Appellant claimed asylum as an unaccompanied asylum-seeking child). However, it is argued that despite this indication at paragraph 44, in the very next paragraph at paragraph 45, it is irreconcilable that the judge finds that "the inconsistent and implausible nature of the Appellant's evidence go to the core of his account …". In short, if the judge had truly given "very limited weight" to the inconsistent aspects of his account and the missing information due the Appellant's age and vulnerability, it could not follow that the judge would find that the same inconsistency went to the core of the Appellant's account. There is not a great deal of argument that either party could put forward in respect of this ground. Ms Isherwood asked me to note that the judge mentioned the Presidential Guidance on treating the Appellant as a vulnerable witness but highlighted that treating someone as vulnerable did not mean that one would always accept their evidence. Whilst that is true, here the judge had accepted the vulnerability and also stated that he

would, as a consequence give very limited weight to the inconsistencies, thus, I do not find that this argument assists me in assessing whether there is an error of law or not. Mr Moriarty highlighted the inconsistency which the judge had placed too much weight upon and the lack of sufficiently clear findings in referring, for example, to the judge's finding at paragraph 45 of an consistency in relation to the Appellant being hit with the butt of a rifle whilst being able to also escape from the clutches of his captors. I agree with Mr Moriarty that it is unclear how that evidence is inconsistent, without it being explained how that is so by the judge. Mr Moriarty highlighted that the judge's finding at paragraph 36(2), that the account of the Appellant's escape is implausible did not make sense in and of itself which had a significant impact upon the judge's assessment because the judge finds at paragraph 44 that the Appellant's account of escape is implausible chiefly because, if one of the guards was close enough to hit the Appellant on the knee with a riffle butt, it is difficult to see how the Appellant was able to escape on foot. Whilst it may be difficult for the judge to understand this, it does not mean necessarily that the account is implausible on its face and without further reasons being given as to why this evidence is implausible, I find that the judge has applied too high a threshold in failing to give very limited weight to the inconsistencies he has identified and in failing to make sufficiently clear findings in respect of those inconsistencies, such as the implausibility of the escape from the mosque.

6. Notwithstanding that, I observe that it may also have been prudent to put any difficulty that the judge had with that clarification to the Appellant so that he could at least answer his concerns (albeit this is not a Ground of Appeal).

7. There is also complaint that the judge has not given appropriate treatment to the expert scarring report before him, in that the judge accepts at paragraph 46 that the Appellant's father arranged for the Appellant to go to the madrassa against his will and that he was subjected to forcible conversion and that he was forcibly taken from his mother's home to that madrassa where he experienced significant mistreatment. The judge also accepted that the Appellant was deliberately burnt during this time and found it reasonably likely that the account given by the Appellant in his asylum interview about how the burns were inflicted is accurate, this being part of the conversion rather than a punishment *per se*. However, the judge's finding that there is inconsistency between those accepted burns being inflicted on the one hand due to forcible conversion, or due to being punished by the madrassa on the other hand, is perverse, as the judge has again failed to give very limited weight to another inconsistency whilst also explicitly mentioning it in his findings. Furthermore, it is irrational for the judge to place weight on the inconsistency in the reasons why the Appellant's captors burned him – which the Appellant could never fully comprehend as he cannot read the mind of the person inflicting harm upon him – whilst also stating that the difference between the cause of the affliction of harm does not make any material difference in the case because the burning took place against his will and caused significant harm. Given that the Appellant has been subject to mistreatment and the likelihood this will increase on return, I accept that the judge has applied a higher threshold than the 10% chance of risk, as identified by the Court of Appeal in the decision of *MAH (Egypt) v Secretary of State for the Home Department* [2023] EWCA Civ 216 at [51] to [52]. Thus, it seems to me that the judge has failed to give weight to the scarring and its ability to substantiate the credibility of the Appellant's account: see *KV (Sri Lanka) v Secretary of State for the Home Department* [2019] UKSC 10.

8. I therefore find that the judge has materially erred for the reasons given above.

9. However, I accept as Ms Isherwood rightly pointed out, that the Article 8 findings have not been challenged and are therefore impliedly free from error. Therefore, I preserve those findings at paragraphs 52 to 61 of the judge's decision in relation to the Appellant's private life and the human rights assessment under Article 8 ECHR.

Notice of Decision

10. The Appellant's appeal is allowed.

11. The judge's findings in respect of private life under Article 8 ECHR at paragraphs 52 to 61 are preserved, those paragraphs being free from error.

12. The appeal is to be remitted to the First-tier Tribunal on the discrete issue of the Appellant's protection, humanitarian protection and Articles 2 and 3 ECHR claims and are to be heard by any judge other than First-tier Tribunal Judge J. C. Hamilton.

Directions

13. The appeal is to be remitted to IAC, Hatton Cross.

14. An Arabic interpreter is required (I note the Appellant is from Chad and has had difficulty in the past as Arabic speaking Syrian interpreters have been employed whom have had difficulty understanding the Appellant's dialect, therefore it is in the Appellant's interest that his legal representatives contact the Tribunal to specify which dialect will be required for the appeal hearing).

15. Upon remittal, each party is at liberty to seek any further direction that may assist in the further management of this appeal.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2024