Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: PA/04862/2019 (P)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC **Decision & Reasons Promulgated**

On 6 August 2020 **On 12 August 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

BB

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

For the appellant: Ms U Dirie

For the Respondent: Ms J Isherwood

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This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The order made is described at the end of these reasons.

Although she could hear and see the other participants, Ms Dirie was unable to get her camera to work but was content to continue making her submissions by audio feed.

1. The appellant, who is an Iraqi national of Kurdish ethnicity, born on 1.7.93, and previously resident in the IKR, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 20.4.20, dismissing on all grounds her appeal against the decision of the Secretary of State, dated 8.5.19, to refuse her claim for international protection based on non-Convention reasons, namely that rogue government officials [BF and HI] used violent tactics against her to thwart an official investigation into their corrupt activities.

2. The First-tier Tribunal rejected the appellant's core account on credibility grounds and concluded that the protection claim was falsely made in order to obtain immigration status for herself and her family in the UK. It followed on those findings that there was no risk on return to Iraq.

3. The grounds assert that the judge failed to consider that specifically aspects of the appellant's factual account were confirmed by the expert and the failure to take account of that part of the expert report undermines the conclusions of fact. In particular, it is submitted that the expert confirmed that the appellant had provided details not in the public domain. It is also argued that the judge failed to identify what further evidence was appropriate when finding the account vague and lacking in detail.

4. In granting permission to appeal, Designated First-tier Tribunal Judge McClure stated, "*Whilst other aspects of the grounds may merely be disagreements with the findings of fact made by the judge, it is arguable that the judge has failed to take account of parts of the expert evidence. That failure arguably constitutes an error undermining the conclusions by the judge such that it is arguably an error of law. The grounds may be argued.*"

5. I heard detailed and cogent submissions by both representatives, which I took into account before reaching the conclusion that there was no error of law in the making of the decision of the First-tier Tribunal, reserving my reasons, which I now give.

6. I am satisfied that there is no merit in the argument advanced at [5] of the grounds that despite the judge asserting at [56] of the decision that the appellant's evidence was vague and lacking in detail, the judge "*does not highlight what further evidence the Appellant would be expected to provide.*" It was

argued in the grounds and in the oral submissions made to me that there was good evidence to support the appellant's case. In particular, it was submitted in the grounds the appellant's account had remained consistent, giving details of her role and "*detailed insight about the investigation she claims to have been involved with, and that some of the detail she has provided about the investigation, arrest and detention of Bakhtiar Faraj and Hakim Ismail were not in the public domain or public knowledge.*"

7. In reality, this ground is no more than a disagreement with the decision and an attempt to reargue the appeal. Provided the judge has demonstrated adequate reasoning to support the assessment of the appellant's evidence as vague and lacking in detail, it is neither necessary nor incumbent on the judge to set out what further evidence the appellant might have provided. It was for the appellant to demonstrate to the lower standard of proof that her account was credible and reliable. At [13] the judge noted the respondent's view, putting the appellant on notice that it considered her account to be "*confused and muddled*".

8. The judge was entitled to consider the appellant's evidence vague and lacking in detail, providing clear reasons at [56] of the decision, including that the account given at interview was "*a vague rambling account of what she claimed to have been doing as an investigator. When asked to give detailed evidence about the procedures that she followed, her evidence was painfully lacking detail and she gave me the clear impression that she did not believe a word of what she was saying. I got the same impression from her husband*." At [33] the judge noted that when asked to give the detail of procedures she followed in the investigation, her evidence became "*a confusing muddle*." At [35] her account of what happened in the "hot room" was "confusing".

9. At [57] of the decision the judge provided further detail of the appellant's "*rambling confusing*" account, which gave the impression that "*she was inventing her evidence and that she had given no thought to the substance of her story*."

10. Ultimately, the judge was not persuaded even to the low standard of proof that the appellant had ever been employed in an investigations department but "*was doing her best to explain what she thought might happen in an investigations department..*"

11. I am satisfied the judge has provided more than ample reasoning to justify the appellant's account as vague and lacking in detail. This ground discloses no error of law.

12. The more significant ground upon which basis permission was granted relates to the Tribunal's treatment of the country expert, Dr Kaveh Ghobadi, and his report of 31.1.20, which found the appellant's account plausible and that there are examples of it happening, concluding that it was supported by information not in the public domain.

13. Ms Dirie submitted to me that what was said by the judge at [57] of the decision, where it was concluded that the appellant had taken "*true objective facts*" about these two men and made a false claim to have been responsible for the investigation and thereby at risk on return, was inconsistent with and contrary to the expert evidence at [20] to [22] of the report. Having considered the matter very carefully, I do not accept that the finding at [57] is inconsistent with what the judge accepted about the report as stated at [53] of the decision and I consider that Ms Dirie may have misunderstood the judge's statements at [53] and [57].

14. At [22] the judge had stated that the starting point for assessing credibility was the medical evidence and the expert report of Dr Ghobadi.

15. In relation to the expert report, as pointed out at [52] of the decision, the issue was not whether it was plausible that such things as described by the appellant happened (threats from persons under official investigation for corruption) but whether the events claimed by the appellant and her husband had happened. That there was an investigation of these two men was also accepted by the judge at [53] of the decision, where the judge noted the expert opinion that the claim of an investigation of the two men was confirmed by a source in government. At [53] the judge summarised this part of the expert evidence, which was that a source (MO) working in the Ministry of Martyrs and Anfal Affairs had confirmed to the expert that the persons identified as BF and HI worked for the government, the first as chief of staff of the IKR's Ministry of Martyrs and Anfal Affairs, and the second works in the legal department of the same ministry. It is said that MO confirmed that they are respectively members of the PUK and the KDP, and that the Commission of Integrity lodged with the courts a corruption case against these two men in December 2017. As a result, they were detained for one night and then released on bail. The judge accepted at [53] that "*this disclosure assists the appellant's case and proves that it has an objectively true background*." At [54] the judge also accepted that the medical evidence also supported the claim that the appellant's husband had been assaulted by these men.

16. The judge correctly observed at [54] that this evidence had to be considered in the round with all the documents provided by the appellant. However, after considering the appellant's evidence alongside the expert evidence, the judge stated at [57] of the decision, "*the only conclusion I have been able to reach on the totality of the evidence before me is that the appellant has taken true objective facts about these tow men who were investigated apparently for corruption and has made a false claim*." The judge relied on the appellant's vague, confusing and rambling account, as described above, but went on to give further detailed reasons for rejecting the account, including the difficulties with the account the judge identified at [59] of the decision. The judge found that the appellant had changed her story from one of working covertly using surveillance techniques

to openly approaching the departments of the people she was investigating, in order to explain how it was these two men learnt of the investigation and her role in it. In effect, there were many difficulties of the appellant's own making in the giving of her account and thereby undermining her credibility, which had to be set against the expert's opinion that there was an objectively true background to the investigation of these two men, as well as the supportive medical evidence of an assault on her husband.

17. At [60] of the decision the judge considered the other evidence in the form of letters and other documents purporting to corroborate her role in the Commission of Integrity but found they did not demonstrate that she worked as an investigator. Of concern, but not raised in the grounds or the submissions made to me, is a remark I noticed the judge made at [60] in the assessment of the documentary evidence, including a letter of support from the Kurdistan Times, for which organisation the appellant claimed to have worked as a volunteer. The judge there stated about that documentary evidence, "*I can give this little weight as I am in no doubt the appellant's claim is a false one and that these documents have been obtained to support it*." At first sight, that may suggest that the judge has rejected this evidence without considering it in the round, in the context of the evidence as a whole. However, at [51] of the decision the judge made clear that the findings were made after considering the totality of the evidence, including the evidence not specifically referred to but within the bundle of documents and the respondent's papers. This was effectively repeated at [54] and again at [55] of the decision. At [23] the judge had prefaced the summary of the evidence by stating that, "*I will only be referring to the parts of the evidence that are important to explain the reasons for the decision I have reached in the appellant's appeal.*" Further, in respect of the Kurdistan Times letter of support specifically, the judge observed at [60] that whilst it was signed, it did not state the name of the person who provided verification of the appellant's time volunteering with them, justifying the accordance of limited weight to that document. The judge also referred to the self-serving nature of the documents and in particular the threatening letter which was claimed to have been thrown into the appellant's garden, which "*was worded in such a way that it is obvious that this letter was written for use in this appeal rather than to cause the appellant to give up her investigating role*."

18. It is clear, considering the decision as a whole, that the judge gave careful consideration to all the evidence said to support the appellant's account and provided cogent reasons open to the Tribunal for rejecting it. However, there was nothing inconsistent between the objective verification by the expert, through the source, that there was an investigation into the two men named by the appellant, and the judge conclusion that the appellant had taken these "true objective facts" and fabricated a false claim. Although this information was said not to be in the public domain, MO certainly knew about it and others

working for or familiar with the IKR government. It is not inconsistent for the judge to conclude that the account of the appellant being responsible for the investigation had been fabricated from information she had gleaned. Put another way, that the information may not have been in the public domain lends some support but does not prove that the appellant's claim of being responsible for the investigation is unanswerable. The judge gave weight to the expert's opinion and accepted that there was objective support for the background facts of the investigation. However, as stated above, that had to be set against what were a considerable number of factors, set out in the decision, undermining the appellant's credibility to the point the judge could not accept it, even to the lower standard of proof.

19. In summary, I am satisfied that the First-tier Tribunal has taken full account of all the relevant evidence put before the Tribunal, including the opinion of the expert that that appellant knew detail of the investigation that was not in the public domain. As stated above, at [53] the judge accepted that this part of the expert evidence proved that there was an objectively true background of an investigation into these two men. However, after having taken that aspect into account in the context of the evidence as a whole, including the appellant's own vague, rambling, confusing and changing account, the judge was entitled to reach the conclusion expressed at [55] and again at [61] that the appellant had failed to demonstrate to the lower standard of proof that she was truthfully involved in any investigation as claimed. At [57] the judge was not satisfied that she had ever been employed in an investigations department. The judge explained why, as stated at [56], the impression was formed that the appellant did not believe a word of what she was saying in evidence and why, as stated at [57] she gave the impression of inventing her evidence and had given no thought to the substance of her story. In the light of that reasoning, the judge was entitled to and did not err in concluding at [57] that the appellant had taken "*true objective facts*" about the two men and constructed from them a false claim to have been involved in and responsible for the investigation, and to be at risk as a result. Whilst the information about the investigation was, according to the expert, not in the public domain, it must nevertheless be possible for such information to be obtained, as the expert obtained it from MO who did not claim to have been involved in the investigation. To contend otherwise is to make a rather startling assertion that because the information was not in the public domain the appellant must, therefore, be truthful irrespective of the Tribunal's assessment of all other evidence in context of the whole.

20. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of law.

I do not set aside the decision.

The decision of the First-tier Tribunal must stand and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 6 August 2020

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.*"

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 6 August 2020