IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002137
First-tier Tribunal No:
PA/52122/2022
IA/05598/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 July 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

ZM (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms P Yong, Counsel
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 11 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, and following the anonymity order made on 5 July 2023, the Appellant is further 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

Background

1. This matter concerns an appeal against the Respondent's decision letter of 18 May 2022, refusing the Appellant's asylum and protection claim initially made on 6 March 2019.

2. The Appellant's claim had been made on the basis that he was a member of a particular social group, being someone who was a potential victim of honour crime, having been in a clandestine relationship with someone in Iraq, whose family later found out and threatened to kill him.

3. The Respondent refused the Appellant's claim on the basis that his account was both internally inconsistent and implausible, and externally inconsistent with country information.

4. The Appellant appealed the refusal decision on 6 June 2022.

5. His appeal was heard by First-tier Tribunal Judge Sweet ("the Judge") at Hatton Cross on 10 May 2023, who later dismissed it in its entirety in a decision promulgated on 12 May 2023.

6. The Appellant applied for permission to appeal to this Tribunal on three grounds, namely that:

   (1) the Judge erred in that he failed to provide any or adequate reasoning, and failed to make findings of fact;

   (2) the Judge erred in that he failed to consider relevant evidence, in particular the evidence of Dr Ashleigh concerning the Appellant's mental health; and

   (3) the Judge failed to adequately and/or properly consider all the relevant evidence in respect of the Appellant's claim under paragraph 276ADE of the Immigration Rules and Article 8 ECHR.

7. Permission to appeal was granted by First-tier Tribunal Judge Athwal on 16 June 2023. Although permission refers only to the case being arguable as regards Dr Ashleigh's report, it does not restrict the grounds of appeal so that all are arguable.

The Hearing

8. The hearing came before us on 11 July 2023.

9. A preliminary discussion took place as to the Respondent's intention, or otherwise, to defend the Judge's decision.

10. Ms Isherwood candidly accepted the decision of the Judge was infected by a material error of law as described in ground 1, and must be set aside, although she said she would have maintained opposition to the remaining grounds.

11. Having reviewed the papers and discussed the matter in detail, we say for the sake of completeness that we would have found all grounds to have been made out, for the following reasons.

12. No findings are made by the Judge in relation to the Appellant's mental health and what, if any, impact this could have had on his account and accuracy/credibility of his evidence as a whole.

13. As per paragraph 24 of the well-known case of Mibanga [2005] EWCA Civ 367:

> "It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence. Mr Tam, on behalf of the Secretary of State, argues that decisions as to the credibility of an account are to be taken by the judicial fact-finder and that, in their reports, experts, whether in relation to medical matters or in relation to in-country circumstances, cannot usurp the fact-finder's function in assessing credibility. I agree. What, however, they can offer, is a factual context in which it may be necessary for the fact-finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them. What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence."

14. And further, as per paragraph 31:

> "…if an expert's view is to be rejected in the conclusive terms adopted by the adjudicator in this case, then proper procedure requires that at least some explanation is given of the terms and reasons for that rejection".

15. The Judge was clearly aware of the medical evidence including the letters from Dr Ashleigh, as these are mentioned in [4] and [6] of his decision. Dr Ashleigh, in her letter of 21 October 2020, found that there were indications of the Appellant having "severe clinical issues surrounding his problems and issues, physical functioning, and a generally low perception of his own subjective wellbeing" and "extreme anxiety or panic and severe symptoms of depression" requiring an urgent referral to a GP for medication and perhaps also talking therapy. Dr Ashleigh's letter of 2 March 2023 later opines that the Appellant's health conditions had become more chronic, scoring 10% higher than when she last saw him, and that he was "continually suffering from panic attacks, extreme and severe anxiety and depression". She said his symptoms of extreme depression and anxiety appeared to have affected his cognitive ability and "he is finding it more difficult to process information and has difficulty in retention and recall, both of which can be influenced by extreme anxiety".

16. The Judge therefore assesses the evidence seemingly without having had proper regard to the medical evidence before him, or if he did have such regard, it is not clear what impact he found this to have had on the Appellant's evidence.

17. In addition, although at [9] the Judge says he takes into account the Appellant's young age, it is not clear how he has taken it into account in the findings later made. For example, at [10], the Judge finds it extremely unlikely that the Appellant and his girlfriend would have had intimate relations in the park, but he

does not state his reasons for this finding. He does not state whether he has considered the Appellant's explanation in both his witness statement and interview record as to why the Appellant may have taken the risks he did, and how his age could have impacted on his ability to assess or appreciate those risks.

18. These are material errors, given the Judge's findings concerning the Appellant's relationship and events in Iraq went to the core of his account. The Judge should have assessed the medical evidence and had regard to the Appellant's age before making findings as to the impact, if any, on his ability to provide credible coherent evidence, before going on to assess the evidence against that background.

19. We also find the decision as a whole lacks sufficient reasoning. It is well-established that reasons for a decision must be given. As per the headnote of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), heard by the then President of this Chamber as a member of the panel:

> "(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.
>
> (2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons."

20. At several points in his decision, the Judge finds the Appellant's account to be lacking in credibility for reasons which are unclear or appear to be based on the Judge's own perception of what would or would not be reasonable, for example:

(a) At [12] the Judge states "I find this account wholly lacking credibility because an agent would have informed him of his ability to claim asylum in any of those safe countries, and not wait until arriving in the UK". It is unclear on what basis the Judge knows what any particular agent would or would not have done in the circumstances.

(b) Also at [12] the Judge states "He also gave a fanciful but unexplained account of expecting to see his mother and sister in Bulgaria, who came to join him". It is unclear why the Judge considered this fanciful against the background where the Appellant had provided some explanation for this expectation in the interview record. The Judge does not appear to have considered this explanation at all, stating in [12] that "He also did not explain why he was expecting his mother and sister to join him in Bulgaria".

(c) At [13], the Judge says that he does not accept that the Appellant was not able to maintain contact with his family members or with [HA], referring only to the Appellant's account of having lost his phone and forgotten telephone numbers. The Judge does not appear to have considered the Appellant's account that: his mother and sister had both left Iraq for Turkey themselves; the Appellant was then prevented by the agent from speaking to them whilst in Turkey; and his explanation that [HA] had "handed him over to the agent".

(d) At [15], the Judge says "His exit from Iraq was clearly to enter the UK for other reasons" without explaining why he considered this to be so. Even if the Judge reached this conclusion due to the Appellant lacking credibility in his account of events in Iraq, the Judge does not appear to have considered the Appellant's explanations concerning the actions of the agent, or the very detailed account in his witness statement of what happened on his journey through several countries, some of which he stayed in for some time.

(e) It is also unclear why the Judge so entirely rejects the Appellant's account, having found at [11] that "There is some support for the impact of blood feuds in the CPIN report of February 2020 and honour-related conflicts in the COI report (Landinfo) of November 2018", and that "Two of the photographs show them [the Appellant and his girlfriend] together in the park" at [10]. The Judge does not state what weight is attached to the photographic evidence, nor the videos of the couple in the park mentioned at [7], neither of which appear to have been challenged in any meaningful way by the Respondent.

21. There are further errors in the Judge undertaking no assessment of private life under paragraph 276ADE at all, and not conducting a proportionality exercise in relation to Article 8 ECHR. The Judge's conclusion in [16], that there can be no successful claim in respect of any private life in the UK because the Appellant's account is wholly lacking credibility, is flawed. Even if the findings that the Appellant lacked credibility as regards events in Iraq were sound, that does not mean that a private life in the UK could not have been formed. This was a matter for assessment in its own right as against the applicable immigration rules. The Judge should have made findings as to whether or not those rules were met, which would have been a factor to be considered in an overall proportionality assessment for the purposes of article 8.

22. Although not relevant to the substance of the appeal we say also that the Judge should have made an anonymity direction, notwithstanding his dismissal of the appeal, in line with the Presidential Guidance Note No 2 of 2022: Anonymity Orders and Directions regarding the use of documents and information in the First-tier Tribunal (Immigration and Asylum Chamber). Upper Tribunal Judge O'Callaghan made such an order on 5 July 2023 prior to the hearing of this appeal to address this failure, and we have continued it below.

23. Overall, we find the errors found infect the decision as a whole such that it cannot stand.

24. Both parties agreed that the appropriate course of action was for the matter to be remitted to the First-tier Tribunal for hearing afresh.

Conclusion

25. We are satisfied the decision of the First-tier Tribunal did involve the making of errors of law.

26. Given that the material errors identified fatally undermine the findings of fact as a whole, we set aside the decision of the Judge and preserve no findings.

27. In the light of the need for extensive judicial fact-finding, we are satisfied that the appropriate course of action is to remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than Judge Sweet.

Notice of Decision

28. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.

29. We remit the appeal to the First-tier Tribunal for a fresh decision on all issues. No findings of fact are preserved.

30. Given the claim concerns issues of protection, the anonymity order made on 5 July 2023 is continued.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 July 2023