Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/08917/2014
AA/08920/2014
AA/08921/2014
AA/08922/2014

THE IMMIGRATION ACTS

Heard at Newport
On 20 October 2015

Decision & Reasons Promulgated
On 26 October 2015

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

H S H S (FIRST APPELLANT)
Z H S S (SECOND APPELLANT)
Z H SS (THIRD APPELLANT)
A H S S (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr C Simmonds of Duncan Lewis & Co Solicitors
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

REMITTAL AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the appellants who have claimed asylum. This order prohibits the disclosure directly or indirectly (including by the

© CROWN COPYRIGHT 2015

parties) of the identity of the appellants. Any disclosure and breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or court.

Introduction

2. The appellants are citizens of Iraq. The first appellant was born on 4 July 1973. He is the father of the second and third appellants who are his daughters and of the fourth appellant, his son who was born on 19 December 1995.

3. The appellants initially arrived in the UK in October 2013 and were granted leave to enter until 29 January 2015.

4. On 22 July 2014, the first and fourth appellants applied for an asylum and an extension of their leave on that basis. The second and third appellants sought leave as the first appellant's dependants. On 10 October 2014, the Secretary of State rejected the first and fourth appellants' claims for asylum and refused to grant further leave to each of the four appellants.

5. The appellants appeal to the First-tier Tribunal. Following a hearing, in a determination promulgated on 10 March 2015 Judge Burnett dismissed the appellants' appeals. The judge rejected the first and fourth appellants' claims as not being credible.

6. The appellants appealed to the Upper Tribunal. Initially, the First-tier Tribunal refused permission but on 23 June 2015 the Upper Tribunal (UTJ Blum) granted the appellants permission to appeal.

7. Thus, the appeal came before me.

The Appellants' Claim

8. The basis of the appellants' claim for asylum is that the first and fourth appellants had returned to Iraq on 27 June 2014 in order to facilitate the fourth appellant's application to Baghdad University. Whilst in Iraq, on 2 July 2014 the first appellant witnessed a number of people loading bombs into the backseat of a car parked in the garage of the house adjacent to the first appellant's home. The first appellant recognised some of the items as being handheld rocket launchers. The next day, 3 July 2014, the first appellant reported the incident to the police. A number of soldiers went to the house and a number of individuals were arrested. The first and fourth appellants did not initially return to their home but, on 7 July 2014 they arranged to meet the first appellant's brother at the home. The first appellant's brother arrived before them and was confronted by someone who shot him. Following that, the first and fourth appellants stayed with a cousin and returned to the UK on their valid visas on 10 July 2014. Thereafter, the appellants claimed asylum fearing they too would be killed.

The Judge's Decision

9. In his determination, Judge Burnett did not accept the credibility of the accounts of the first and fourth appellants. He considered two expert reports which he did not find helpful (see paras 66 and 67). In addition, Judge Burnett considered two documents submitted by the appellants in support of their claim – an "arrest warrant" and a "statement of investigation". In relation to those documents, Judge Burnett considered that there were inconsistencies with the appellants' evidence. At para 68 he said this:

> "68. I have noted that there is no engagement in the expert reports with the documents entitled 'arrest warrant' and 'Statement of Investigation'. These are odd documents. The document titled 'Arrest Warrant' is not an arrest warrant at all but a report of the appellant attending the police station and reporting what he had seen. It also then refers to the arrest of individuals. This report contains inconsistencies with the appellants account. It states that two of the accused were arrested and three fled. It refers to a 'booby trapped cycle' not explosives loaded into a car. I give no weight to the document."

10. At paras 70 – 73, Judge Burnett also identified inconsistencies in the evidence given by the first and fourth appellants and also that it was "implausible" that the first appellant would remain in his house with his son having witnessed what was happening next door and that it was "incredible" that he had been able to witness such events in the circumstances where it was dark and the individuals concerned were using torches.

The Submissions

11. Mr Simmonds, who represented the appellants, relied upon the single ground of appeal. That ground argues that the judge was wrong in law to identify in para 68 of his determination inconsistencies between the appellants' account and the "arrest warrant" as it had been accepted before the judge that there had been mistranslations in the "arrest warrant".

12. In the course of his submissions, Mr Diwnycz who represented the respondent read out the Presenting Officer's record of the proceeding and I also consulted the judge's Record of Proceedings. It was clear from both that the first appellant contested the accuracy of the translation of the "arrest warrant".

13. Mr Simmonds relied upon an email from the translator of the document, Mr Phillip Gordon dated 24 March 2015 in which he accepted that there had been mistranslations in his original translation and attached to the ground was a corrected translation of the "arrest warrant document", now headed "record of seizure". In particular, Mr Gordon accepted that he had

mistranslated the word "ajala" in the context of Arabic used in Iraq to mean "wheel" or "bicycle" when it meant in Iraq "vehicle". He also pointed out that the translation as a "record of arrest" was more likely to be accurate as a "record of seizure" of articles.

14. Mr Simmonds submitted that it was procedurally unfair for the appeal to be determined on the basis of an inaccurate translation and he relied upon the case of MM (unfairness; E & R) Sudan [2014] UKUT 00105 (IAC) that the failing need not be through any fault of the First-tier Tribunal where "some material evidence ... was not considered" with resulting unfairness.

15. Mr Diwnycz relied upon the Rule 24 response and pointed out that there had been no application by those representing the appellant for an adjournment in order to obtain a true translation of the document. He submitted that the appellants had chosen to carry on with the appeal but he accepted, as a result of a letter dated 15 October 2015 submitted at the hearing, that the appellant had raised a complaint with their previous representatives that they had not corrected an inaccurate translation of the documents prior to the hearing before the First-tier Tribunal.

Discussion

16. It is clear from the record of proceedings both of the judge and the Presenting Officer that the first appellant did not accept that the translation of the document then headed "arrest warrant" but now headed "record of seizure" was accurate. The email of Mr Gordon demonstrates that he, as the translator, accepted that the translation before the First-tier Tribunal did contain mistranslations.

17. Whilst I accept that no application was made for an adjournment, the fact nevertheless remains that the judge did not grapple with the first appellant's evidence that the translation was inaccurate. On the basis of the translation as put before him, the judge relied upon it in para 68 in reaching his adverse credibility finding inconsistencies (which may well not have existed had the translation been accurate) between the "arrest warrant" document and the appellants' evidence.

18. It is not clear why the appellants' representative did not seek an adjournment in order to clarify the claimed mistranslation of the document. Perhaps, particularly in hindsight, it would have been prudent to do so. However, the fact remains that the judge proceeded to base part of his reasoning for his adverse credibility finding upon a document which objectively has been mistranslated. The judge took the mistranslated version of the document into account in assessing the appellants' credibility. In effect, he proceeded upon a mistake of fact and, in my judgment, that resulted in a procedural irregularity and unfairness in the hearing. Whilst his reasoning in para 68 in reliance upon the mistranslated document formed only part of his overall reasoning for concluding that the appellants' account was not credible, I am unable to

say that had he not taken the mistranslated document into account he would inevitably have reached the same conclusion on credibility. He might have but I cannot be sure that he would have. Therefore, his error was material to his adverse credibility finding.

19. For these reasons, the judge erred in law in reaching his adverse credibility finding and in dismissing the appellants' appeals.

Decision

20. For the above reasons, the First-tier Tribunal's decision to dismiss the appellants' appeals involved the making or an error of law. The First-tier Tribunal's decision cannot stand and is set aside.

21. Given the nature of the fact-finding required and bearing in mind para 7.2 of the Senior President's Practice Statement, it is appropriate to remit this appeal to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge Burnett.

Signed

A Grubb
Judge of the Upper Tribunal