



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11183/2018

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 16<sup>th</sup> May 2019

Decision & Reasons Promulgated  
On 20<sup>th</sup> May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

O H O  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr K Wood, Immigration Advice Service

For the Respondent: Mr Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. The First-tier Tribunal ("FtT") has made an anonymity order and for the avoidance of any doubt, that order continues. O H O is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. This is an appeal against the decision of First-tier Tribunal (“FtT”) Judge Rowlands promulgated on 20<sup>th</sup> December 2018. The FtT Judge dismissed the appellant’s appeal against the decision of the respondent dated 6<sup>th</sup> September 2018, to refuse his claim for international protection.
3. The appellant is a national of Iraq. The background to the appellant’s claim for international protection and the evidence heard by the FtT is set out at paragraphs [3] to [13] of the decision. The findings and conclusions of the FtT Judge are set out at paragraphs [28] to [40] of the decision. At paragraph [29] of the decision, the FtT Judge note that the appellant did not present as a witness of truth. The Judge found that the basis of his claim lacked credibility and the detail given by him was wholly unsubstantiated. The Judge states; *“As I have already stated, the onus of proving his claim lies with the appellant and he has not provided any evidence to corroborate what he says happened.”*. In the paragraphs that follow, the FtT Judge sets out his reasons for the adverse credibility finding.
4. At paragraph [30], the FtT Judge refers to the appellant’s claim that he was an HGV Driver in Iraq and had his own vehicle. The Judge notes that the appellant *“was unable to provide any evidence of this.”*. At paragraph [31], the Judge states as follows:

“He says that his brother and his wife were in an unhappy marriage mainly because his brother wanted a family and his wife was not getting pregnant. He says that he agreed to having sex with her, in order to get her pregnant, so that the beatings would stop and she would avoid being divorced. In essence he says that rather than leave her to be divorced, he suggested they commit adultery instead. This makes no sense whatsoever. The brother’s unhappiness at being childless (*sic*), would pale into insignificance compared to his anger at discovering her infidelity. The liaison led to the birth of her son [R]. Despite claiming that the boy is his son, he does not know his date of birth. He claims to have memory problems but has not been able to provide any medical evidence of this, and it is notable that he could be very accurate about certain dates like the one on which he left and last spoke to his cousin, and yet he couldn’t tell us the date of birth of his own son. I do not find credible that he wouldn’t know even his month and year of birth, let alone the actual date. In fact, the boy has been born in wedlock and must be considered legitimate by everybody. The appellant says that his brother had a fertility test in Dubai but doesn’t give any logical explanation as to why he would do that, particularly as he had a two-year-old, or younger than, son. He admitted that his brother didn’t know that he had fathered the child and suggested that he still didn’t know, there is no apparent reason why he needed to leave. According to him his brother suggested that he might help him kill his wife because of her infidelity. He never suggested that he

thought that he was the father. The appellant says that he had sufficient money to take them out of the country so it is not clear as to why he didn't just send them out of the country for their own safety.

5. The Judge provides further reasons in the paragraphs that follow. At [32], the Judge refers to the appellant having given different explanations as to what happened during the journey between Iraq and the United Kingdom. The Judge refers to the appellant having told an immigration officer that one of the fears he had, was for his family still in France. At [33], the Judge refers to a factual issue that leads him to conclude that this claim is false. The appellant claims that the child is two years old, and that his relationship with his sister-in-law started two years ago. The Judge notes that it is clearly impossible for the relationship to have begun two years ago, and for there to be a two-year-old child of that relationship.
6. The Judge concludes at [34], as follows:

“I am satisfied on the basis of all the evidence that I have heard that the appellant has not told the truth and that there is really no basis for his claiming asylum. I am satisfied that he is more likely than not an economic migrant.”

### The appeal before me

7. The appellant advances three grounds of appeal. First, the *FtT* Judge erred in concluding that the appellant's credibility is harmed by a lack of corroborative evidence. The *FtT* Judge should have considered the evidence in the round and applied the lower standard of proof applicable in such an appeal. Second, in reaching the conclusion that the appellant provided no logical explanation as to why his brother had taken a fertility test in Dubai, the *FtT* Judge failed to consider the matters set out at paragraphs 4 and 5 of the appellant's witness statement. Third, the *FtT* Judge erred in relying upon the claim in the respondent's decision, that the appellant had told an Immigration Officer that one of the fears he had was for his family still in France. He had never made such a claim.
8. Mr Wood submits that there is in law, no requirement for the appellant to provide evidence to corroborate a claim for international protection. Although he accepts that a Judge is entitled to consider why evidence such as medical evidence that should be readily available, has not been provided, it was unreasonable to expect the appellant

to provide evidence of his previous work in Iraq as an HGV driver. It is quite possible that such evidence would have been lost along the way to the UK. Mr Wood accepts that it was not claimed by the appellant that any supporting documents had been lost along the way.

9. I reject the first ground of appeal. I accept that as a general proposition, an appellant is not under any obligation to provide corroboration of any part of an account, but here the central part of the appellant's account is not supported by any other evidence. It is not an error of law, when assessing an appellant's credibility, to take into account the absence of supporting corroborative evidence if (a) the availability of such evidence could reasonably be expected and (b), no credible account for the absence of such corroborative evidence has been given by the appellant. This was explained by the Upper Tribunal in ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119:

"The fact that corroboration is not required does not mean that an Adjudicator is required to leave out of account the absence of documentary evidence which might reasonably be expected. An appeal must be determined on the basis of the evidence produced but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support. The Adjudicator was entitled to comment that it would not have been difficult for the Appellant to provide a death certificate concerning his brother or some evidence to support his contention that he had received hospital treatment. These were issues of fact for the Adjudicator to assess. When the Adjudicator says in paragraph 35 that there is no evidence to support his assertions, it is clear, and both representatives accept, that the Adjudicator is referring to evidence which supports or corroborates the oral evidence of the Appellant."

10. Furthermore, in TK (Burundi) [2009] EWCA Civ 40 the Court of Appeal stated

"Where evidence to support an account given by a party is or should be readily available, a Judge is, in my view, plainly entitled to take into account the failure to provide that evidence and any explanations for that failure"

11. As Mr Bates submits, the applicant claimed that he was an HGV driver in Iraq and had his own vehicle. His work in Iraq was relevant to the question of whether the appellant was, as he was claiming, at risk upon return, or, as the Judge concluded in the end, an economic migrant. The claim that he was an HGV driver with his own transport was made on the basis that the appellant had no other reason, other than the claim being advanced, to leave Iraq.

12. The appellant was aware from the respondent's decision that the respondent claimed that the appellant had provided an inconsistent and unclear account regarding the sexual relationship that he claimed to have had with his brother's wife, and the subsequent problems that he claims to have faced. The Judge was assessing the claim made by the appellant, against the possibility of the events relied upon by the appellant not having occurred and the appellant simply being an economic migrant. In reaching his decision, the FtT Judge was in my judgement entitled to take into account the lack of any evidence supporting the appellant's claim to have been an HGV driver in Iraq. That was not however determinative of the claim or the appeal.
13. In any event, the appellant also claimed that the problems with his memory, were the cause of his inability to provide the date of birth of his son. The FtT Judge was entitled to note the absence of any medical evidence to support the claim that the appellant has 'memory problems'. As Mr Woods properly accepts, medical evidence might reasonably be expected to support such a claim, and would not be difficult to obtain. In my judgement, if the appellant was going to maintain that he could not provide even the month or year of birth of his son, let alone the full date of birth, because of 'memory problems', evidence to corroborate that claim could reasonably be expected from the appellant, who had by the time of his appeal been the UK for some 16 months, and had had ample opportunity to obtain such evidence.
14. The second and third grounds of appeal relied upon by the appellant concern the FtT Judge's consideration of the evidence. I reject the claim that in reaching the conclusion that the appellant provided no logical explanation as to why his brother had taken a fertility test in Dubai, the FtT Judge failed to consider the matters set out at paragraphs 4 and 5 of the appellant's witness statement. Mr Wood submits that when paragraphs 4 and 5 of the appellant's witness statement are read together, it is clear that a logical explanation had been provided by the appellant as to why his brother had a fertility test in Dubai. The appellant claimed in his witness statement that his brother "*.. was happy when she had a child but already the problems were going to begin again because he wanted another child. My brother worked in Dubai in 2017 and it is here that he sought medical answers. He was told that he could not have children categorically and he was furious with [his wife.]*". The explanation appears therefore to be that the

appellant's brother wanted to have more children and was seeking medical answers. He had been told categorically that he could not have children and he was therefore furious with his wife. That however appears to miss the point being made by the FfT Judge. The FfT Judge was concerned that there was no logical explanation as to why the appellant's brother would undergo a fertility test in Dubai, in 2017, when even on the appellant's account his brother must have known that it has taken his wife and number of years to conceive, and in July 2017, the child that he believed at that point to be his own, would only been about a year old.

15. I accept that there is some force to the submission made by Mr Wood that the FfT Judge erroneously relied, at [32], upon the claim in the respondent's decision that the appellant had told an immigration officer that one of the fears he had, was for his family still in France, when in fact, there is nothing in the interview records to suggest that the appellant had made such a claim. The appellant had, in his witness statement, claimed that he did not say that his [sister-in-law] and his son were in France. I have carefully considered whether that erroneous reliance upon the claim in the respondent's decision letter, is material to the outcome of the appeal.
16. At paragraph [28] of the decision, the FfT Judge states that he has considered all of the evidence. At paragraphs [30] to [33] of the decision, the FfT judge identifies a number of factors, including the factual issue identified at paragraph [33], that taken together, lead the judge to conclude that on the basis of all the evidence, the appellant has not told the truth and that there is really no basis for his claiming asylum.
17. The Judge had the opportunity of hearing the appellant give evidence and having that evidence tested. The weight that he attached to the evidence was a matter for him. The obligation on a Tribunal Judge is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. It is sufficient that the critical reasons to the decision, are recorded.

18. I am satisfied that having carefully considered the appellant's evidence that it was open to the Judge to reach the conclusion that the account advanced by the appellant is a fabrication, and that he is more likely than not, an economic migrant. The Judge refers to a number of matters that in the end, lead to the adverse credibility finding. The erroneous reference, at [32], to what the respondent claimed had been said by the appellant to an immigration officer, is immaterial. Given all of the other reasons identified by the Judge for the adverse credibility finding, that error could not affect the outcome of the appeal. The Judge has set out, with a number of reasons, how and why he arrived at the decision that the appellant is not at risk upon return to Iraq. In my judgment, a careful reading of the decision of the FfT establishes that the FfT Judge reached his overall findings by reference to a combination of factors including a lack of detail or sufficient explanation, inconsistencies, and matters that appeared to the Judge, to be implausible. The decision of the Judge is not based simply upon the lack of corroborative evidence, but from a consideration of all the evidence in the round.
19. Having carefully considered the decision of the FfT Judge, I am entirely satisfied that it was open to the Judge to dismiss the appellant's appeal for the reasons set out in the decision.
20. It follows that in my judgment, there is no material error of law in the First-tier Tribunal Judge's decision and the decision shall stand.
21. I dismiss the appeal before me.

**Notice of Decision**

22. The decision of the FfT Judge did not involve the making of an error of law.
23. The appeal is dismissed.
24. An anonymity direction is made.

Signed

Date

16<sup>th</sup> May 2019

**Deputy Upper Tribunal Judge Mandalia**

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal but in any event, as no fee is payable, there can be no fee award.

Signed

16<sup>th</sup> May 2019

**Deputy Upper Tribunal Judge Mandalia**