IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001709
First-tier Tribunal Nos:
PA/00920/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SHSA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented
For the Respondent: Mr. N. Wain, Senior Home Office Presenting Officer

Heard at Field House on 18 July 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. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Dilks, (the "Judge"), promulgated on 27 August 2021, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse his protection claim.

2. Permission to appeal was granted by First-tier Tribunal Judge Bird on 25 October 2021 as follows:

> "2. The appellant argues that the Judge relied on the findings made by a Judge in an earlier hearing. The appellant alleges that the evidence he presented was not properly taken into account. There was a letter from his housemate which was provided which was not properly considered. He further argues that the evidence in relation to the problems he and his family had with the Jordanian authorities was not properly considered – grounds 6 and 7.
>
> 3. It is arguable that the Judge failed to consider the statement from the appellant's housemate which was submitted in relation to his sexuality. In failing to make any findings on this evidence, the judge has made an arguable error of law.
>
> 4. In relation to the appellant's claim that he and his family have had problems the Judge considered this at paragraphs 54 and 55. It is arguable that the judge failed to consider the evidence that the appellant had problems with the Jordanian authorities before he left. His evidence at the hearing was that "the Jordanian authorities asked his siblings in Jordan about him before and after his activities for Saudi Arabia in the Netherlands due to previous problems when he ran away from Jordan in 1991".
>
> 5. It is clear that the Judge in 2017 made findings on a misunderstanding of this evidence and this was repeated by the Judge in 2021 (see paragraph 54). In this the judge's findings in 2021 were tainted by this misunderstanding. This is an arguable error of law. Further the judge's findings on core issues are not supported by adequate reasoning. The judge's decision contains arguable errors of law."

The hearing

3. The hearing took place remotely using Teams. As before the First-tier Tribunal, the Appellant was not legally represented. He was present with Mr. Robert Brennan from Sefton CVS who had been present at the hearing in the First-tier Tribunal. TJ was also present.

4. I explained the remit of my jurisdiction to the Appellant. I explained that I was only considering whether the Judge's decision involved the making of a material error of law, and that I was not considering the appeal afresh.

5. The Appellant had provided a bundle of further documents for this hearing. Mr. Wain had not seen these. Unfortunately owing to technical difficulties it was not possible to email a copy to Mr. Wain. Anything relevant was explained/read out to him, as set out below. I explained to the Appellant that I was only considering the evidence which was before the Judge and that I would not be taking new evidence into account when considering whether the decision involved the making of a material error of law.

6. I heard submissions from the Appellant and Mr. Wain. I took each paragraph of the grounds in turn, and only when I was satisfied that the Appellant had said what he wanted to say, and had had the chance to respond to Mr. Wain, did I move onto the next paragraph. I was satisfied that the Appellant was able to take part fully in the hearing. I reserved my decision.

Error of law

7. Given that the Appellant is not represented, I have carefully considered whether the Judge's decision involves the making of material errors of law, mindful that the Appellant's grounds have been drafted by him, that he is not legally qualified, and that he is a vulnerable appellant.

Paragraph 2 - sexuality

8. Paragraph 2 of the reasons for appealing referred to the finding that the Appellant was not bisexual, and the reliance by the Judge on the previous decision of the Tribunal. The Appellant submitted that evidence from TJ, the Appellant's previous housemate, dated 25 February 2018, had not been taken into consideration by the Judge. The Appellant stated that this letter was "not included in the bundle sent by the Home Office to the tribunal and myself". A copy of this letter was in the bundle of further documents provided for this hearing.

9. In the Rule 24 response the Respondent submitted that the Judge had given a full consideration to the Appellant's claims. The Judge noted that the Appellant had failed to mention his sexuality in the statement and that he himself had given no new evidence beyond what had previously stated. It was unclear whether the letter from the housemate formed part of the original information before the Tribunal or whether it had been submitted post-hearing. In any event the Appellant was the only person who gave evidence and the author of the letter was not available for cross-examination. It was therefore unclear how this solitary piece of evidence would have or did raise an arguable case.

10. At the hearing the Appellant confirmed that the only new piece of evidence in relation to his sexuality which had not been before Judge Malik was the letter from TJ. The other documents in the bundle provided for this hearing pre-dated the decision of Judge Malik in 2017. Mr. Wain referred to the Rule 24 response and pointed out that the Appellant's witness statement did not mention his sexuality, as was noted by the Judge.

11. The Judge considered the Appellant's sexuality at [47]. He states:

> "With regard to the appellant's claims regarding his sexuality, in accordance with Devaseelan, the findings of the previous Tribunal are my starting point. There is no further evidence regarding the appellant's sexuality in this appeal and this claim is simply referred to in the appeal notice and no mention is made of this in the appellant's witness statement. I consider that the issue and the evidence is materially the same as the first appeal and therefore I should treat the issue as settled by the first decision rather than allowing the matter to be relitigated and for this reason I reject that the appellant is bisexual."

12. The Judge is correct in stating that no mention of the Appellant's sexuality was made in his witness statement. The Judge does not refer to the letter from TJ. The Judge set out at [31] onwards the documents that he had before him. At [33] he stated that the Appellant had not produced a bundle for the hearing. He then referred to documents which the Appellant said had been sent to the Tribunal and the Respondent. He did not have these and was emailed a copy by the Presenting Officer which he then took time to consider. However, the letter from TJ is not among these documents.

13. At [34] the Judge stated that the Appellant said that a document he had sent to the Home Office was not in the Respondent's bundle. This is a document showing that he was born in Palestine. The Judge makes no reference to the Appellant stating that the letter from TJ was not there. The Appellant stated in the grounds that the letter from TJ was not in the Home Office bundle, and the Appellant himself had not provided a bundle.

14. The Judge stated at [35] that the Appellant had sent further evidence to him on the day following the hearing. However these documents were related to the Appellant's claim that he attempted to leave the United Kingdom in May 2019. There is no reference to any letter from TJ regarding his sexuality.

15. I find that the Judge set out clearly the evidence that was before him. There is no evidence that the letter from TJ was submitted to the Tribunal. The Appellant was clear before me that he had submitted it to the Home Office, but it is not in the Respondent's bundle, and there is no evidence that it was submitted to the Tribunal.

16. After the appeal hearing the Appellant, as he had done in the First-tier Tribunal, sent some additional documents. One of these is a decision from the Home Office dated 2 February 2019 refusing his further submissions. At page 2 of this letter there is a reference to the Appellant having submitted a letter from TJ. This letter was considered by the Respondent in her decision of 2 February 2019, but she did not consider that it supported the Appellant's claim to be bisexual. Following the refusal of these further submissions, the Appellant made further submissions which are the subject of this appeal. I find that the decision of 2 February 2019 corroborates the Appellant's claim that he sent this letter to the Respondent, albeit with a different further submissions than those which are the subject of this appeal.

17. The Appellant expressed his frustration with the fact that he claims that the Respondent has documents in relation to other issues which he has provided to her, but which she has not put before the Tribunal. I accept that the Appellant sent the letter from TJ to the Respondent with his further submissions which were refused on the 2 February 2019, but there is no evidence that he put this letter before the Judge. While he may have justifiably considered that the Respondent would provide all documents relevant to him which were in their possession, the burden of proof was on the Appellant. The Appellant pointed out to the Judge that documents were missing from the Respondent's bundle, but he made no reference to this letter. Given that the Judge carefully listed the documents which were before him, I find that this letter was not before the Judge. There can therefore be no error in his failing to take account of it.

18. In the absence of any new evidence, and given that the Appellant had not raised the issue of his sexuality in his witness statement, the Judge was bound to follow the decision of Judge Malik following the case of Devaseelan. I find that there is no error of law.

Paragraph 3

19. Paragraph [3] does not identify an error of law. I will consider the issue of the Jordanian authorities below (see [28] to [35]).

Paragraphs 4 and 5 – Belizean nationality

20. Paragraphs [4] and [5] of the reasons for appealing deal with the Appellant's renunciation of his Belizean nationality. He states:

> "4. Regarding my renunciation Belize nationality, Home office will not provide me with required documents to submit to high commission of Belize in London. Due to a previous bad experience with the Home office, I couldn't continue with my renunciation. *In 2018 I've been trying over a year to get my Jordanian passport to apply to the Netherlands embassy for visa.
>
> 5. Belize government is refusing to issue passport to my son he apply for passport on July 2017 until now no answer from them is it racism maybe or discrimination maybe because of that I'd love to go further with renouncing the nationality of Belize. I send you copy of the first complaint to Ombudsman in Belize against the high commission of Belize London and the response enclosed. (Document number 2 and 3)"

21. Again these paragraphs do not identify any error of law. At the hearing the Appellant said that Belize was not his country. He referred to the issue with his son's passport. He said that, even if he applied to renew his passport, they would not do it. Mr. Wain referred to [34] where the Judge noted the Respondent's submission that the Appellant was a national of both Jordan and Belize. The Judge found at [48] that the Appellant was a national of Belize who had not renounced his citizenship, based on his oral evidence. He submitted that there was no error of law in the findings at [48].

22. At [33] the Judge referred to the documents relating to the Appellant's Belizean nationality. These were "namely the appellant's email of 30 June 2021, enclosing a copy of the appellant's witness statement which is included in the home office bundle and a copy of a reply from the Ombudsman 24 March confirming that the Ministry of Foreign Affairs, Foreign Trade, and Immigration has begun an internal investigation into the pending passport application and a report of their findings will be forwarded in due course."

23. At [48] the Judge states:

> "I find that the appellant has not renounced his Belize nationality based on his oral evidence at the hearing that he had submitted an application to renounce his Belize citizenship in 2018 but he could not go further with this as the Belize authorities needed documents which the Home Office has. The appellant said that he has a letter from the Belize authorities saying they cannot take this further. The appellant has not therefore renounced his Belize nationality. The appellant currently does not have a valid Belize passport but having not renounced nationality I find that it is reasonably likely that he would be able to obtain one if he wished."

24. I find there is no error of law in this paragraph. The Appellant's evidence is that he has not been able to renounce his Belizean citizenship, so the Judge has not erred in finding that he has not done so.

25. Before me the Appellant said that the Home Office had evidence that Belize had accepted the renunciation of his citizenship. He said that he thought he had sent it to the Home Office. In the email sent after the hearing the Appellant said that he was providing a "Letter of renunciation of citizenship of Belize from high commission [in] London". However, there is no such document attached. The refusal of further submissions dated 2 February 2019 refers to a letter dated 22 March 2018 from the Belize High Commission. This letter was considered by the Respondent. The letter stated that the High Commission would begin the process of renunciation of citizenship. The Appellant's evidence is that he has not been

able to renounce his citizenship, as stated in the reasons for appealing. There was no evidence before the Judge that he had renounced his citizenship and I find that there is no error of law at [48].

Paragraph 6

26. Paragraph [6] of the reasons for appealing states as follows:

> "6. As for the truth of my story of working with Saudi General Intelligence not with the Saudi embassy, evidence relate to my claim is stored in the previous email address mdd.douglas@gmail.com which can no longer be accessed by me. I'd like to request the court to involve in the procedure of getting the account unblocked with a court order to support my claim."

27. As explained to the Appellant at the hearing, if the evidence was not before the Judge, there can be no error of law in the Judge's failure to address it.

Paragraph 7 - problems with the Jordanian authorities

28. At paragraph [7] the Appellant states:

> "7. The period in Jordan from 2015/2016 was not free of problems with the Jordanian General Intelligence. The first attempt to escape Jordan, At Amman airport On 30 March 2016 through an employee working at the airport who I paid an amount of 1500 Jordanian Dinar. This attempt was unsuccessful as a group of government intelligence arrested me before boarding the plane. Later the stamp was cancelled and I can provide evidence relate to this with expired passport that's still with me. I send you enclosed copy of that stamp in my passport.(Document number 4)"

29. This paragraph does not identify any error in the Judge's decision. At the hearing the Appellant repeated what was said in this paragraph. Mr. Wain submitted that it was an attempt to submit new evidence which was not before the Judge at the hearing. In response the Appellant said that he had given his passport to the Home Office, but then said that maybe he had forgotten to give it to them. He referred to his witness statement at page 37 RB where he said that he had tried to leave Jordan in April 2016 but had been caught by the police and taken to the intelligence headquarters. He submitted that the Judge had made a mistake at [55].

30. The evidence of a cancelled stamp which the Appellant has now provided was not before the Judge. Neither was it part of the evidence sent to the Judge on the day after the hearing. I have considered more widely the Judge's treatment of the Appellant's evidence that he had problems with the Jordanian authorities.

31. From [53] to [55] the Judge states:

> "The appellant relies on the copy of an email dated 15 February 2019 at D1 of the respondent's bundle which the appellant said at the hearing was from his brother, who lives in Jordan, Sameh Abdallah. In this email it states that Sameh Abdallah and Sami Abdallah acknowledge that in the period between 1992 and 2010, the Jordanian government summoned them many times when they were asked about the appellant's whereabouts and anything related to him.
>
> At paragraph 14 of the asylum decision the respondent did not find it plausible that the appellant's siblings would be questioned about the appellant's activities before they occurred, the appellant's evidence at the hearing being that he started working for the Saudi Arabian authorities in around 2011. However, the appellant also said at the hearing that the Jordanian authorities asked his siblings in Jordan

> about him before and after his activities for Saudi Arabia in the Netherlands due to previous problems when he ran away from Jordan in 1991.
>
> I reject that the appellant's claim with regard to his treatment in Jordan in 2015-2016 following his deportation from the Netherlands because I have not found him credible and I have rejected that he worked with the Saudi Arabian embassy whilst he resided in the Netherlands. But even taken at its highest, other than claiming that he was questioned about his activities, I consider, as stated in the asylum decision (paragraph 14) on the appellant's evidence, he was not subjected to ill treatment or serious harm which would give a real risk of persecution or serious harm on his return."

32. At [53] the Judge set out the Appellant's evidence that his brothers had been summoned between 1992 and 2010. At [54] the Judge sets out the Appellant's evidence that he had problems due to running away from Jordan in 1991. At [55] the Judge rejects the Appellant's claim about his treatment in Jordan "in 2015-2016 following his deportation from the Netherlands". However there is no consideration of the claim at [54] that he was of interest to the authorities before he started working for the Saudi Arabian authorities. There is no consideration of his evidence that he had run away from Jordan in 1991.

33. While the Judge has stated that the Appellant's evidence was that he was of interest to the Jordanian authorities due to "previous problems", he has not made any further findings on this. At [55] he has rejected the Appellant's claimed treatment in Jordan in 2015/2016 as he has rejected the Appellant's claim to have worked with the Saudi Arabian embassy in the Netherlands. However, the Appellant's claim is that he was of interest to the Jordanian authorities before he started working for the Saudi Arabian authorities. The Judge has not made findings on this. In his witness statement the Appellant said that he had problems in Jordan "related to my past activities and my absence and expiration of my passport". It was not just due to activities in the Netherlands.

34. I have considered the Judge's Record of Proceedings. This indicates that the Appellant gave this evidence at the end of the oral evidence, but there was no further exploration of it. The Appellant was unrepresented. At [42] the Judge states "I have borne in mind the appellant's vulnerability due to his mental health. Having said that, it appeared to me that the appellant understood the questions put to him at the hearing, and gave reasonably coherent responses to virtually all of those questions". The Judge stated at [62] that he has "borne in mind that the Appellant is a vulnerable witness in my assessment of his evidence". However, it appears from the Record of Proceedings that the Appellant gave this evidence, but then was asked no further questions by either the Presenting Officer or the Judge. This does not indicate that his unrepresented and vulnerable status was properly taken into account. He was not given any opportunity to expand on this evidence before the Tribunal.

35. While the Judge referred to the Appellant's evidence that he was of interest to the authorities prior to leaving Jordan in 1991, he failed to properly consider this evidence. He has not given adequate reasons for rejecting this claim. Especially given my observations above relating to how this evidence was treated at the hearing, I find that this is a material error of law.

Paragraph 8 – mental health

36. At [8] of the reasons for appealing it states:

> "8. I stopped my mental health medication because of I was preoccupied with other health problems that started in 2018 and until now. I take several types of medicines to treat/ help these conditions. I can get reports from the GP, but a cost of £50 was mentioned and as an asylum seeker , I cannot afford to pay this amount of money. Home office has access to these files as I have signed the declaration form in 2016."

37. At the hearing the Appellant said that he could not take some mental health medications because of his physical health problems. Mr. Wain referred to [62]. He submitted that the Judge knew that he had stopped his mental health medication and why. At [72] the Judge carried out an assessment of Article 3. There was no error of law in his assessment.

38. While [8] does not identify any error of law, given that the Appellant is unrepresented, I have considered the Judge's assessment of his mental health.

> "I have borne in mind that the appellant is a vulnerable witness in my assessment of his evidence and the asylum decision refers to the appellant as having been diagnosed with depression and PTSD. The appellant stated in evidence to me that he had stopped his medication for his mental health in 2019 due a number of physical conditions and confirmed to Miss Malomo that he was not seeing a doctor in relation to his mental health. Although when asked whether he had ever been diagnosed with any psychosis the appellant said he thought so and that he had met some people to talk with them, I did not find this reasonably likely. In my assessment I consider if the appellant was suffering from psychosis, then this is something that it is reasonably likely that Sefton CVS, who have clearly assisted him with this claim, having submitted the fresh submissions and acted as McKenzie friend at the hearing, would have helped him highlight prior to the hearing. In any event, I find no reason to depart from the findings of Tribunal Judge Malik that the appellant is not a credible witness."

39. At [62] the Judge considers the effect of the Appellant's mental health on the credibility of his evidence. The Judge states that he has borne in mind that the Appellant is a vulnerable witness. However, he then appears to doubt that he is suffering from mental health problems, despite the acceptance of the Respondent that the Appellant had been diagnosed with depression and anxiety. He focuses on the Appellant's reference to suffering from psychosis, which he rejects, but he does not consider the accepted diagnoses of depression and PTSD, and the effect of these conditions on his ability to give evidence. He states at the end of the paragraph that "in any event" he finds no reason to depart from the previous finding that he is "not a credible witness". It is not clear what he means by "in any event".

40. Further, at [55] he had already found the Appellant to be not credible, but this is prior to any consideration of the effect of the Appellant's mental health on the credibility of his evidence. I find that the Judge has erred in his treatment of the Appellant's mental health with reference to his status as a vulnerable witness. There is no reference to the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance, and while there appears to be some to be consideration of the Appellant's vulnerability, this is not in accordance with the guidance. I find that this is a material error of law.

Paragraphs 9 and 10 – attempt to leave the UK in 2019

41. Paragraphs [9] and [10] refer to the Appellant's attempts to leave the United Kingdom in May 2019. The Appellant states that he has tried to get copies of documents back from the Respondent and is still waiting for a response. He

refers to the Respondent only having provided half of the correspondence to the Tribunal. He provided the boarding pass.

42. Mr. Wain submitted that the Judge had given reasons for not accepting the extra evidence after the hearing. The Appellant said that he had asked the Respondent for the documents referred to in his reasons for appealing. He asked Mr. Wain please to look for them. Mr. Brennan said that the point the Appellant was making was that the decision had not been made with all of the facts.

43. Given that I have found above that the decision involves the making of material errors of law, and having explained to the Appellant at the hearing that I was only considering the evidence which was before the Judge, it is not necessary for me to examine this issue any further. As I explained to the Appellant at the hearing, he is able to request documents from the Respondent under data protection law, and Mr. Brennan said that he understood and would discuss this with the Appellant.

44. I find that the decision involves the making of material errors of law. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

> *"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*
>
> *(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."*

45. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I have found that the decision involves the making of material errors of law. The credibility findings cannot stand owing to my finding that there was unfairness in the Judge's treatment of the Appellant as a vulnerable witness. I find therefore that is appropriate for the appeal to be remitted to the First-tier Tribunal to be reheard.

Notice of Decision

46. The decision of the First-tier Tribunal involves the making of material errors of law.

47. I set the decision aside. No findings are preserved.

48. The appeal is remitted to the First-tier Tribunal to be reheard.

49. The appeal is not to be listed before Judge Dilks.

50. The Appellant must provide a consolidated bundle for the hearing which must contain all of the documents on which he intends to rely. He must include documents even if they have already been provided to the Tribunal or the Respondent. The bundle should include all evidence relating to his sexuality, including the letter from TJ, evidence relating to his Belizean nationality, evidence

relating to his problems in Jordan, evidence relating to his mental health, and any other documents which he wants the Tribunal to take into account.

51. If the Appellant has any problems providing these documents, he must raise this with the First-tier Tribunal when he receives the notice of the hearing, and not wait until the date of the hearing.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
2 August 2023