IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004843
First-tier Tribunal No:
PA/55721/2021
IA/17627/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 May 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MTK
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr S Woodhouse, HS Immigration Consultants
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 18 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Pakistan. He arrived in the UK on 31 January 2020 and claimed asylum. His claim was refused by the respondent for

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reasons set out in a decision dated 26 November 2021. His appeal against that decision was dismissed by First-tier Tribunal Judge Hobson for reasons set out in a decision promulgated on 13 June 2022.

2. The appellant claims Judge Hobson erred in her assessment of the appellant's credibility. The appellant claims that having accepted the appellant's account of events in 2018, it is unclear why Judge Hobson rejected the appellant's account of events in 2020. The appellant claims that in paragraph [41(a)] the judge noted that the appellant's account of the two incidents he claimed had occurred in January 2020, were not supported by documentary evidence. The appellant maintains that he handed those documents to his previous representatives, that they were scanned and then returned to him. He always believed those documents had been sent by his previous representatives. The appellant informed the judge that he had those documents in electronic form, and the judge should have offered the appellant the opportunity to submit them knowing as she did, that they are crucial to any assessment of the appellant's credibility. The appellant's representatives, in the grounds of appeal, state that the relevant documents were sent to them by the appellant, by email on 23 June 2022. I pause to note that that postdates the hearing of the appeal and promulgation of Judge Hobson's decision. Furthermore, the appellant claims Judge Hobson erred in finding that the two-year delay between the murders and the claimed threats to the appellant lacked plausibility. The appellant claims a judge is not in a position to assess when somebody would act on their desire for revenge. The appellant also criticises the judge's finding at [41(d)], that the appellant's evidence as to the events following the attack on 21 January 2020 to be inconsistent.

3. Permission to appeal was granted by Upper Tribunal Judge Macleman on 11 November 2022. He said:

> "4. The grounds assert that the Judge should have taken the initiative by offering an adjournment. That may also be difficult to establish.
>
> 5. There appears to be no good reason for the 2020 documents not being placed before the tribunal. However, there was arguably a procedural mishap, due not to fault of the Judge, but to shortcomings of successive representatives. Permission is granted.
>
> 6. There may not turn out to be much in the rest of the grounds, but the grant is not restricted."

4. On 2nd May 2023, the appellant's representatives made an application under Rule 15(2A) of Upper Tribunal Rules to admit further evidence. The evidence comprises of the documents the appellant maintains he handed to his previous representatives, but which do not appear to have been before First-tier Tribunal Judge Hobson.

5. On my enquiry, however, Mr Woodhouse accepted that this material was not relevant to the question of whether or not the judge below had erred in law. It was not contended, for example, that this evidence established that the judge had erred in the manner recognised in E & R v SSHD [2004] QB 1044. Mr Woodhouse accepted, therefore, that the evidence and the

application to admit it, is only relevant in the event that I accept that the judge had erred in law.

6. I am very grateful to Mr Woodhouse and Mr Lawson for their succinct and focused submissions. The appellant can be assured that his appeal before me has been presented in the best possible light by Mr Woodhouse. The submissions made are a matter of record and I do not burden this decision with a recitation.

Decision

7. The background to the appellant's claim for international protection is summarised at paragraphs [3] to [17] of the decision of Judge Hobson. At paragraph [23], Judge Hobson records that the appellant attended the hearing, was represented and chose to give his evidence in English. At paragraph [24] she records there was no application for an adjournment and at paragraph [25] she records the evidence before the Tribunal was to be found in a bundle comprising of 204 pages. The appellant's oral evidence is recorded at paragraphs [27] to [38]. Judge Hobson's findings and conclusions are set out at paragraphs [40] to [42] of the decision. For reasons set out at paragraph [40], Judge Hobson accepted the appellant's family was involved in a land dispute, and that his brother was suspected of the murder of his cousins following an altercation in January 2018 when his cousins had started building work on the disputed land.

8. Before turning to the appellant's claim that Judge Hobson erred in her assessment of the appellant's account of events, I consider the appellant's claim that when the appellant informed the judge that he had those documents in electronic form, the judge ought to have offered the appellant the opportunity to submit them, knowing as she did their crucial importance to her credibility assessment. As far as the documents are concerned, at paragraph [37], Judge Hobson said:

> "I asked for some clarification about the documents the Appellant submitted. He told me that all the documents were together, and that he gave them to his solicitor at the time of the asylum interview. He said that he also had them in digital format on his laptop. He could not explain why the documents from 2018 were included within the bundle and not the ones from 2020, nor why the Respondent had received only the documents relating to 2018."

9. Judge Hobson addressed the appellant's account of the incident in January 2020, at paragraphs [41] of the decision. She notes, at [40(a)] that the two incidents in January 2020 *(3rd January 2020 and 21st January 2020)* are not supported by documentary evidence. That is correct. Judge Hobson noted the appellant's account that he had produced those documents and given them to his solicitors, but could not explain why the documents were not before the Tribunal at the hearing. Judge Hobson noted the submission made by Mr Bukhari that there had been a great deal of difficulty obtaining the documents because the appellant had given them to his previous solicitors, and there had been a change of

representation to his own firm. Judge Hobson carefully considered the references in the documents before the Tribunal regarding the documents the appellant was relying upon. She concluded the FIR from 2018 was not provided to the respondent at the time of the appellant's interview, but some months later. Judge Hobson was not satisfied that the appellant has provided more than one FIR to the respondent, noting in particular the absence of a reference to any other FIR in the respondent's decision and the respondent's bundle. Judge Hobson said, at [41 (page 8)]:

> "Mr Bukhari relied on the fact that the Appellant had changed representation, and that there had been some difficulty obtaining documents. That may well have been the case, but the Appellant's evidence was that, in any event, he had the documents stored digitally on his laptop. In those circumstances, there can be no argument that important documents have been lost. If the Appellant was able to provide hard copies of documents he has in digital format to his previous solicitors, there is no reason why he could not provide further copies to his new solicitors for the purposes of the appeal bundle. I came to the conclusion that the Appellant has never produced any documents to support his claim to have been the victim of attacks in January 2020. In circumstances where, if his account is true, there would be easily obtainable documentary evidence to support it, I found that his credibility was undermined by the lack of documentation."

10. It is clear from the passages of the decision that I have referred to above, that it was Judge Hobson that had sought clarification about the documents relied upon by the appellant. The appellant was represented at the hearing of the appeal. The judge was plainly entitled to note as she did that the appellant could not explain why the documents from 2018 were included within the bundle and not the ones from 2020, nor why the respondent had received only the documents relating to 2018.

11. It must have been obvious to the appellant's representatives that in the respondent's decision, at paragraph [6], the only one of the documents that is listed as being relied upon by the appellant is the "First Information Report (FIR) dated 16 January 2018". It must therefore have been obvious to the appellant and his representatives that the respondent had not had sight of, or considered any other document relating to events in January 2018 and more importantly, January 2020. The appellant's representatives were plainly aware that the evidence before the Tribunal was set out in a bundle comprising of a total of 204 pages. It would have been obvious to them in their preparation for the presentation of the appeal that the bundle did not contain any documents relating to the appellant's account of events in January 2020. On the appellant's account, he held them in digital format on his laptop. As soon as it became apparent that the documents were not in the evidence before the Tribunal, the appellant and his representatives could have taken steps, even on the morning of the hearing itself, to provide the Tribunal with copies of the relevant documents. They did not do so. When Judge Hobson asked the appellant for clarification about the documents, it was open to the appellant's representative to invite the Tribunal to have regard to the documents, or stand the matter down for a short time so that the documents could be printed and provided to the Presenting Officer and to the Judge. They did

not do so. It was equally open to the appellant and his representative to apply for an adjournment so that the documents could be filed, served and considered before a decision is made. They did not do so. The burden rests upon the appellant and it was not for the judge to enter the arena and tell the appellant or his representative how they should proceed. In fact the appellant's representatives did not even send the documents to the Tribunal immediately after the hearing. The appellant waited until after a decision had been promulgated. In paragraph [3] of the Grounds of Appeal the appellant's representatives confirm that it was not until 23rd June 2022, ten days after the decision was promulgated, that the appellant provided his current representatives with the relevant documents. The Judge cannot be criticised for failing to have regard to evidence that was not before the Tribunal and it was not for the Judge to offer the appellant an opportunity to submit the documents.

12. In any event, quite apart from the lack of documents, Judge Hobson found the appellant's account of the events in January 2020 to be inconsistent and implausible. She noted the appellant's account of events between January 2018 and January 2020 was inconsistent and referred to the inconsistencies between the account set out in the appellant's witness statement and the account in his oral evidence. Judge Hobson rejected the appellant's claim that he had been receiving repeated threats throughout the two years between 2018 and 2020. Judge Hobson found the delay of two years between the murders and the claimed threats to the appellant lacked plausibility. Judge Hobson explains why the appellant's claim that his cousins were desperate for revenge after the incident in January 2018, is inconsistent with the appellant's account that the first physical attack occurred in January 2020. She considered it a highly unlikely coincidence that the appellant's cousins decided to attack him two years after the events that caused the dispute, at a time when the appellant just happened to have a relatively easy escape route open to him, in the form of a valid visit visa. Judge Hobson also clearly explains why she considered the appellant's claim that the police refused to help him because his cousins had influence over them was vague and lacked plausibility. The judge identified material inconsistencies in the appellant's account of events between what he said when interviewed, and the account given in his oral evidence. Judge Hobson accepted the appellant is well-educated and that he held a position of responsibility in Pakistan. However, she noted that the evidence produced in the appellant's bundle showing him named as principal of a school in Islamabad, is dated November 2017, some years before the appellant left Pakistan. She noted there may have been any number of personal reasons for the appellant to have wanted to leave Pakistan, and without speculating, the fact that the appellant has been educated to a high standard did not alter her findings as to the credibility of the appellant's claim.

13. The assessment of a claim for international protection is a fact sensitive fact. In an appeal such as the present, where the credibility of the appellant is in issue, a Tribunal Judge adopts a variety of different evaluative techniques to assess the evidence. The judge will for instance

consider: (i) the consistency (or otherwise) of accounts given by the appellant at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (iv), the overall plausibility of an appellant's account.

14. In Y –v- SSHD [2006] EWCA Civ 1223, Keene LJ referred to the authorities and confirmed that a Judge should be cautious before finding an account to be inherently incredible, because there is a considerable risk that they will be over influenced by their own views on what is or is not plausible, and those views will have inevitably been influenced by their own background in this country and by the customs and ways of our own society. However, he went on to say, at [26];

> "None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be…"

15. Here, reading the decision as a whole and the reasons given by Judge Hobson for dismissing the appeal, it is in my judgment clear that Judge Hobson gives a number of reasons for her finding that the appellant is not a credible witness as far as the events of January 2020 are concerned. She was not satisfied, even to the low standard that the appellant was attacked in January 2020 in the way he claims. She was not satisfied that he faces a risk of violence from his cousins or any other person in Pakistan. She was not satisfied that the appellant faces a real risk of persecution in Pakistan, nor that he would be at risk of harm in Pakistan, or of a breach of his rights under Article 2 or 3 ECHR.

16. It is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. It is in my judgement clear that in reaching her decision, Judge Hobson considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to her on the evidence. A fact-sensitive analysis of the risk upon return was required. In my judgement, the findings made by Judge Hobson were rooted in the evidence before the Tribunal. The findings reached cannot be said to be perverse, irrational or findings that were not supported by the evidence.

17. It follows that in my judgment it was open to Judge Hobson to dismiss the appeal for the reasons she set out.

18. I dismiss the appeal.

Notice of Decision

19. The appeal is dismissed.

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 May 2023