Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08479/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 January 2020	**On 5 February 2020**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

OQ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T. Hodson, Counsel, Elder Rahimi Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iraq, born on 5 May 1984. He appeals against a decision of First-tier Tribunal Judge Lloyd-Lawrie promulgated on 1 November 2019 dismissing his appeal against the respondent's decision dated 22 August 2019 to refuse his asylum and humanitarian protection claim.

Factual background

2. The appellant arrived in the United Kingdom by plane on 24 February 2019, claiming asylum the same day. He is a Sunni Muslim of Arab ethnicity from the city of Mosul.

3. The basis of the appellant's claim relates to his occupation as a baker, working with his father, at their bakery in Mosul. He claims that the bakery was a major supplier of bread to a nearby US and anti-ISIS military base. Although ISIS had largely been defeated in Mosul at the time, he claims that a sleeper cell approached him and his father in February 2019 and asked them to poison the bread that they supplied to the military base. The judge below found there were a number of different accounts of what happened next. I will record the appellant's central account as follows. Having initially purported to "go along" with the demand, the appellant and his father later refused to do so. A struggle ensued, the appellant was shot but not "hurt", but his father was kidnapped by ISIS. The appellant attempted to report the incident to the police, in order to secure their protection, but they laughed at him and refused to assist. He claims they did so because the police in Mosul are mainly Shia Muslims affiliated with al-Hashd al-Shaabi. Arrangements were made for him to flee the country in order to seek protection here.

4. The judge dismissed the appellant's appeal on the basis that the threat purportedly faced by the appellant originated from non-state actors and was therefore outside the scope of the Refugee Convention. Secondly, the judge did not find the account provided by the appellant to be credible. She considered the appellant had been internally inconsistent and had been unable to state with the specificity one would expect of a person involved in such an incident key features that took place, with the expected consistency.

Permission to appeal

5. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on the basis that the judge arguably erred by finding that the claimed threat from ISIS was not within the scope of the Refugee Convention, and that the judge did not sufficiently engage in the appellant's "actual evidence" concerning key features of his claim.

6. The respondent did not submit a rule 24 response. Mr Hodson relied on his detailed and clear grounds of appeal.

Discussion

ISIS threat – Convention ground?

7. The judge's analysis of the appellant's claim under the Refugee Convention may be dealt with swiftly. The judge was, of course, correct to characterise the threat from ISIS as being from a non-state actor, and thus

ordinarily outside the ambit of the Convention. However, the basis upon which the appellant claimed he was unable to secure effective state protection from the authorities in response was on account of his Sunni ethnicity, in the face of the majority Shia-led law enforcement authorities and the Shia anti-ISIS militia who worked to counter ISIS occupation of Iraq (see the respondent's *Country Policy and Information Note – Iraq: Sunni (Arab) Muslims*, version 2.0 June 2017 at, for example, [6.1.4]). Accordingly, as Judge Grant-Hutchison identified when granting permission to appeal, there is a potential nexus to the Refugee Convention on religion and imputed political grounds. The nature of the nexus depends on the findings of fact reached by the judge, but, in principle, the appellant's narrative is capable of falling within the Refugee Convention.

8. The judge made an error of law on this point. The non-availability of state protection on religious, ethnic and political opinion grounds is, in principle, able to engage the Convention. As was common ground at the hearing, the materiality of this error depends on the credibility findings reached by the judge. If those findings were sound, the erroneous approach of the judge to the Refugee Convention issue falls away. The materiality of the judge's error on this point stands or falls with her approach to the credibility of the appellant's account.

Sufficiency of reasons

9. Turning to the appellant's submissions concerning the judge's primary findings of fact, Mr Hodson characterises his complaint as a sufficiency of reasons challenge. He stressed that he did not seek to challenge the decision on rationality grounds, accepting that it would, in principle, be possible for an adequately reasoned decision legitimately to dismiss this appeal. As Mr Lindsay submits, a facet of a sufficiency of reasons challenge is that the judge reached conclusions which, in light of the (allegedly insufficient) reasons given, are irrational, as the basis upon which the decision was reached will not be clear from the reasoning given. Accordingly, where a judge has not given sufficient reasons, the reader of the decision will be presented with findings and conclusions which bear no or little relationship to the analysis (if any) conducted by the judge, and which are, therefore, unsupported by any rational explanation. The rationality of the link between the judge's conclusions and the reasons given for the judge is, therefore, a primary consideration.

10. The duty to give reasons is well established. There is authority specific to the issue from this Tribunal: see, for example, MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC). There is also higher authority from elsewhere covering the point. In Flannery v Halifax Estate Agencies Ltd [1999] EWCA Civ 811, [2000] 1 WLR 377 at 381 Henry LJ set out the underlying rationale behind the duty to give reasons:

> "…a requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on the evidence than if it is not…"

11. In English v Emery Reimbold & Strick Ltd. (Practice Note) [2002] EWCA Civ 605, the Court of Appeal surveyed the domestic and Strasbourg authorities on the issue. I will highlight just two extracts from the judgment. Lord Phillips MR (as he then was) held:

> "19. [The duty to give reasons] does not mean that every factor which weighed with the Judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the Judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the Judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, in may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

Lord Phillips made two concluding observations about the duty to give reasons, in light of his discussion of the principle, and its application to the individual cases that were before the Court. The observations were as follows:

> "118. The first is that, while it is perfectly acceptable for reasons to be set out briefly in a judgment, it is the duty of the Judge to produce a judgment that gives a clear explanation for his or her order. The second is that an unsuccessful party should not seek to upset a judgment on the ground of inadequacy of reasons unless, despite the advantage of considering the judgment with knowledge of the evidence given and submissions made at the trial, that party is unable to understand why it is that the Judge has reached an adverse decision."

12. These principles were endorsed by the Court of Appeal recently in Simetra Global Assets Limited v Ikon Finance Ltd & Others [2019] EWCA Civ 141 at, for example [46]. Lord Justice Males observed that:

> "it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered."

13. Against that background, I turn to the central reasoning of the judge's decision. The judge explained (see [27]) that she had considered all the evidence in the case. She noted at [33] that it was necessary to consider the appellant's credibility from an internal and external perspective, pursuant to the well-known authorities on credibility.

14. The judge summarised the appellant's case in more depth at [21]. She noted that there were different versions of the account that he had provided. The respondent had made similar observations: see [11] of the refusal decision dated 22 August 2019. The judge said:

> "[The appellant] claimed that he and his father had a bakery and that they made and delivered bread to a US airbase. He claims that ISIS came and told them I had to poison the bread and that **either, his father outright**

> **refused, pretended to go along with it and poison the bread or poison the bread and was then kidnapped by ISIS. He claims that he either he was shot out, shot in the elbow always just grazed by the bullet but did get away**. He claims that after ISIS came to the bakery for the first time, they went to the local police station to ask for help. He claims that they said that as they were Sunni, they would not help them, he said that they were from the group Hash d Shabbi. He said that he fears both them and ISIS." (Emphasis added)

15. In setting matters out in this way, the judge was providing the context for the analysis she was subsequently to conduct. The appellant had advanced a number of different theories; it would be for the judge to reach findings of fact in light of that approach.

16. The judge proceeded to set out the background evidence concerning in-country conditions in Iraq from the relevant country guidance authorities then in force, before reaching her operative findings concerning the central claim of the appellant. At [32], the judge cited what she considered to be different versions of the account given by the appellant on a number of different occasions, having introduced those differing theories at [21]. She opened [32] in these terms:

> "I find that it [sic] wholly incredible that the appellant would be confused as to whether he and his father refused to poison the bread, actually poisoned the bread or pretended to poison the bread. The appellant has been inconsistent on this issue.

17. Mr Hodson submits that the appellant had not given as many conflicting accounts as the judge found him to have given. The judge had mis-read a crucial sentence in the appellant's screening interview, which she should have read as though it featured the words "do not", he submits. The missing words must have been omitted through a combination of interpreter difficulties and human error by the transcriber, contends Mr Hodson.

18. At paragraph 4.1 of his screening interview, the appellant was asked to explain, briefly, the reasons why he could not return to Iraq. The appellant is recorded as having said the following:

> "Because of ISIS – every morning we provided bread to USA army soldiers in Mosul – ISIS told us to put poison in the bread to kill the USA soldiers this happened in QADA QIARA. **Because my dad listen to ISIS and poison the bread they took him away** – when this happened I entered the bakery – ISIS saw – I was shot at in the right arm elbow but got away." (Emphasis added)

Mr Hodson submits that the words in the emboldened sentence, above, should have been read by the judge as though they featured the following words in square brackets:

> "Because my dad **[did not]** listen to ISIS and poison the bread they took him away"

19. In Mr Hodson's submission, the only coherent construction that may be given to the sentence above involves the implied insertion of the words "did not". The sentence does not make sense otherwise, he submits. Why, he questions, would ISIS take the appellant's father away if he did listen to them and poison the bread as requested? The appellant would not have said in his screening interview, submits Mr Hodson, that ISIS took his father away when they asked him to do what they wanted. They would only have taken had he not done as requested. It simply did not make sense, he submitted. Pursuant to this submission, any analysis by the judge which fails to read the sentence in that way is, by definition, flawed and any reasons purportedly given by the judge will be inadequate.

20. The difficulty with this submission is that, while there is some superficial force in the contention that, on one reading, it may seem odd for the appellant's father to be kidnapped for doing what he was ordered to do by ISIS, the judge had not considered the contents of the appellant's screening interview in isolation. Her concerns about what she perceived to be the inconsistencies in the appellant's account were not limited to that single issue. In addition, the judge was live to the issue of the alleged inaccurate record of the appellant's answer to that question, and dealt with it, albeit in brief terms.

21. Turning to the judge's treatment of the poison inconsistencies in the appellant's account as a whole, the judge noted that the appellant said in his substantive asylum interview that his father had *refused* to poison the bread. That must have been a reference to question 63, where the appellant was asked, "did your father refuse to put poison in the bread?", and the appellant replied, "yes he refused…" The judge then noted in response to question 64 ("When he refused what did they do?") The appellant answered, "on the same day the 9th February we *pretended* to put the poison inside the dough…"

22. Accordingly, in the space of answering two questions, the appellant said that his father both *refused* to poison the dough, and went along with the suggestion, *pretending* to poison it. Plainly, these two answers are inconsistent. Even putting to one side the answer that the appellant was recorded as having given at paragraph 4.1 of his screening interview, there is a difference between the appellant's answers to these two questions: pretending to do something implies an act of deceit, a positive act designed to give a misleading impression of reality. By contrast, refusing to do something implies the presence of an objection to the requested or demanded task. It was open to the judge to find that the appellant's father could not have both refused to plant poison in the bread, on the one hand, while simultaneously pretending to do so on the other.

23. At question 74, the appellant was asked to explain why he said in his screening interview that his father had poisoned the bread. In his answer to this question, the appellant introduced a new strand to his narrative, namely that there had been two visits from ISIS; he claimed that they

visited the day before his father was kidnapped, and on that occasion initially asked his father to plant poison in the bread. It was the next day that they returned to enforce the order and, when the appellant's father refused to poison the bread, it was then that he was kidnapped, he said. The judge recorded the appellant's cross-examination on this issue at the hearing. Mr Hodson has not suggested that the judge's record of this aspect of the proceedings was inaccurate, so I proceed on the basis that it accurately records what took place. The appellant was asked to clarify why he had stated previously that his father had pretended to poison the bread, rather than having refused to do so. The appellant "said he did not say that", recorded the judge. The question was put to him again and:

> "he said that the day they came the [sic] pretended to 'go along' with the idea to quieten ISIS down. He said that after that his father refused."

24. The appellant did not say in response to question 74 that the answer he gave to question 4.1 in the screening interview had been inaccurately recorded. He had every opportunity to do so at that stage. He had already been asked – see question 10 of the substantive asylum interview – whether his screening interview was accurate, and he said that it was.

25. Accordingly, in relation to the alleged missing "did not" from the record of the appellant's answer to question 4.1 in his screening interview, it is plain that the judge was live to the issue, and the appellant had been given the opportunity to clarify his seemingly self-contradictory answer in his substantive asylum interview, and did not do so. The judge noted later in [32] that the appellant had sought to clarify what he said in his screening interview in his witness statement prepared for the First-tier Tribunal proceedings: "in the appellant's witness statement, he clarified at paragraph 10 that he had been hit on the elbow and said that he had been misquoted in the screening interview as his father would not have been taken away if he had poison the bread."

26. Mr Hodson sought to imply further contextual clarifications into the appellant's account. He submits that the judge should have taken judicial notice that a bakery in Iraq would not have been baking bread in the evening and factored that into her assessment of the appellant's account of being visited by ISIS the night before his father was kidnapped. The grounds of appeal are expressed as follows:

> "[11] As for the allegation that the appellant said that the father (or he and his father) 'pretended' to put the poison inside the dough, this derives from one recorded answer in the appellant's main asylum interview (Q 64). This answer is part of an explanation as to what happened when members of ISIS came to the bakery at 5 PM on 9 February 2019 and threatened the appellant's father, telling him to poison the bread which was to be taken to the [airbase]. The sentence in issue, in the asylum interview record, is as follows:
>
> > "on the same day the 9th February we pretended to put poison inside the dough" (Q64 of AIR).

> [12] When interpreting this statement, again a *modicum* (but only a *modicum*) of common sense is required. Thus, it is common knowledge – and is in any event an integral part of the appellant's account – that bread is baked first thing in the morning to be delivered to recipients, and otherwise made available to customers, in the morning. It is not baked at 5pm in the evening. Therefore, the appellant cannot possibly have been saying that at 5pm on the evening of 9th February 2019 he and his father pretended to put poison inside the 'dough' – there would not have been any dough at that time to put the poison into!" (emphasis original)

27. Mr Hodson, who drafted the grounds of appeal, appears to be attempting to give evidence on the likely shift patterns of a bakery in Mosul allegedly supplying bread to a US military base. There was simply no evidence before the judge that has been brought to my attention which would admit of only one conclusion concerning the alleged baking patterns of the appellant's father's bakery. It is not possible to say that a "*modicum*" of common sense demands an alternative answer. It is also not clear why Mr Hodson structured his submissions in this way, given he was at pains to stress his was a sufficiency of reasons challenge, rather than a challenge on the basis of rationality. Either way, the judge did not fall into error on account of her treatment of this issue. It was a matter that was not in evidence before the judge and something that is not within the gift of Mr Hodson to speculate about, still less contend that the judge fell into error for failing to adopt his assumptions about how a baker in Iraq would organise his business. In any event, this submission takes the appellant's case no further, as it is not clear how the appellant's father could have *pretended* to poison the bread during the initial visit of ISIS if, as Mr Hodson contends, their initial visit was once all the bread for the day would have been baked and no baking was taking place.

28. The remainder of Mr Hodson's submissions focused on the judge's treatment of the account the appellant gave of fleeing ISIS when they allegedly returned to kidnap his father. The judge noted at [32] that on this issue also the appellant had given conflicting accounts. The central issue is whether the appellant was shot in his elbow. He is recorded in his screening interview as having demonstrated the presence of a scar on his elbow, although no medical evidence has been provided. In his substantive asylum interview, again at question 64, the appellant said that when ISIS attempted to apprehend him, he managed to get in his car:

> "put the engine on and swerved to redirect myself. They fired at me a few time [sic] but **luckily nothing hurt me**" (emphasis added)

29. The judge's analysis of this aspect of the appellant's case is at [33]. Recalling that she had already noted at [21] that the appellant had given conflicting accounts as to whether he had been shot, grazed by a bullet, or just shot at without being hit, she said:

> "I also find that a person would know if they got shot or did not get shocked and would not claim to have got away without being hit if a bullet him [sic]

> them on the elbow in a way that left a scar, as the appellant had claimed at a different point of the asylum process."

Again, Mr Hodson relies on implying into the appellant's account words that did not feature in his original narrative in order to make good his submission. At [17] of the grounds of appeal, Mr Hodson writes:

> "The fact that a reflected bullet (a ricochet or a fragment of metal) grazed his right elbow leaving a scar is consistent with the appellant saying that he was not **(seriously)** hurt when shot at. Scarring can result from relatively a minor wound if not treated, for instance by being stitched." (Emphasis added)

30. Putting aside for one moment the fact that Mr Hodson again appears to be straying into evidential territory with his submissions, in order for the appellant's account to be reconciled as internally consistent, it is necessary – as the grounds of appeal recognise – to imply the insertion of the word "seriously", as emboldened above. The appellant had claimed, simultaneously, that he had been shot, and not hurt. It was not irrational for the judge to conclude that this aspect of the appellant's case was internally inconsistent. The appellant had provided conflicting accounts of what had happened, claiming essentially that he had both been hit and not hit. I accept that it may have been open to the judge to imply the word "seriously" into the account provided by the appellant, but it was by no means mandatory for her to do so. Again, although Mr Hodson attempted to characterise his submissions as sufficiency of reasons submissions, the substance of the grounds of appeal relates to the rationality or otherwise of the judge's decisions.

Conclusion

31. In my judgment, the judge gave sufficient reasons for rejecting the appellant's case. The appellant had given different answers to questions about the same issue on a number of different occasions. He was specifically invited to address the apparent inconsistency between question 4.1 of his screening interview and the narrative he provided in his substantive interview, and he did not say that it had been mis-recorded, instead providing a yet further different version of his account. It was not until the appellant prepared his witness statement for the proceedings before the First-tier Tribunal that he claimed his answer to question 4.1 of the screening interview had been mis-recorded. It was open to the judge on the evidence to ascribe significance to the inconsistencies between the different answers the appellant gave to the same questions about the same issues.

32. As the Court of Appeal noted in English v Emery Reimbold at [118], the unsuccessful party needs to be able to understand why a judge reached an adverse decision. The judge provided sufficient reasons. It was clear why the appellant's appeal was dismissed. The appellant had provided inconsistent answers on a number of issues that were central to the credibility of his narrative. The judge set out the different accounts the

appellant had provided and explained why she did not accept any of what the appellant had said. She identified the central reasoning upon which she relied, providing reasons for doing so that were within the range of findings properly open to her. The judge demonstrated that she took care with the evidence and that the evidence as a whole had been properly considered.

33. Mr Hodson's attempts to characterise the judge's reasoning as insufficient rely on ignoring her treatment of key aspects of the evidence, assuming common knowledge of the likely practices of an Iraqi baker and implying words into the appellant's account that were not there. In reality, the grounds of appeal are not sufficiency of reason-based or even rationality-based objections. Properly characterised, they are disagreements of fact and weight. In the absence of irrationality, no appeal lies to this Tribunal against such findings.

34. In light of the above findings, the judge's error in relation to the Refugee Convention nexus was not material.

35. This appeal is dismissed.

36. In light of the contents of this decision, I make a direction for anonymity.

Notice of Decision

This appeal is dismissed.

The decision of Judge Lloyd-Lawrie did not involve the making of an error of law such that it must be set aside.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Stephen H Smith* Date 3 February 2020

Upper Tribunal Judge Stephen Smith