Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00169/2018

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision & Reasons Promulgated**
On 18th September 2018	**On 10th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR ARKAN ABDULAZIZ ABDULLAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood, Solicitor, I A S (Manchester)
For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 1st July 1996. The Appellant claims to have left Iraq in October 2015 and to have travelled across Europe prior to entering the UK on 26th June 2016. The Appellant claimed asylum reportedly on arrival. The Appellant's claim for asylum is based on the fact that he is Kurdish and has had a relationship with a girl whose father and brother have threatened to kill him. The Appellant's claim for asylum was refused by Notice of Refusal dated 17th December 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Devlin at Manchester on 6th February 2018. In a decision and reasons promulgated on 14th March 2018 the Appellant's appeal was dismissed on all grounds.

3. On 28th March 2018 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended that the First-tier Tribunal Judge had made a material misdirection in law and allowed a procedural unfairness to operate in that the judge had materially misdirected himself as to his appraisal of the Appellant's credibility.

4. On 27th April 2018 Judge of the First-tier Tribunal Osborne granted permission to appeal. Judge Osborne noted that at paragraph 33 of the Respondent's refusal letter it stated that the Appellant had the opportunity to submit amendments to the screening interview but had failed to do so. However, he noted that within the Appellant's bundle there was a letter from the Immigration Advice Service dated 27th October 2017 setting out amendments to the screening interview and recording explicitly problems in Iraq from the family of the girl with whom he was in a sexual relationship. Judge Osborne noted that at paragraph 69 of the decision Judge Devlin found the omission from the Appellant's initial screening interview of any mention of problems with the girl known as Suzan's family damaging to the Appellant's credibility. He noted that this was not a point taken by the Respondent who confined her criticism of the Appellant to the misapprehension that he had not submitted any amendments to the screening interview. This was an issue that the judge took upon himself and it was arguably procedurally unfair to do so without giving the Appellant and opportunity to respond. Judge Osborne considered that the remainder of the First-tier Tribunal Judge's decision – which is lengthy – was careful and focused but that it was arguable nonetheless that the judge had made a material finding at paragraph 69 which contradicted the Appellant's evidence and that it was at least arguable that the error was material to the judge's assessment of the Appellant's credibility.

5. On 20th June 2018 the Secretary of State responded to the Grounds of Appeal under Rule 24. The relevant paragraphs therein are paragraphs 3 and 4 where it was noted that the Appellant had made late amendments referred to at paragraph 64 to 68 of the decisions and that the judge, it was contended had given cogent reasons for rejecting them at paragraph 69.

6. It is on this basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed solicitor Mr Wood. The Secretary of State appears by her Home Office Presenting Officer Mr Whitwell.

Submissions/Discussions

7. Mr Wood starts by directing me to paragraph 33 of the Notice of Refusal where the Secretary of States notes the Appellant had had an opportunity to submit amendments to the screening interview and had failed to provide anything about having a girlfriend and fearing her family and to paragraph 21 of the First-tier Tribunal Judge's decision where he refers to this. In addition, I am referred to the IAS letter of 27th October 2007 providing corrections to the Appellant's screening interview record and that consequently it was surprising that the Home Office Presenting Officer attending before the First-tier Tribunal contends that there was no attempt made to bring the problem of the Appellant's girlfriend to the Secretary of State. It was, he contends, the Secretary of State's case that there had been a failure to provide amendments to the screening interview when quite clearly he states that there was. Thereafter he submits that the Immigration Judge developed a new argument against the Appellant in that whilst considering the same part of the Appellant's account the judge rejects his evidence that he had instructed his original representatives Lawrence Lupin about the problems with Suzan's family because there was a lack of notes or letters from that firm. Mr Wood points out that this was not a point take by the Respondent who had confined her criticism of the Appellant seemingly on the misapprehension that he had not submitted any amendments to his initial screening interview and was an issue that Judge Devlin took upon himself. Mr Wood submits it was procedurally unfair to resolve that aspect of the Appellant's account against him without the opportunity to respond. He contends that the Appellant meets the case that is set out against him and then the judge takes it upon himself to set out a different case and that this creates procedural unfairness. He further contends that the judge has failed to look at the evidence in the round. Overall he considers consequently the decision is unsafe and should be set aside and remitted for complete rehearing before another Tribunal.

8. Mr Whitwell in response accepts that the Notice of Refusal raises the issue of the additional evidence and amendments but contends that the judge at paragraph 21 in response is only talking generally about the screening interview. He takes me further into the lengthy decision of Judge Devlin pointing out that at paragraph 53 the judge has noted that the Appellant had failed to mention the threat from his former partner's family in his initial contact and asylum interview and that there was nothing that prevented the Appellant from adducing further evidence. Further, he comments that the judge has purportedly contended that he has looked at everything in the round and that even if there has been an error submits that it is not material, due to the manner in which the judge has structured his findings. He takes me to the findings to be found at paragraph 122 of the decision which sets out a very lengthy set of findings made by the judge and that the judge concludes at paragraph 123 with the words, "I do not believe a word he says." He submits that the judge has done more than enough and that looking at the whole matter in the round there is no material error of law and the decision of the judge is one that he was entitled to reach.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

11. Mr Wood raises the contention that the judge has failed to consider amendments to the Appellant's screening interview relating to difficulties he experienced following his relationship with his girlfriend. I take the view that that is not an issue that should be considered in isolation. The judge has considered this matter in considerable detail and at paragraph 122 looks at everything in the round. He makes findings that he cannot be satisfied even to the lower standard of proof of seven factors including reference to the relationship that the Appellant had with the girl Suzan. He makes conclusions at paragraph 123 and at 124 to the effect that he does not believe anything the Appellant says or that return is not feasible. The judge has followed the proper approach to credibility i.e. to assess the evidence and the claim generally. He has looked at the relevant factors i.e. the internal consistency, the inherent plausibility and the consistency of the claim with external factors of the sort typically found in country guidance. He has made overall findings of fact that he was entitled to.

12. It is important in this case to look at how the case has been developed. Even if the judge had failed to give consideration to these amendments he has considered the incidents fully and has given reasoned findings including detailed findings relating to his conclusions relating on the Appellant's relationship with the girl Suzan.

13. I acknowledge that the common law principle of fairness requires careful consideration of the extent to which reliance can properly be placed on answers purportedly given by Claimant's in screening interviews and, as has previously been set out by the Court of Appeal, the fact that some reasons do not bear analysis is not of itself enough to justify an Appellate Court setting aside a decision. Consequently, I am of the view that there is no material error of law in this matter. The judge has looked at this matter in the round and has made overall findings which he was entitled to. I do not consider that any omission – even if one had taken place and I do not necessarily accept that it has – would create such procedural unfairness as to constitute a material error of law. This is a well-reasoned and well-set out decision which discloses no material error of law and consequently the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

14. The decision of the First-tier Tribunal Judge discloses no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

15. No anonymity direction is made.

Signed Date: 4th October 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date: 4th October 2018

Deputy Upper Tribunal Judge D N Harris