IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-006737 & UI-2022-006738
FtT Nos: PA/00600/2021 & PA/00601/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of October 2024

Before
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between
(1) SW (IRAQ)
(2) SN (IRAQ)
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Sadiq, Solicitor, Adams Solicitors
For the Respondent: Mr A Tan, Senior Presenting Officer

Heard at Manchester on 7 October 2024

ANONYMITY ORDER

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants.

Failure to comply with this Order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellants appeal a decision of First-tier Tribunal Judge Lang ('the Judge') dismissing their international protection and human rights appeals. The decision was sent to the parties on 20 August 2021.

Anonymity Order

2. The Judge did not issue an anonymity order, observing at [52] of her decision that at the case creation stage a general order for anonymity was issued, which was subsequently 'revoked' at a pre-hearing review. No explanation is provided as to why the order was set aside. No express consideration was given by the Judge to relevant First-tier Tribunal guidance concerned with anonymity and appeals in respect of international protection.

3. The Upper Tribunal anonymised the appellants for the purpose of the published hearing list pending consideration of anonymity at the error of law hearing. I note paragraphs 27 to 30 of the Upper Tribunal's Guidance Note 2022 No 2: *Anonymity Orders and Hearings in Private*. I consider that at the present time the appellants' private life rights, as protected article 8 ECHR, outweigh the right of the public to know the identity of the parties to these proceedings, as protected by article 10 ECHR. I reach this conclusion as the Tribunal is required to consider whether the appellants are refugees.

4. The order is confirmed above.

Relevant Facts

5. The appellants are nationals of Iraq. They are father and daughter. SW is aged 55 and SN is aged 27. In 2017, they travelled to the United Kingdom along with SW's wife and son, SN's mother and brother. The two appellants claimed asylum. The respondent refused their applications by decisions dated 4 March 2021.

6. SW asserts that members of ISIS approached him at his shop in Baghdad and sought to recruit him as an informer. They came to his house, and he provided them with information. The family then fled and went to stay with relatives elsewhere in Iraq. Members of ISIS attended SW's shop and assaulted an employee, smashed windows and openly stated that SW was an informer. Others in the community are said to have become aware that SW was an informer, including Shias involved in local politics. SW subsequently received a letter from ISIS threatening to kill him and his family if they did not return home.

First-tier Tribunal Decision

7. The appeal came before the Judge sitting at Manchester as a hybrid hearing on 2 August 2021. The appellants were represented by Mr Sadiq.

8. The Judge did not accept the appellants' evidence as to events in Iraq. Various inconsistencies in evidence were identified at [37] to [42]. Relevant to this appeal, the Judge reasoned at [41] to [42]:

> "41. In terms of the first Appellant's version of his contact with ISIS, between his asylum interview, his witness statement and his oral evidence at the hearing, I find it to be vague, inconsistent and not substantiated by anything at all. All I have as evidence is his version of events. I find this to vary, to lack depth and consistency. I do not find it to be cogent, credible or convincing.
>
> 42. After the alleged issues with ISIS in Baghdad, it is the Appellants contention that they were able to travel widely around Iraq. This is despite the fact that the first Appellant claims to have been under surveillance from ISIS. How could this be? I do not accept they were threatened and at risk to such an extent as the Appellants claim. There is nothing of substance, even in their oral evidence, to substantiate this claim, and nothing other than the evidence of the Appellants at all."

9. The Judge found that SW continued to have a business in Baghdad, at [47], and that the appellants could, through family members, secure their CSIDs which they left in Iraq.

10. As to article 8, the Judge did not accept that SN and her husband were married as claimed, or that they reside together, at [51].

Grounds of Appeal

11. The grounds of appeal are concise and focused. Mr Sadiq confirmed that three grounds of challenge are advanced:

    i. The Judge materially erred by failing to give adequate reasons as to why the appellants' accounts were vague, lacking in depth and not cogent, at §4 of the grounds.

    ii. The Judge materially erred by requiring corroboration, at §5.

    iii. The Judge materially erred by placing reliance upon peripheral matters, at §6 and 7.

12. In respect of ground 3, the appellants observe:

> "7. It should be noted that the appellants did not raise any contention as to feasibility on return due to lack of CSID documentation. That was not part of their case. Both [appellants have] their CSID documentation and that was the matter raised in court [sic] (not that either had never been issued with such). It is thus in any event a matter that is irrelevant to risk on return."

13. Mr Sadiq acknowledged at the hearing that no appeal was advanced in respect of the Judge's article 8 decision.

14. First-tier Tribunal Judge Singer granted permission to appeal on all grounds by a decision dated 19 October 2021 reasoning, *inter alia*:

> "3. It is arguable that the Judge at [41] and [42] fell into error by requiring corroboration of the oral evidence. In ST (Corroboration – Kasolo) Ethiopia [2004] UKIAT 00119 the Tribunal said that it was a misdirection to imply that corroboration was necessary for a positive credibility finding. The fact that corroboration is not required does not mean that a Judge must leave out of account the absence of documentary evidence, which could reasonably be expected – however in this case it is arguable that the Judge should have set out what corroborative material could have reasonably been expected to have been provided, over and above the oral evidence. While this was not the only reason the Judge gave for rejecting the appellants' account, it arguably carries sufficient weight such that the outcome would not have inevitably been the same without it. Any error would therefore be arguably material. The other grounds may also be argued."

15. The respondent did not file a rule 24 response.

Discussion

16. At the outset I detail my gratitude to Mr Sadiq and Mr Tan for their focused and helpful submissions.

Ground 1 – lack of adequate reasoning

17. I detail the challenge as set out in the grounds of appeal, and upon which permission to appeal was granted:

> "4) Paragraph 41 of the determination it states that the appellant's account is vague, lacking in depth and not cogent. No particularised examples are given as to such it is respectfully contended (aside from the singular one at paragraph 37 of the determination). Such findings thus reflect inadequate reasoning it is respectfully contended."

18. The reference to [37] of the decision is to the unchallenged conclusion of the Judge that the appellants were not credible as to how they fled Baghdad.

19. I am satisfied that when read in isolation [41] is erroneous for a lack of adequate reasoning. The reference to 'vary' in respect of SW's evidence is sufficient to identify inconsistency, but save for the reasoning at [37], which is primarily directed to the evidence of SN, and at [38]-[39], concerning SW's oral amendment to his evidence as to where SN resided in the United Kingdom, there is no express identification of instances of inconsistency. However, I am required to consider whether the error of law is material.

20. The Judge's finding at [41] is properly to be read in conjunction with [42]. The core element of the appellants' assertion as to possessing a well-founded fear of persecution in Baghdad is a fear of ISIS, in particular the visit of its members to the family business and the announcement that they were informers having become public knowledge within the local community. The position as advanced in the claim was that ISIS had placed SW under surveillance. The Judge rejected this contention, and such rejection fatally undermines the appellants' international protection case as it underpins the Judge's conclusion that the family were not threatened or at risk. The

appellants did not challenge the reasoning at [42] by means of the grounds of appeal.

21. Mr Sadiq sought no little skill to widen the scope of this ground at the hearing to include a challenge to [42]. He was reminded as to the requirement of this Tribunal to exercise procedural rigour: *R (Talpada) v Secretary of State for the Home Department* [2018] EWCA Civ 841, at [67]. Noting that the challenge to [42] was not expressly advanced in the grounds of appeal, that permission to appeal had not been granted in respect of the now identified challenge, and that it was only advanced upon my observing during the hearing that [41] was properly to be read with [42], I agreed to hear submissions on a *de bene esse* basis.

22. The core of the new complaint was that the Judge did not expressly address SW's evidence on the issue of surveillance in his witness statement, at paras. 7 and 9:

> "7. In relation to paragraph 47 of the refusal, I wish to say that it is true that I do believe that I was under some surveillance. I do not suggest that I was under surveillance all of the time or 24 hours a day. I do not see how in those circumstances ISIS could realistically have known about my plans. I did not tell anyone that I was going to flee."
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> "9. In relation to paragraph 51 of the refusal in terms of my plan to flee and surveillance by ISIS please note my comments above. ISIS did not and could not have known that I was planning to flee. I did not tell anyone."

23. Complaint was also made as to the use of a rhetorical question within the reasoning at [42].

24. I note the application of the most anxious scrutiny in asylum appeals. I observe that permission to appeal was not granted in relation to a challenge to [42] and procedural rigour is properly to be applied. In any event, I consider there to be no merit to the submission advanced by Mr Sadiq.

25. The Judge confirmed that she took all the presented evidence into account when undertaking her consideration, at [13]. There is no cogent case advanced that this confirmation was inaccurate. I therefore proceed on the basis that the Judge considered SW's witness

statement and had his evidence in mind when reaching her conclusions.

26. Though concise in her reasoning, the Judge rejected the contention that SW was of such interest to ISIS that he was under surveillance, but at the same time he could leave Baghdad and travel elsewhere in Iraq to reside with no personal difficulties. Reasons need not be expansive; simply sufficient to adequately explain why a decision has been reached. The use of the rhetorical question in the Judge's reasoning was, in this instance, adopted to identify the lack of credibility as to SW's evidence on this issue. The appellant comes nowhere close to establishing that the Judge's conclusion is irrational.

27. Consequently, any error as to reasoning in [41] is not material. There is no challenge to the reasoning at [42] which fatally undermines the appellants' Refugee Convention appeal. This ground is dismissed.

Ground 2 – requirement for corroboration

28. The appellants contend that the Judge's "search for corroborating evidence" constitutes a material error of law. During his submission Mr Sadiq identified references to "substantiated", at [41], and "substantiate", at [42], as a requirement for corroboration.

29. The domestic appellate process permits reliance upon oral and written evidence, as well as reliance upon expert and objective evidence. A judge can properly consider assertions as to personal history and the well-foundedness of the fear of persecution against a backdrop of objective documentary evidence. As confirmed in *ST (Corroboration – Kasolo) Ethiopia* [2004] UKIAT 00119, the fact that corroboration is not required does not mean that a judge is required to leave out of account the absence of documentary evidence which might reasonably be expected, for example objective country material. An appeal must be determined on the evidence produced, but the weight to be attached to oral evidence may be affected by a failure to produce other evidence in support.

30. The Judge did not expressly rely upon a failure to provide personal documents, for example she did not seek corroboration of the threatening letter sent to SW by ISIS, mentioned in her decision at [16].

31. I conclude that the only reasonable reading of the use of the words "substantiate" and "substantiated" at [41] and [42] is in respect of the evidence presented in general, and not as a self-direction that corroboration was necessary for the appellants to secure a positive credibility finding. This ground is dismissed.

Ground 3 – reliance upon peripheral matters

32. Mr Sadiq properly accepted that this ground alone was not sufficient to secure the setting aside of the Judge's decision if the appellants were unsuccessful in respect of grounds 1 and 2.

33. The Judge's decision would have benefitted from greater focus to its structure, particularly in the "Findings" section. This has resulted in complaint being made as to the relevance of the findings of fact at [38] and [39] of the decision which are not concerned with the asylum claim; the latter addressed at [35] to [37] and again at [41] to [44]. As Mr Sadiq accepted in his oral submissions, [38] and [39] are concerned primarily with SN's article 8 appeal, and whilst it is unfortunate that judicial reasoning interweaves between the asylum and article 8 appeals, such approach cannot properly be said to undermine the Judge's reasoning in respect of the former. This ground is dismissed.

Notice of Decision

34. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

35. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.

36. An anonymity order is made.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 October 2024