IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005992

First-tier Tribunal No: PA/50133/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 13th of March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

UY
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person.
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 6 March 2024

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 appeals with permission a decision of First-tier Tribunal Judge Hatton ('the Judge') promulgated on the 6 October 2022, in which the judge dismissed his appeal against the refusal of his claim for international protection and/or leave to remain in the United Kingdom on human rights grounds.

2. The appellant is a citizen of Pakistan born on the 29 June 1981 who claims to face a real risk on return to Pakistan as a result of his agnostic beliefs and having entered into a mixed caste marriage in Pakistan. Although the appellant also refers to the UAE that was the country from which he and his family travelled to the UK and where he was previously employed rather than the country to which the Secretary of State is likely to return him, which will be his home state of Pakistan.
3. The appellant's wife and three children are dependants on his claim.
4. Before the Judge the appellant was represented by Mrs A Choudhry a very experienced and competent barrister in the field of immigration and asylum law.
5. Having considered the documentary and oral evidence and submissions made the Judge sets out his findings of fact from [28] of the decision under appeal. The Judge divided his assessment into considering the two core issues, fear of persecution based on religious belief, set out between [33] – [80] and fear of persecution based on inter-caste marriage between [81] - 88], and the question of whether there was any real risk to the appellant if returned to Pakistan which was considered at [89] – [94].
6. The Judge's conclusions, having assessed the evidence, are that the appellant's credibility had been undermined so significantly that the Judge was unable to accept the substance of his claim [95], but that had the appellant not been found not to be credible the Judge did not accept his account of his fear on return to Pakistan and did not accept he had established a well-founded fear of persecution [96], that the appellant is not entitled to a grant of Humanitarian Protection as he had not established a well-founded fear of persecution [97], and that his claims pursuant Articles 2 and 3 ECHR fell in line with the asylum claim [98].
7. In relation to Article 8 ECHR the Judge's assessment of this aspect of the appeal is set out in [99]. In that paragraph the Judge finds the appellant had failed to establish either private or family life in the UK recognised by Article 8(1). In the alternative, to assess the situation if a protected right was engaged and when considering the proportionality of any interference with such right from [103] - [112], the Judge concludes that any interference is proportionate.
8. The appellant sought permission to appeal which was refused by another judge of the First-tier Tribunal and on a renewed application initially by the Upper Tribunal. It transpired, however, that addendum grounds of appeal dated 22 July 2023 had not been seen by the Upper Tribunal Judge who refused permission resulting in that decision being set aside. Following further reconsideration, permission to appeal was granted by Upper Tribunal Judge Kamara on 9 August 2023 on the basis the amended grounds are arguable.
9. Although the appellant was previously represented he has for some time communicated with the Upper Tribunal is a litigant in person and appeared as such before me. As a result of certain concerns expressed in the amended grounds of appeal care was taken to explain the procedure to the appellant that will be adopted at the error of law hearing and he was given ample opportunity to make such representations as were required, relevant to the issues. The appellant was assisted by a McKenzie Friend, LA, who was able to sit by him, who took detailed notes, and was able to speak to the appellant and assist as required. I am satisfied the appellant received a fair hearing in relation to this appeal.
10. The appellant has also produced two additional pieces of evidence, a letter from Humanists UK dated 31 May 2023 written by a Yehudis Fletcher and a letter from an organisation described as the Council of Ex-Muslims of Britain dated 5 May 2023 written by a Mr Ali Malik. As neither of these documents was even in existence at the date of the hearing before the Judge, and could therefore not have been considered by the Judge when assessing the evidence that had been provided, it was decided the question of whether the Judge had erred in law

would be considered on the basis of the material the Judge had been asked to consider. A judge cannot be criticised for not considering evidence that was not made available as it did not even exist.

11. That approach does not prejudice the appellant for if material error of law is found in the decision of the Judge and the matter proceeds to a further substantive hearing the new evidence can be considered on the next occasion as part of the appellant's evidence or, if no material error of law is found, the new material may enable the appellant to make a fresh claim which can be considered by the Secretary of State on its merits.

Discussion and analysis

12. At the outset of the hearing the appellant was referred to the judgment of the Court of Appeal in Volpi v Volpi [2022]EWCA Civ 464 at [2] in which that Court found:

> **Appeals on fact**
>
> 2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
>
> i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.
>
> 3. If authority for all these propositions is needed, it may be found in *Piglowska v Piglowski* [1999] 1 WLR 1360; *McGraddie v McGraddie* [2013] UKSC 58, [2013] 1 WLR 2477; *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29; *Henderson v Foxworth Investments Ltd* [2014] UKSC 41, [2014] 1 WLR 2600; *Elliston v Glencore Services (UK) Ltd* [2016] EWCA Civ 407; *JSC BTA Bank v Ablyazov* [2018] EWCA Civ

1176, [2019] BCC 96; *Staechelin v ACLBDD Holdings Ltd* [2019] EWCA Civ 817, [2019] 3 All ER 429 and *Perry v Raleys Solicitors* [2019] UKSC 5, [2020] AC 352.

13. This approach has been repeated in the more recent decision of the Court of Appeal in Hafiz Aman Ullah v Secretary of State for the Home Department [2014] EWCA Civ 201 in which Lord Justice Green in giving the lead judgement, with which the other members of the Court agree, writes:

UT's jurisdiction and errors of law

26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:

(i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];

(ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 at paragraph [45];

(iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19 at paragraph [25];

(iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095 at paragraph [27];

(v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 at paragraph [107].

14. Turning to the appellant’s addendum on grounds to appeal to the Upper Tribunal, these together with the available evidence and submissions made at the hearing have been considered by me with the required degree of anxious scrutiny. The first section of the document contains a number of introductory paragraphs, one of which confirms the appellant had studied for an MA in law at the University of Sheffield, passing the modules of Public Law and Administrative Law in July 2023. The appellant is clearly an intelligent individual who was able to engage with the Tribunal to discuss relevant points once appropriate guidance was given in relation to what was relevant and not at this stage of the proceedings. It was explained to the appellant that the hearing is not a substantive rehearing of his appeal against the decision of the Secretary of State but rather a challenge to the decision of the Judge.

15. I shall consider the individual grounds as they are referred to by the appellant in his pleadings for the sake of clarity, albeit attributing a reference number to the grounds of appeal as they appear in the chronology set out in the appeal document.
16. Ground 1: headed Procedural Impropriety and Irregularity Grounds -(Points 7-9). In this ground the appellant refers to a witness statement from a MIU, described as the appellant's brother-in-law who lives in the UK. The statement is dated 3 November 2019 and was sent to the Home Office in 2019. The appellant states there is specific reference to this letter in the Refusal Letter of 11 January 2021, at paragraph 7. In that section of the refusal letter the author was setting out the evidence considered in making the decision. That includes the letter from MIU together with a number of other individuals.
17. The appellant's claim is that the letter sent to the Home Office was not included in the Secretary of State's bundle and was therefore not available for consideration by the Judge. The appellant claims that had it been provided it would have assisted the Judge in realising his protection claim was genuine, and the fact the letter had been omitted resulted in procedural irregularity and a subsequently unfair decision. The appellant asserts the irregularity of missing his crucial evidence alone is materially sufficient to establish the Judge's decision should be set aside for breach of natural justice.
18. There can be no credible criticism of the procedure adopted by the First-tier Tribunal in ensuring that the appellant had the fullest of opportunities to enable him to present the evidence on which he intended to rely in support of his appeal. On 17 May 2021 notice was sent to the respondent following the notice of appeal being lodged against the decision of the Secretary of State that he was now required to upload all documents to the Tribunal by 1 June 2021, which specifically required him to provide any statements of evidence, notice of decision, any other documents provided to the appellant giving reasons for the decision, the application form, any record of interview, any other unpublished documents on which the notice of any other appealable decision was made in relation to the appellant. Those documents were made available to the appellant. A further direction sent on 29 December 2021 required the appellant to build his case to enable the respondent to conduct a thorough review of the decision. The appellant was advised he had until 28 January 2022 to upload his appeal skeleton argument and evidence which, once received, would be reviewed by a Tribunal Caseworker. On 3 March 2021 notice was sent to the respondent that they have until 17 March 2022 to review the appellant's arguments and evidence. The Home Office reply to the appeal skeleton argument and evidence was sent to the appellant's representatives on 31 March 2022 with a right of response by 5 April 2022. On 6 April 2022 it was noted the appeal was going to a hearing and on 23 April 2022 detailed directions were sent in relation to what needed to be filed concerning hearing requirements.
19. The appellant, in accordance with the directions, filed an appeal bundle dated 28 January 2022 in addition to the earlier evidence provided. A skeleton argument dated 28 January 2022 was filed for the purposes of the hearing.
20. In none of the bundles filed by the appellant did he include the statement from MIU despite knowing that it had not been included in the Secretary of State's evidence.
21. The Judge also notes at [21] that he had considered the 631 page hearing bundle that had been assembled before the hearing and at [22] that at the outset of the hearing both advocates confirmed that the information contained within that bundle constituted all the documentary evidence relied upon by the parties in the case. It was therefore clear before the Judge that the appellant was not relying upon the statement from MIU.

22. The appellant had ample opportunity to review the evidence that was being provided and to have included the statement from MIU in his bundle if he considered this relevant. The appellant was asked during the hearing whether he had told his solicitors that MIU will be willing to support him in his appeal, which he claimed he had, although there is no evidence of this or that MIU was contacted and asked to provide a witness statement or that, if he was, he agreed to do so. The directions make it clear that it is for the appellant to provide the evidence he was seeking to rely upon. It is not for the respondent to make out his case for him and I find no breach of the duty of candour in relation to disclosure.
23. I find no procedural impropriety or irregularity made out, sufficient to amount to a material error of law, as the reason this statement was not filed appears to be solely as a result of the appellant not making it available to the Judge. Although the appellant during the course of his submissions complained about the conduct of his solicitor and barrister there is no indication he has raised any concerns with his legal representatives upon which they have had opportunity to make comment in reply, in accordance with the guidance provided by the Upper Tribunal in case law in relation to circumstances where the conduct of previous legal adviser has been criticised. I find no evidence of inappropriate or unprofessional conduct by either the appellant's solicitor or barrister made out sufficient to amount to procedural irregularity, either itself or in combined with other issues.
24. I find no legal error made out in relation to Ground 1.
25. For the sake of completeness, as the letter relates specifically to the appellant's claim he will face a real risk as a result of his alleged inter-caste marriage, he was asked how the letter from MIU would have made any difference if it was available. A copy of the letter has been provided in the appellant's bundle. The Judge considers this issue between [81] – [88] of the decision under challenge. The Judge does not find this claim credible for the reasons set out. It is not irrational for the Judge to have concluded that if the appellant had a genuine fear on account of his inter-caste marriage would not have repeatedly returned to Pakistan with his wife and children on an almost annual basis. The Judge notes at [83] that the appellant's wife had expressly confirmed that she herself has no fear of being persecuted on account of her inter-caste marriage. When this was put to the appellant during the hearing he retorted by asking how the Judge knew this fact when he claimed his wife told him otherwise, but the Judge records finding this to be the case on the evidence that was made available. Whilst the appellant may disagree with that finding it is clearly a finding within the range of those reasonably open to the Judge. It is also not disputed in the appellant's grounds that the evidence showed, as confirmed by the appellant himself in his evidence, regular contact between the appellant and his mother and other family members in Pakistan, that his wife and children had returned to Pakistan and visited her family there, and that he returned to Pakistan with his wife and 3 children in April 2019 because the children wished to see their grandmother. The content of the letter does not undermine the Judge's findings in relation to the lack of credibility in the appellant's evidence and claim to face a real risk for this reason, or the finding of a lack of reliability in the appellant's evidence.
26. Ground 2: headed (FtTJ Judge Hatton did not evaluate the available evidence correctly) refers to a claim by the Judge at [41] that there were 5 days between 30 September 2019, the date the appellant entered the UK and 5 November 2019, the date on which the appellant claimed asylum. The appellant asserts this error is a material error of law as the Judge had found it was unlikely that his fear would have developed in the 5 day supervening period when the appellant claims it is actually 36 days between the two dates. The appellant also asserts that in addition that indicates the Judge did not consider his witness statement with due

care and attention, as he had set out in his witness statement circumstances which led to the issues that give rise to a genuine fear on return to Pakistan and the need for international protection, which did not arise during the 5 day period but over a period of 3 to 4 months. The appellant alleged a major breach of natural justice sufficient to warrant the decision being set aside.

27. The Judge sets out the chronology when setting out the appellant's immigration history between [2] – [14] of the decision under challenge. The Judge notes that on 30 September 2019 the appellant and the family left the UAE travel to the UK arriving on the same day. At [12] the Judge states that 5 days later on 5 November 2019 the appellant claimed asylum in the UK with his initial screening interview taking place on the same date and the substantive asylum interview taking place on 2 November 2020.

28. Calculating the period between 30 September 2019 and 5 November 2019 as only 5 days is clearly an error of fact. Such issues may arise as a result of failure to consider the evidence with the required degree of anxious scrutiny, as the appellant alleges occurred in this case, or simply as a result of a typographic error not corrected when the document is proofread prior to promulgation. It is important to consider whether this error of fact is material which requires the consideration of the determination as a whole. The appellant specifically refers to [41] of the decision under challenge. At [41] the Judge writes:

> 41. Conversely, given the Appellant and his wife each separately and individually confirmed that at the date of their entry to the UK on 30 September 2019 they intended to return to the UAE, this indicates that neither of them had any fear of returning there as at 30 September 2019. It thereby follows that on their combined testimonies, the Appellant subsequently developed a fear of returning to the UAE in the 5-days' supervening period between entering this country on 30 September 2019 and claiming asylum on 5 November 2019.

29. What can be seen is that the Judge does not find that the appellant's claim he could not return to Pakistan arose in a period of 5 days but that it arose between the time he re-entered the UK on 30 September 2019 and claimed asylum on 5 November 2019. In light of the chronology identified by the Judge and finding at [42], any error of fact in recording the period as 5 days rather than the longer period set out by the appellant, is not material. In [42] the Judge writes:

> 42. I am additionally mindful that although the Appellant has articulated a fear of returning to the UAE and/or Pakistan, a fear which was first articulated on 5 November 2019 [see above], by stark contrast his wife has no such fear. Indeed, this was made explicit during her screening interview. In particular, when asked to confirm whether she wished to claim asylum in her own right, she replied in the negative. Further, when subsequently asked whether she herself had a well-founded fear of persecution or faced a real risk of serious harm if removed from the UK, she again replied in the negative [HB, p.371].

30. In relation to the more general allegation that the Judge did not consider the evidence with the required degree of anxious scrutiny, I find no merit in the same. Having carefully examined the appellant's submissions in relation to this point, having reviewed the evidence that was made available, and having read the determination as a whole, I find the Judge did consider the evidence with the required degree of anxious scrutiny.

31. I find no material error of law made out in relation to Ground 2.

32. Ground 3: headed (Appellant not given permission to speak and explain during the hearing). The appellant claims that the Judge instructed him to cut his answers short whenever he was permitted to speak during the hearing. He claims this took away the opportunity of a fair hearing to explain his point of view and

that at later stages during the hearing the Judge did not permit him to speak and provide an explanation on multiple occasions, claiming this denied him the chance to explain and clarify officially a few issues towards the end of the hearing which depriving him of a fair hearing.

33. The determination clearly shows that in addition to the appellant being assisted by an experienced barrister he was able to advance his case through his evidence in chief and was cross examined. The Judge makes reference throughout the determination to points put by the appellant. It was for the Judge, in accordance with his discretionary case management power, to decide what he needed to hear, what was relevant to the issues, and from whom. The Judge had the appellant's skeleton argument, evidence in written and oral form, and detailed submissions made on the appellant's behalf. The appellant appears to be complaining about the fact he was not able to say everything he needed to say, but even at the error of law hearing it was necessary to interject at times to get the appellant to focus on the matters requiring specific consideration at this stage of the proceedings. I appreciate the appellant is very anxious about the outcome of the appeal and wishes to remain in the United Kingdom with his family. It is not made out, when reading the evidence and decision as a whole, that with the exception of the error of fact relating to the 5 day period the Judge did not fully understand the issues in the case, evidence advanced in support of the appellant's appeal, the nature of the appellant's claims, or submissions made on his behalf. I find nothing wrong on the evidence in the Judge adopting an approach in restricting the statements made to other than those that were required. Although the appellant claims he was not given permission to explain the necessary points the grounds do not set out what he would have said had he been allowed free rein or how his not being able to say things that he would have liked to have said makes any material difference to the outcome.

34. I note the appellant has raised this as an issue with a complaint to the President of the First-tier Tribunal, but I find no merit in the claim of unfairness, procedural irregularity, bias or any improper conduct by the Judge. In particular, I do not find it made out that the appellant was denied a fair hearing or an opportunity through himself or his appointed legal representatives to put his case to the Judge.

35. Ground 4: headed Irrationality and Unreasonableness Ground is divided into a number of subheadings. The first of these is the appellant asserting (Unreasonable Presumptions About My Wife Being Not Present at the Hearing). The appellant asserts that the Judge has objected to his wife not attending the hearing and treated that is a reason to refuse the protection claim, which the appellant states is absurd and irrational as his wife was not present due to the need to look after their three children who are of school age and there was no direction from the court or any indication from himself that his wife would be attending the hearing. The appellant also states there was no legal reason or direction for her to attend and that the Judge's presumptions/reasons are irrational and unreasonable.

36. I accept that as a litigant in person the appellant is not expected to know or understand legal procedures to the same extent as his qualified legal representative, but at the relevant time the appellant was represented by both a solicitor and very experienced barrister. As with the evidence filed, the Judge was entitled to assume that any witnesses the appellant was intending to rely upon would have been called to give evidence.

37. It is also important note the Judge does not dismiss the appeal because the appellant's wife was not in attendance. It was noted as fact that the wife was not in attendance, which is true. The pleading distorts the actual finding of the Judge. In addition to [42] which I set out above, at [43] the Judge writes:

> 43. Correspondingly, I am mindful the Appellant's wife has not resiled from the above position since her screening interview of 5 November 2019, as made explicit by the fact that she is not a party to her husband's protection and/or human rights claim, and the combined fact that she has not seen fit to attend her husband's appeal to give evidence on his behalf or support his claim in any way. Indeed, there is not even a witness statement or supporting letter from Mrs Islam to support or corroborate any aspect of her husband's case.

38. In addition to the appellant's wife not being in attendance, she had not provided any evidence to support or corroborate any aspect of her husband's case. That is factually correct. The Judge does not object to the appellant's wife not being in attendance but rather records that is a simple fact. The wife's lack of attendance is not used as a reason to refuse the protection claim but rather it be noted that in addition to lack of physical attendance there was a lack of any other source of support or corroboration from her. No material legal error is made out in this ground.
39. Ground 5 headed: (No justified reasons for refusing to accept agnostic beliefs of appellant). In this grounds the appellant claims it was unreasonable of the Judge not to consider that aspect of the appellant's evidence as the central aspect and core reason for the protection application. The appellant refers to the evidence he provided in support of his conversion and claims the Judge did not give reasons as to why he did not consider that as evidence of his faith.
40. Such a claim is without merit. If one reads the determination as a whole it is clear the Judge was well aware of the reasons the appellant claimed to be entitled to a grant of international protection based upon both his agnostic belief and inter-caste marriage.
41. There is no need for the Judge to set out each and every aspect of the evidence being relied upon or to take findings upon the same. The reasons given by a judge in support of findings made need not be perfect, just adequate. It is clear the Judge not only considered the evidence but also made findings on that evidence supported by adequate reasons. The main reason the Judge rejected the appellant's claim is that the Judge did not consider the appellant's assertions in relation to his agnostic beliefs were credible, and that he was not telling the truth. It has not been shown that is a finding outside the range of those reasonably open to the Judge on the basis of the evidence the Judge was asked to consider. No material error of law is made out.
42. Ground 6 headed: illegality ground, (wrong application of law while assessing credibility of the appellant). In this the appellant asserts the Judge had not applied the law correctly whilst assessing his credibility. The appellant claims the Judge employed an unreasonable credibility assessment and treated his evidence unfairly and failed to give him the benefit of the doubt in regard to his protection application. The appellant claimed he had only spoken and written the truth which deserves respect, and that even if there was any doubt he should have been given the benefit of the doubt as per the decision of the European Court of Human Rights in RC v Sweden. The appellant also in this ground refers to the evidence from Humanist UK and the Council of Ex-Muslims Britain but that is the new material referred to above that did not exist at the time of the hearing before the Judge.
43. As a matter of simple interpretation, the term 'benefit of the doubt' would normally mean that any ambiguity should be resolved in favour of the person entitled to it. The Upper Tribunal considered this issue in the reported determination of KS (benefit of the doubt) [2014] UKUT 00552(IAC). In that case the Tribunal considered whether in the assessment of credibility the benefit of the doubt as detailed in the UNHCR Handbook in paragraphs 203 and 204 should be a

guiding principle in an asylum claim and whether a tribunal judge would err in law if he failed, when assessing the credibility of a minor who applied for asylum (as in that case), to give that person's evidence a liberal application of the benefit of the doubt.

44. The Tribunal noted that notwithstanding that the benefit of the doubt had often been used in the jurisprudence of the European Court of Human rights, including in RC v Sweden, the benefit of doubt is not a rule of law but instead a notion, which only apply where there is doubt. It was found the notion was nonetheless useful as clarification and should apply even at an early stage of the credibility assessment. The Tribunal also found that the notion should not lower the standard of proof when assessing the existence of a well-founded fear.

45. In the current appeal the Judge did not accept this is a case in which there was any doubt as to the correct outcome, on the facts. So far as the appellant is claiming that the benefit of the doubt notion should have warranted greater weight being given to his evidence then that found to be warranted by the Judge, such that it should have been accepted as determinative, there is no merit in that claim. The Judge gives ample reasons for why it was found the appellant lacked credibility which have not been shown to be outside the range of findings reasonably open to the Judge on the evidence.

46. Ground 7 headed: irrelevant consideration ground (consideration of information from past (before 2019) to assess the threats – that arose in later period, instead of assessing relevant developments in the later period (subsequently June 2019) – that resulted in respect of protection needs). This claim relates to the Judge's consideration of Facebook posts. Whilst the appellant claims those prior to June 2019 were not relevant to the risk he claims that arose thereafter, there was nothing before the Judge to suggest or show that the appellant made such a submission at the hearing. As noted above, the directions required the appellant to provide all the evidence he was seeking to rely upon. He provided posts from his Facebook account. The Judge was required to consider all the evidence with the required degree of anxious scrutiny which included both the pre-and post June 2019 Facebook entries, which he did. The Judge clearly considered that evidence with the required degree of anxious scrutiny. That formed part of the appellant's cumulative evidence. Not only did the Judge consider the pre-June 2019 evidence but also the post June 2019 evidence. The Judge does not make the adverse findings on the basis of the earlier material but rather the material as a whole, including the appellant's own evidence as to why he claims to believe what he does and how he arrived at that position. In light of there being no expressed submission the Judge did not need to consider this material as it was not relevant, the Judge was fully entitled to do so. No material error arises on this ground.

47. At [14] of the appellant's addendum grounds he sets out what he describes as a brief explanation of his personal circumstances before and after the protection application which repeats information already known, and in which he claims to share his thoughts further, but this adds nothing to the allegations made against the Judge.

48. The appellant sets out his requested remedies at [15]. In this he claims he has provided irrefutable evidence but refers again to the new evidence which was not before the Judge.

49. The decision was reserved to enable full consideration to be given to this matter. Having done so I conclude that the appellant has failed to establish legal error material to the decision to dismiss the appeal. I have found above that the Judge considered the evidence with the required degree of anxious scrutiny and has made finding supported by adequate reasons. Whilst the appellant disagrees with the Judge's findings and would prefer a more favourable outcome to enable him to remain in the United Kingdom, that does not establish arguable legal error

per say. In light of my findings and the guidance provided by the Court of Appeal I do not find it has been made out that the Judge's findings are outside the range of those reasonably open to him on the evidence, it has not been made out that the findings are rationally objectionable, or that there is any basis on which the Upper Tribunal can interfere any further in relation to this matter. The appeal is therefore dismissed.

50. The appellant was advised of the possible outcomes of the appeal process and the error of law hearing. It is a matter for him as to whether he wishes to make a fresh claim based upon the material that he now has available to him.

Notice of Decision

51. No material error of law has been made out in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 March 2024