Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/09643/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely
On 13 January 2021

Decision & Reasons Promulgated
On 21 January 2021

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

GH

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr J Greer of Counsel, instructed by Broudie Jackson & Canter Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

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. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a citizen of Iraq of Kurdish ethnicity with date of birth given as 1.1.93, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 6.12.19 (Judge Bannerman), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 26.9.19, to refuse his claim for international protection made on 25.6.19. The appellant claimed a well-founded fear of persecution in Iraq on the basis of his membership of a particular social

group (PSG) as a victim of Kurdish 'honour' crime arising from an alleged incestuous relationship with his sister or step-sister, A.

2. The First-tier Tribunal disbelieved the appellant's core factual account, concluding that it was an invention to bolster a false asylum claim. The judge also considered that as his CSID card was left with family members in Iraq, as he came from a non-contested area of Iraq, and in light of the finding that he is not at risk from any blood-feud or honour killing, he had the ability to re-document himself and return to his home. In the premises, the appeal was dismissed.

3. In summary, the grounds of appeal submit that the judge (1) provided inadequate and faulty reasoning for reaching the conclusion that the appellant was not a witness of truth, and (2) placed undue weight on irrelevant considerations, namely, the Tribunal's view of the appellant's demeanour.

4. On 18.2.20 the First-tier Tribunal granted permission to appeal to the Upper Tribunal on all grounds, considering it arguable that the judge erred in finding that the appellant was not a convincing witness and appeared to place weight on his demeanour during the hearing. Further, it was considered arguable that the judge erred in not setting out her reasons for finding the appellant's explanations implausible.

5. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal. I have also taken into account the appellant's written submissions, dated 7.4.20; the respondent's Rule 24 reply of 14.5.20; and the appellant's further written submissions, dated 21.5.20.

6. The Upper Tribunal has also received two further bundles from the appellant, including a further witness statement and other evidence as to an attempt to redocument himself. However, at this stage I am only concerned with the evidence before the First-tier Tribunal and, therefore, am not prepared to admit the subjective material.

7. I first note that the grounds do not challenge the judge's findings on documentation and return to Iraq, and in particular that the appellant will be able to access his CSID and redocument himself. To that extent, the further subjective evidence would appear to be immaterial. Mr Greer accepted that this evidence was not pertinent to the error of law issue but pointed out that if the credibility findings are flawed then the basis of the judge's finding that the appellant could return home also fall.

8. In relation to the allegation of inadequate reasons, the respondent has drawn to the attention of the Tribunal the guidance in Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085, to the effect that although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense. Even where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no

misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, "*unless the conclusions the judge draws from the primary data were not reasonably open to him or her*." The respondent submits that the Tribunal holistically engaged with the appellant's evidence and provided cogent reasons from [61] onwards of the decision.

9. In response, the appellant points to MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC), which held inter alia, "*If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons*." Reference is made in the written submissions to various statements of the judge, namely:

    i. At [64] finding the appellant's account of his departure from Kurdistan implausible and that this aspect of his case was "strange";

    ii. At [65] making reference to "issues" with the screening interview without explaining what those issues are and how they undermined credibility;

    iii. At [65] rejecting without reason the appellant's account of having woken up in his sister's bedroom as implausible;

    iv. At [66] rejecting the appellant's account to have been adopted, making reference to his position and the "issues" that his evidence raised being far from persuasive against the lower standard.

Adequacy of Reasoning

10. Reading the decision as a whole, I am not persuaded that the decision is devoid of adequate reasoning and find that it is clear to the reader why the appeal was dismissed. Whilst the findings are relatively briefly stated, it is clear that the appellant's account stretched credibility to the point that he was disbelieved, for which I am satisfied the judge has provided cogent reasons. The references relied on by the appellant to "issues" have to be read in context of the decision as a whole, by which it is clear that when referring to issues with the screening interview the judge was effectively referencing those issues identified by the respondent at [5] of the decision and the note of the evidence at [28]. The judge's treatment of the evidence between [27] and [42] explains the other "issues" there were with the evidence. That the appellant's claim of his sister having had sex with him without his consent was found implausible is hardly surprising. The judge's record of the evidence, including that at [35], notes the difficulties the appellant got himself into in explaining this account.

11. This was not a case of a bare statement that the appellant was not believed but the judge went on from [61] onwards to give reasons, having explained that she had given very careful consideration to all of the evidence, both written and oral. In the premises, I find no error of law is disclosed by this ground of appeal.

Demeanour

12. In relation to demeanour, the appellant criticises the judge stating at [63], "*I have to make it plain that the appellant was not a convincing witness, even against the lower standard. I simply did not believe him against that standard,*" and at [64], "*Throughout his evidence he was stumbling and delayed in answering when it suited him to do so and at other times not. This is not the delivery of a man, in my opinion even against the lower standard, who is telling the truth.*" It is argued that the appellant had given evidence of having been subjected to incestuous sexual assault at the hands of his sister whilst he was intoxicated, and, therefore, any stumbling in speech and delay in answering questions on such matters might be suggestive of shame or discomfort rather than suggestive of deception. It is submitted that the judge made no attempt to excuse other possible causes of the appellant's discomfort in giving evidence. However, the submission itself is mere speculation and it was not incumbent on the judge to exclude all other possible causes of discomfort.

13. In SS the Upper Tribunal stated at [44] that it was impossible and perhaps undesirable to ignore altogether the impression created by the demeanour of a witness giving evidence "*But to attach any significant weight to such impressions in assessing credibility risks making judgements which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgements based on the appearance of a witness or their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the matter in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts*."

14. As the respondent pointed out, SS (Sri Lanka), R (On the Application of) v Secretary of State [2018] EWCA Civ 1391, held that "*research confirms that people do not in fact generally rely on demeanour to detect deception but on the fact that liars are more likely to tell stories that are illogical, implausible, internally inconsistent, and contain fewer details than persons telling the truth*." The respondent submitted that the Tribunal considered all the evidence and made clear its reasons for rejecting the appellant's account.

15. I am not satisfied that any significant weight was given to the appellant's demeanour, per se. As Mr McVeety submitted, effectively the judge was pointing out that the appellant was evasive when it suited him. What the grounds do not address is that what concerned the judge was not the fact of the appellant "stumbling" or being "delayed" but that he appeared to do so only when it suited him whilst at other times was able to give his evidence without stumbling or delaying his answers. An example of evasion is given at [34] of the decision. Again, a reading of the judge's note of the evidence from [27] of the decision onwards and a holistic consideration of the decision justifies the judge's reliance on this point.

16. 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 appeal of the appellant to the Upper Tribunal is dismissed.

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

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 13 January 2021

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 him or any member of his 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: 13 January 2021