



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number PA/00812/2019

THE IMMIGRATION ACTS

Heard at Birmingham
On 4th September 2019

Decision and Reasons Promulgated
On 12th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

SSM
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Fraczyk (Counsel, instructed by UK & Co, Solicitors)

For the Respondent: Ms H Aboni (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's appeal against the refusal of his asylum claim was dismissed for the reasons given in the decision of First-tier Tribunal Judge French promulgated on the 4th of April 2019. The reasons for the decision are given in paragraphs 5 to 9 and involve the rejection of the Appellant's credibility on the basis of implausibility of various aspects of the account and inconsistencies. The parties' submissions are set out in the Record of Proceedings.

2. The grounds take issue on a number of points. Firstly it was argued that the Judge had found that ISIS had not been present, there was evidence of sleeper cells and it was not clear why the Judge found that ISIS would not be capable of recruiting the Appellant's brother. This is a misreading of the decision the Judge's observation that ISIS was not present was related to the Appellant's inability to explain why he would be targeted, not to the question of recruitment, sleeper cells by their nature would not be known about.
3. The grounds do not address the clear implication that it was not credible that his brother would not know where the Appellant's father-in-law's house was given the close knit nature of the community. The Appellant's point in submissions that the Peshmerga could have obtained information quite late leading to their seeking out the Appellant involved speculation. Besides their ability to find the Appellant's in-laws' house when they were not related reinforced the point that it was incredible that his own brother would not know where that was. The explanation that the Appellant's brother had not visited after a move was not explicitly addressed by the Judge.
4. The second point raised was with regard to the sale of his house and the knowledge of others about his brother joining ISIS and the Appellant's inability to explain why his brother joined. ISIS would not necessarily have needed to be in the area for someone to hear about them and decide to join. It does not follow that the Appellant would know why his brother joined although it would be surprising if his brother had not said why he did. The assertion that it was unlikely that a person described as being mild mannered would join is difficult to follow.
5. It is difficult to see why others would know his brother had joined the group. The sale of the house in 10 days is said to be implausible, the Judge did not explain why that was so. As was observed in submissions there would be no reason to suppose that house sales proceed in the same way as in the UK and a forced sale in the circumstances claimed by the Appellant could proceed differently and speedily.
6. The third point related to the Appellant's supporting witnesses and the Judge had not rejected their credibility but had found that the information they related was likely to be unreliable. I would accept that the statement that their information would be unreliable is unreasoned. Clearly they could be honestly recounting what they had heard but as it stands the finding rests on a bald assertion.
7. In the grant of permission there is a suggestion that the Judge appeared to have failed to consider other aspects of the Appellant's case such as the availability of documentation and any article 8 claim. The latter point is an error by the Judge granting permission as the Judge expressly considered the medical position of the Appellant's son and article 8 in paragraphs 8 and 9.
8. There are positive aspects to the decision. For example the Appellant's failure to claim on route given his previous experience of claiming asylum would be relevant as a factor that would count against him. Similarly the fact that the Appellant's credibility had been rejected previously would also be a relevant factor for the Judge to take into consideration.

9. At the hearing it was accepted by the Home Office that the Judge had not addressed the mechanics of return for the Appellant and the family. If that were the only issue I would have remitted the decision for the Judge to address that point but with the observation that having rejected the core credibility of the Appellant's account there would be no foundation for finding that the Appellant did not have a CSID or access to one.
10. What does not help is the Judge's repeated reference to evidence being implausible. The Court of Appeal has repeatedly warned against using plausibility as a yard stick to assess the credibility of claims being made and that leaves the impression that the Appellant's case has not been assessed with sufficient objectivity.
11. While there are factors that the Judge was entitled to take into account against the Appellant there are a number of findings central to the case which involve a simple rejection of the facts claimed without explanation or reference to evidence that might support the view taken. The decision has to be read as a whole and in the circumstances when that is done the critical factors outweigh the positive and the decision cannot be maintained.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

This appeal is remitted to the First-tier Tribunal for re-hearing with no findings preserved. It is not to be heard by First-tier Tribunal Judge French.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In allowing this appeal and remitting it to the First-tier Tribunal for re-hearing I make no fee award which remains an issue for the First-tier Tribunal at the conclusion of the remitted hearing and dependent on the findings made.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 5th September 2019