



**IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM  
CHAMBER**

Case No: UI-2024-003079

First-tier Tribunal No:  
PA/00040/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 16 December 2024**

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**JM**

**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mrs S Nwachuku, Senior Home Office Presenting Officer

For the Respondent: Ms S Saifolahi, counsel instructed by Elizabeth Rose Solicitors

**Heard at Field House on 7 November 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. This is my decision which I delivered orally at the hearing today.

### **The Appeal**

2. In this case, even though the Secretary of State is the Appellant I shall refer to the Secretary of State as the Respondent and the original Appellant as the Claimant to avoid any confusion.
3. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Mensah which was promulgated on 28 May 2024 whereby she had allowed the Claimant's claim on human rights and humanitarian protection grounds and dismissed it on asylum grounds.
4. The Secretary of State's application for permission to appeal had been refused by the First-tier Tribunal but was granted by Upper Tribunal Judge Keith in a decision dated 30 July 2024. The learned Judge had noted that the Claimant had said he feared harm from Honduran criminal cartels as a result of having accidentally killed a child relative of a Honduran cartel member in a road traffic accident. In the grant of permission, the learned Judge concluded:

"... it is at least arguable that the Judge failed to explain adequately why she accepted the Claimant's account as credible. The Judge made a very detailed assessment of aspects of the account from para [45] onwards, (that) recited the law. However, the Judge's conclusions at paras [71] to [76] on credibility are arguably insufficient. Put simply, the Judge sets out the various factors for and against credibility, arguably without explaining her final conclusion, beyond stating that the positive factors outweighing the negative".

### **The Hearing Before Me**

5. I heard helpful submissions from both parties today. Mrs Nwachuku said that she relied on the Secretary of State's grounds of appeal and she said that despite what was said in the grant of permission, she maintained that here the Judge had erred in her decision as to why the positives outweighed the negatives. She took me to what she said that the 'negatives' were within the decision and it was said that although that was not the strongest ground of appeal, it was still being pursued.
6. It was submitted that the reason why the sister could not travel because of work commitments was mentioned, there were two direct attacks, it was unclear why the heaviest factors had been given weight in the manner described by the Judge. Paragraph 60 of the Judge's decision was referred to. Insofar as paragraph 56 is concerned there were some factors where the Judge gave positive or neutral weight but the Judge identified, for example, how two rival gangs were using the same hitman yet this was a neutral factor. It was said that even though the Judge had listed out

various reasons as to why they were positives because of the weight of the negatives it damaged the Claimant's account and it was unclear how that was able to outweigh the positives. Paragraph 68 was also referred to. It was found that the Claimant's credibility was damaged because he did not claim asylum in France.

7. Ms Saifolahi took me through the Judge's decision. The Secretary of State was arguing that the weight to be attached was wrong. It was submitted that the Judge's decision was detailed and extremely thorough and the overarching submission was that the Respondent's challenges was a challenge to the weight which the Judge had attached as opposed to disclosing any material error of law. Ms Saifolahi took me to various parts of the Judge's decision and she highlighted that in respect of the grant of permission the references there were really the summaries at paragraph 71 onwards rather than the complete reasoning.
8. It was submitted in reply by Mrs Nwachuku that the Secretary of State was not making an argument based on weight. It was not being said that the incorrect weight was applied, it was a Judge who had used term 'positive weight'. For example, positive weight was given to hearsay evidence on as to how the Appellant knew that the stepfather was associated with gangs. It was submitted that it was incumbent upon the Judge to explain why such strong negative factors were outweighed. This was a reasons argument. It was submitted the Judge had failed to provide adequate reasons; it was not an argument in respect of weight.

### **Analysis and Consideration**

9. It is worth summarising the Secretary of State's grounds of appeal, albeit curiously drafted as one ground but there is a paragraph (1) with subheadings from (a) to (f). It said that the Judge's balancing exercise had not been adequately reasoned that there were a plethora of negative credibility findings and that other material points were given neutral weight but that balancing these points against the Claimant's account it could not be said that 'the positives outweighed the 'negatives'. There is also reference to why corroborative evidence was not provided when taking into account the Court of Appeal's appeal in *TK (Burundi) v Secretary of State for the Home Department* [2009] EWCA Civ 40. For example, the Claimant was in touch still with family and where it was said that bullet holes or damage was caused to the mother's home then that could easily have been the subject of some evidence.
10. Having considered the Judge's decision in full, it can be seen that the structure to the decision comprises firstly at paragraphs 1 to 7 a summary of the Claimant's case. Then a subheading of the law that the Judge was to apply including self-directions at paragraphs 8 to 12. The Judge then considered the evidence including the bundle that had been provided to her along with detailed notes of the cross-examination from paragraphs 16 to paragraph 28. Thereafter one sees the details of the evidence of the Claimant's wife with similar detailed notes of the cross-examination and

evidence. The Judge also noted from paragraphs 39 to 48 the submissions on behalf of the Claimant and Respondent. Then one sees from paragraph 49 a subheading of 'Findings' which continues to paragraph 76.

11. In my judgment whilst it is correct that if one only looks at paragraph 71 it appears to be a lack of adequate reasoning, this needs to be considered further. The Judge said at paragraph 71:

“Weighing the positive and the negatives I find overall the weight of the positives is enough to meet the low threshold identified. I find they have established to the lower standard of proof it is reasonably likely they have been targeted as claimed and pursued and threatened. I accept they have done enough on the lower standard to show a connection between the stepfather and a gang, albeit I am not satisfied which gang and how strong the connection, I accept it appeared enough to facilitate multiple players in seeking to harm the family at various times”.

12. It is important to consider why it is that the Judge said what she did at paragraph 71. This can be done by considering the earlier paragraphs starting at paragraph 49 to paragraph 70. There the Judge had considered the various aspects of the evidence and gave her reasoned decision in respect of those aspects of the evidence.

13. For example, the Judge went through the chronology of events and then set out whether she accepted that event or not and referred to whether it was a 'negative' or a 'positive'. Indeed, in some instances she concluded it was a neutral factor.

14. Also, by way of example at paragraph 62 there are references to an attempt on the Claimant's wife's life and references to death threats against the child. The Judge had referred to messages which were received and this was something that was considered in the round.

15. Documentation and other evidence was similarly considered by the Judge on an individual basis.

16. The Judge said at paragraph 69 that she was taking into account the judgment of the Court of Appeal in *MAH (Egypt) v Secretary of State for the Home Department* [2023] EWCA Civ 216 in respect of the correct approach to credibility and corroboration whereby she said specifically:

“Importantly, for this case the Upper Tribunal was criticised for unduly focusing on the fact it had not been provided with evidence showing only political prisoners were held in the named prison when instead it should have been enough that the evidence showed the prison was notorious for holding political prisoners”.

17. There then followed a long citation in respect of the assessment of credibility including that adverse credibility findings must only be made on reasonably drawn inferences and not simply on conjecture or speculation.

18. I remind myself that it has been made clear by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 that the decision of first instance judges be respected on appeal. There must be appropriate judicial restraint against granting permission to appeal of the findings of the specialist tribunal. The Judge saw and heard from the Claimant.
19. In my judgment looking at the decision of the First-tier Tribunal Judge as a whole I conclude that there is no material error of law.
20. In my judgment paragraphs 71 to 76 of the Judge's decision have to be looked at holistically with the whole of the decision in mind, in particular noting paragraphs 49 to 70 which provided reasoning. Although Ms Nwachuku has said all that she can on behalf of the Secretary of State in relation to the grounds of appeal, ultimately in my judgment the weight to be attached to each limb of the evidence was for the Judge.
21. The issue in respect of corroboration was something that the Judge was aware of having cited and then applied the correct law. In respect of the failure to claim asylum earlier in France, the Judge had correctly observed that this had damaged the Claimant's credibility, but that it was not something that was determinative.
22. In my judgment the Judge took the correct approach in terms of the law, applied the law correctly and gave adequate reasons and came to a decision that she was unarguably entitled to. In the circumstances I reject the Secretary of State's grounds of appeal against the decision of First-tier Tribunal.

### **Notice of Decision**

The decision of First-tier Tribunal Judge Mensah does not contain a material error of law.

The decision of First-tier Tribunal Judge Mensah which had allowed the Claimant's appeal on human rights and humanitarian protection grounds therefore stands.

For the avoidance of doubt, First-tier Tribunal Judge Mensah had dismissed the Claimant's asylum claim and that remains dismissed.

**Abid Mahmood**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**7 November 2024**