



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/11030/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC via Decision & Reasons Promulgated
Skype**

On 11 November 2020

On 16 November 2020

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**AS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, Counsel

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS (V)

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

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') promulgated on 18 May 2020, dismissing his appeal on asylum and human rights grounds. As the appellant has made a claim for international protection I have made an anonymity direction.

Background

2. The appellant is a citizen of Iraq of Kurdish ethnicity. His home area was in Sulaymaniya, in the Kurdish Region of Iraq. His claim for asylum was based upon a fear of persecution from his father, in relation to whom he claimed the authorities would not be able to provide sufficient protection, for reasons relating to the dishonour the appellant was said to have brought by assisting his mother with divorce proceedings and allegations of domestic abuse against his father. The FTT did not consider the appellant to have provided a credible account, and his appeal was dismissed for this reason.

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3. Counsel representing the appellant before the FTT (not Mr Holmes) drafted three grounds of appeal, in relation to which permission to appeal was granted by FTT Judge Keane in a decision dated 14 September 2020. Judge Keane summarised the grounds of appeal to be as follows – the FTT judge:
 - (1) substituted her own understanding as to what constituted reasonable conduct in finding that the appellant’s father would not use his contacts with the PDK in order to locate the appellant and thereafter harm him.
 - (2) had regard to an immaterial consideration in seemingly according weight to the fact that the appellant’s witness, a Mr Majid, did not attend the hearing;
 - (3) failed to take into account the appellant’s explanation as to why his mother continued to live with his father notwithstanding his propensity to violence.
4. At the hearing before me Mr Holmes sought permission to amend the grounds of appeal in order to rely upon a fourth ground of appeal: the FTT failed to give adequate reasons for rejecting the court documents and whatsapp messages relied upon by the appellant and / or failed to consider that evidence in the round. Mr McVeety did not oppose the application for permission to rely upon ground 4 and I granted the application. Although there was considerable delay of some five months since grounds of appeal should have been filed, Mr McVeety made it clear that he was not prejudiced by this and could see the practical utility in dealing with all relevant matters, particularly the court documents. Ground 4 as drafted can properly be described as a ‘Robinson obvious’ ground of appeal with strong prospects of success for the reasons I set out below. It is regrettable that Counsel drafting the grounds of appeal did not identify the issue. Nevertheless I indicated that in all the circumstances it was appropriate for permission to be granted to rely upon ground 4.
5. Both representatives agreed with my suggestion that I should hear submissions on ground 4 first because it appeared to be the strongest of the pleaded grounds of appeal. They also agreed that if ground 4

was made out, the other adverse credibility findings were unsafe and the FTT decision should be set aside and remitted to the FTT.

6. After hearing brief submissions from both parties I indicated that I was satisfied that ground 4 was made out for the reasons I set out below.

Error of law discussion - ground 4

7. The appellant's solicitors submitted a mini-bundle containing 21 pages of court documents from Iraq with associated translations under a covering letter to the Tribunal dated 24 May 2019. These court documents are extensive and varied. They broadly correspond with the appellant's chronology that in recent years he assisted his mother in her divorce court proceedings against his father, wherein allegations of domestic abuse against the father were made. The whatsapp messages are of less import and only relevant to a peripheral issue in the case. They simply indicate that the mother had heated words with a person said to be a woman the father was having an affair with. I therefore focus upon the court documents.
8. I note from a case management review hearing note dated 2 January 2020 that the court documents mini-bundle was given to the presenting officer at a case management hearing of that date. The court documents mini-bundle was clearly available within the Tribunal's file, albeit it is to be found at the back of the treasury tagged section at the right of the file. One would normally expect bundles to be in the left hand section of the file. It is unclear why the court documents mini-bundle was not added to one of the two large 'hearing bundles' relied upon by the appellant. In any event, the FTT must have been aware of the court documents as these are referred to at [13], [21], [42] and [55] of the FTT's decision. It is however not entirely clear whether the FTT was aware or considered the court documents mini-bundle. Although the respondent's decision letter dated October 2019 refers to the court documents, the respondent's bundle only includes the untranslated documents (whereas the mini bundle contains the copies of the court documents and their respective translations).
9. Both representatives before me accepted that the FTT had not referred to the court documents mini-bundle in the decision and it remains unclear whether the judge considered the English translations or not. It is regrettable that both the appellant and the respondent failed to include the English translations in the respective bundles they prepared for the FTT hearing, albeit the appellant had at an earlier point filed and served the separate mini-bundle.
10. The FTT judge clearly indicated at [43] that she had considered all of the documentary evidence before her. That gives little comfort in circumstances wherein it is unknown whether the judge knew that the court documents mini-bundle (with the translations) was before her or not. That is not the end of the matter because the FTT judge clearly

indicated at [45] that she “had regard to all of the evidence presented by the appellant”. The appellant’s representative referred the judge to the court documents but again it is uncertain whether the judge was aware that the English translations were contained in a mini-bundle separate from the other bundles.

11. In any event, I accept Mr Holmes’ submission that although the judge stated that she considered all the documentary evidence, she made no clear findings in relation to the documentary evidence contained in the mini-bundle. This was prima facie significant evidence corroborative of the appellant’s key elements to the appellant’s account: his mother initiated divorce proceedings, she alleged domestic abuse against his father, he assisted her in the court process. The FTT was obliged to consider this evidence in the round prior to rejecting the appellant’s own evidence. Instead, at [55] the FTT found the court documents could not “be relied upon in the context of [the appellant’s] evidence”. The judge appears to have considered the court documents unreliable merely because she had rejected the appellant’s own evidence. That this is so is clear from the structure of the decision itself. At [45] the judge emphasised that although she considered all the evidence, she did not find the appellant to be a credible witness of fact. The judge went on to give reasons why she regarded the appellant’s testimony to be incredible from [45] to [54] before saying this at 55:

“I have had regard to the case of Tanveer Ahmed but the appellant has failed to show that the court documents and whatsapp messages can be relied upon in the context of his evidence”

12. Mr McVeety submitted that the judge quite properly directed herself to Tanveer Ahmed v SSHD [2002] INLR 345, which is authority for the proposition that the FTT should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. Mr McVeety however accepted that the documentary evidence in question must itself nonetheless be considered in the round. He acknowledged that he was unable to take me to any part of the decision wherein the judge expressly addressed the apparent corroborative detail in the court documents. In my judgment, he failure to specifically address the documentary evidence in the court documents mini-bundle is an error of law. As Mr McVeety observed it was entirely open to the FTT, having considered this evidence to have found it unreliable for a number of possible reasons (some of which are set out in the respondent’s decision letter). The mini-bundle contained evidence of potential significance to key aspects of the appellant’s case and demanded more careful scrutiny. I therefore accept that ground 4 has been made out and as agreed by the parties there is no need to consider the remaining grounds of appeal.

Notice of decision

13. The FTT decision contains a material error of law and is set aside. The matter is remitted to the FTT to be heard de novo by a judge other than Judge Chowdhury.

Signed: *UTJ Plimmer*
Upper Tribunal Judge Plimmer

Date: 12 November 2020