IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004130

First-tier Tribunal No:
PA/64823/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of December 2024

Before

UPPER TRIBUNAL JUDGE LODATO
DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

AR
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Aziz, Lei Dat & Baig Solicitors
For the Respondent: Dr Ibisi, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 3 December 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

Introduction

1. We have decided to maintain the anonymity order originally made in these proceedings by the First-tier Tribunal because the underlying claim involves international protection issues in that the appellant claims to fear persecution or serious harm on return to Iraq. In reaching this decision, we are mindful of the fundamental principle of open justice, but we are satisfied, taking the appellant's case at its highest for these purposes, that the potential grave risks outweigh the rights of the public to know of his identity.

2. The appellant appeals with permission against the decision, dated 29 July 2024, of First-tier Tribunal Judge Ficklin ('the judge') to dismiss the appeal on international protection and human rights grounds.

Background

3. The broad factual background and immigration history is not in dispute between the parties. In brief summary, the appellant's case is that he is at risk of honour-based violence from the family of a woman he had a relationship with before she was killed by her father.

Appeal to the First-tier Tribunal

4. The appellant appealed against the refusal of his claim. The appeal was heard by the judge on 19 July 2024 before he dismissed the appeal on all grounds in a decision promulgated on 29 July 2024.

5. After setting out the legal principles to be applied in the appeal, at [5], the judge summarised the evidence from [7] of the decision. At paragraph [8], the judge noted that the respondent had challenged the appellant's credibility on the basis that he had not claimed asylum in any of the safe European countries through which he travelled en route to the UK. The judge asserted at the conclusion of this paragraph that he had taken this into account in the credibility assessment. The core reasoning for dismissing the appeal is to be found between [14] and [18] of the decision. The following key matters emerge from these parts of the decision:

    - It was not accepted that photographs of video calls said to have been between the appellant and his partner amounted to reliable evidence in support of the relationship. It was noted, however, that the female shown in the image bore a resemblance to a woman in additional photographs adduced by the appellant of her and the man said to be her father. [14]
    - The judge rejected as inconsistent and implausible the proposition that he had sex with his partner two weeks before she was murdered and yet she knew that she was pregnant. [15]
    - There was nothing to support the appellant's narrative of his partner's murder. A broad finding of fact was then reached that the appellant provided inconsistent evidence about the core of his account and that his claim was not reasonably likely to be true. [16]
    - The judge sought to briefly summarise the country guidance decision of SMO & KSP (Civil status documentation; article 15) Iraq

CG [2022] UKUT 00110 (IAC) and noted that civil documentation would be required to internally relocate [17]. He went on to find that the appellant had not established that he had lost contact with his family nor that he did not have access to such documentation and found that he would not encounter conditions contrary to Article 3 of the ECHR [18].

Appeal to the Upper Tribunal

6. The appellant applied for permission to appeal in reliance on the following grounds:

   i. Ground 1 – the judge failed to provide lawfully adequate reasons to explain why he had rejected the appellant's factual case.

   ii. Ground 2 - the judge failed to provide lawfully adequate reasons to explain why the appellant had not established that he would encounter conditions contrary to Article 3 of the ECHR on account of not having access to the necessary civil documentation.

7. In a decision dated 3 September 2024, First-tier Tribunal Judge Gumsley granted permission for both grounds to be argued. The following observations were made in granting permission:

> *Whilst reasons need not be lengthy or detailed and determinations can be short, I am satisfied that in this case it is arguable that the assessment of the evidence as a whole and the reasons provided by the FtT Judge for the findings made where inadequate. I am also satisfied that it is arguable that the FtT Judge's assessment of feasibility of return was inadequate and did not properly take into account relevant caselaw (e.g. SMO).*

8. At the error of law hearing, Dr Ibisi for the respondent conceded that the decision involved an error of law. It was common ground between the parties that the appropriate disposal was for the matter to be remitted to the First-tier Tribunal to be decided *de novo* with no findings of fact preserved.

Discussion

9. The touchstone for considering adequacy of reasoning as an error of law remains R (Iran) & Others v SSHD [2005] EWCA Civ 982. At [13]-[14] of the judgment of Brook LJ, it was emphasised that reasons must be sufficiently detailed to show the principles on which a decision was made and why the ultimate decision was reached. Reasons need not be elaborate nor is it necessary to address each and every matter which might have had a bearing on the overall decision if those which were material to the reasoning have been articulated. In DPP Law Ltd v Paul Greenberg [2021] EWCA Civ 672, the Court of Appeal, in the context of employment proceedings, considered adequacy of reasoning as an error of law. Popplewell LJ, stressed, at [57], the need to consider judicial reasons fairly and as a whole without being hypercritical. Restraint is required to read reasons benevolently. "Simple, clear and concise" reasoning was to be encouraged to enable to parties to broadly understand why they had won or lost. Further, it should not be assumed that an element of the evidence which was not expressly discussed was thereby left out of account. While these observations were made in the context of employment proceedings, they are of relevance in the immigration and asylum sphere because this is also a jurisdiction in which decisions are made by expert tribunals attenuated by the need to give appeals anxious scrutiny.

10. The Upper Tribunal is not bound by the respondent's concession that the decision involved a material error of law. However, the fact that there is no dispute between the parties necessarily functions as an important factor in the assessment of whether the judge's reasons were sufficiently clear to enable those directly affected by the decision to understand why the appeal was resolved in the way it was. We are satisfied that the concession was properly made and indicated at the hearing that we would allow the appeal and would remit the matter to the First-tier Tribunal to be decided *de novo* without preserving any findings of fact. These are our reasons for doing so.

11. Paragraph [8] of the decision is emblematic of a decision where conclusions were reached without adequately explaining why those decisions were reached. Here, the judge noted that the failure to seek protection in other safe European countries had an impact on the assessment of the appellant's credibility. However, it is impossible to glean from this brief paragraph why this statutory consideration was held against the appellant, or indeed if it was held against him at all. At the risk of stating the obvious, taking a factor into account, as was stated at [8], does not inform the reader to what extent it weighed on the judge or even if it weighed against the appellant's credibility.

12. The theme continued at [14] where it was asserted that the photographs of an apparent video call between the claimed couple was not reliable. We found it impossible to understand why this photographic evidence was not found to be reliable particularly given the observation that it appeared to show a person who resembled the woman depicted in other images with the man said to have been her father.

13. While we were able to understand the concerns expressed by the judge in relation to the claimed timeline and the improbable sequence of a pregnancy being discovered a mere two weeks after sexual intercourse, this was only one aspect of the fact-finding process. Reading the decision benevolently, and not hypercritically, we remain unable to piece together the judge's overall reasoning for dismissing the appeal. There were various features of the evidence which appeared to weigh on the judge, but we could not discern why, and to what extent, these factors counted against the appellant's credibility.

14. For these reasons, we are minded to accept the respondent's concession that the decision involved the making of an error of law.

Disposal

15. The parties spoke as one that the appropriate course was to remit the matter to the First-tier Tribunal to decide the appeal afresh because a full fact-finding process was necessary upon setting aside the entirety of the judge's decision. We agree and note that the reasoning which supported the decision to reject the appellant's Article 3 documentation case was, at least in part, based on the broad adverse credibility findings which we have found were not adequately reasoned in law. In these circumstances, it would be unsafe to preserve any findings of fact.

Notice of Decision

The decision of the judge involved a material error of law. We allow the appeal and set aside the decision. The appeal is to be remitted to the First-tier Tribunal to be decided *de novo* by a judge other than Judge Ficklin.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber
9 December 2024