IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006709

First-tier Tribunal No: PA/53769/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 20th of December 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

MSMA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Schwenk of Counsel instructed by Obeid Solicitors (by CVP)
For the Respondent: Ms S Nwachuku, Senior Home Office Presenting Officer (by CVP)

Heard at Field House on 4 September 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. This is an appeal against a decision of First Tier Tribunal Judge Malik dated 4 July 2023 dismissing the Appellant's appeal against a decision of the Respondent dated 20 July 2021 refusing a protection claim.

2. The Appellant is a citizen of Jordan. His personal details, and the background to his appeal, are set out in the documents on file and are known to the parties. In keeping with the anonymity direction that has previously been made in these proceedings (and is hereby continued), I do not rehearse the personal details and full background here.

3. Suffice for the moment to observe the following features of the Appellant's case:

   (i) The Appellant entered the UK on 3 April 2011 as a business visitor. His leave expired on 14 September 2011 without any attempt made to extend his leave. The Appellant became an overstayer.

   (ii) On 16 May 2016 the Appellant applied for leave to remain on family/private life grounds with particular reference to a relationship with a British citizen woman, AI. The application was refused on 28 November 2016 with an out-of-country right of appeal. The Appellant did not leave the UK.

   (iii) On 29 December 2016 the Appellant applied for protection. The application was refused on 22 June 2017. An appeal, heard in Manchester on 27 October 2017, was dismissed for reasons set out in a Decision and Reasons of First-tier Tribunal Judge Gladstone promulgated on 7 November 2017. A subsequent attempt to challenge the decision was unsuccessful: the Appellant became 'appeal rights exhausted' on 14 September 2018.

   (iv) It is apparent from the Decision of Judge Gladstone that the Appellant's protection claim was rooted in his involvement with a 'metal' band (that sang anti-government lyrics, and that had led to accusations of Satanism), and participation in protests against the government. It was accepted that the Appellant was a member of a band as claimed but it was not accepted that he had been persecuted as claim; the Judge did not accept that the Appellant had been arrested and ill-treated; whilst he might have experienced harassment and discrimination, this did not amount to persecution, and there was no satisfactory evidence of any continuing interest in the Appellant – see paragraph 125.

   (v) On 6 December 2018 the Appellant lodged further submissions with the Respondent. These were refused on 20 July 2021, but a right of appeal granted.

   (vi) On appeal the Appellant raised arguments in respect of protection based upon his activities in the 'metal' music scene in Jordan, and also relied upon arguments in respect of Article 8 based upon his continuing relationship with AI.

(vii) The Appellant's protection claim was based on essentially the same history as his earlier claim for protection. In support he relied upon a 'country expert' report prepared by Dr Alan George.

4. The appeal was dismissed for reasons set out in the Decision of Judge Malik dated 4 July 2022.

5. The Appellant applied for permission to appeal to the Upper Tribunal. Three bases of challenge were raised, summarised in the Grounds as:

> "*Failing to give adequate reasons for rejecting the opinions and conclusions of expert evidence [Dr George].*
>
> *Failing to adequately consider whether there were 'insurmountable obstacles' to family life continuing in Jordan for the Appellant and/or his partner.*
>
> *Failing to consider whether the Appellant would face very significant obstacles to integration with regard to his private life under paragraph 276ADE(1)(vi).*"

6. Permission to appeal was granted by First-tier Tribunal Judge Murray on 9 September 2022. In material part the grant of permission is in these terms:

> "*2. The grounds of appeal argue that the Judge materially erred in the assessment of the expert evidence of Dr George; failed to adequately consider whether EX.1 was satisfied and failed to consider whether the Appellant would face very significant obstacles to his integration with regard to his private life under paragraph 276ADE.*
>
> *3. It is arguable that the First-tier Tribunal Judge did not consider the expert's report as a whole and the expert's conclusion that the Appellant's claims was generally plausible, with certain caveats. Whilst the remaining grounds are less arguable, I do not refuse permission as the arguable error in relation to ground one impacts on the remaining grounds of appeal.*"

Discussion

Ground 1

7. I do not accept that Ground 1, as drafted and amplified in oral submissions by Mr Schwenk, establishes an error of law on the part of the First-tier Tribunal.

8. The First-tier Tribunal Judge identified that the starting point for the protection appeal was the previous decision, and directed herself with reference to **Devaseelan**: e.g. see paragraph 19. It is manifestly the case that the Judge had regard to the report of Dr George in this context (see paragraphs 22-24) – as well as other evidence advanced on behalf of the Appellant (see paragraph 25). In my judgement it was open to the Judge, recalling the **Devaseelan** guidelines, to conclude as she did at paragraph 26 – rejecting the notion that the first decision should be disregarded, and

concluding that the Appellant had not established a risk on return to Jordan.

9. The Grounds of challenge emphasise Dr George's opinion as to the general plausibility of the Appellant's claim. However, in circumstances where the plausibility of a narrative does not inevitably denote the truthfulness of such a narrative, merely being able to point to 'plausibility' will not be sufficient reason to disregard an earlier finding that material aspects of the narrative did not reasonably likely happen in circumstances where the earlier finding was not founded on implausibility but on an analysis of the overall narrative. Thus, merely stating that the Appellant's claim is plausible is not sufficient reason to revisit the adverse credibility assessment in respect of the Appellant's claim to have been arrested and ill-treated.

10. It is to be noted that Dr George himself recognised the distinction between plausibility and credibility: see report at paragraph 51.

11. In this context and generally it is to be noted that Judge Malik was appropriately critical of the fact that it appeared that Dr George had not had sight of the decision of Judge Gladstone: see Decision at paragraph 22.

12. In any event, as Mr Schwenk readily and properly acknowledged, Dr George's evaluation of the plausibility of the Appellant's narrative was subject to qualification and caveat. In particular, as identified and emphasised by Judge Malik, Dr George "*expresses his "surprise" paragraph 63 of his report that the appellant was able to pass through Amman International Airport unhindered en route to the UK, despite having been the subject of a travel ban*" (Decision at paragraph 23).

13. In all such circumstances the First-tier Tribunal's treatment of the report of Dr George was adequate in the context of considering the extent to which it might justify departure from the decision of Judge Gladstone. In context nothing further was required from Judge Malik by way of a more detailed summary of the report.

Ground 2

14. Ground 2 addresses the 'insurmountable obstacles to family life' test under paragraph EX.1 of Appendix FM, with reference to the definition in paragraph EX.2. The Judge's approach to the circumstances of the Appellant's partner, AI, are the specific subject of challenge: see Grounds at paragraph 13-15.

15. The Grounds emphasise the Appellant's anxiety and consequent treatment by way of a "*high dose of antipsychotic medication*", and her agoraphobia. It is then pleaded that the First-tier Tribunal's consideration at paragraph 29 of the Decision is to be impugned.

16. Paragraph 29 states:

> "*Other than this GP letter and a record confirming her medication, evidence of AI's medical condition, as of the date of hearing, is limited to her oral evidence and that of the appellant. She says the appellant's cancer immigration status has caused her health to deteriorate; she is on medication for anxiety/depression and a high dose of an antipsychotic medication. Yet even taking their evidence at the highest, there is no medical evidence from a clinician setting out the impact on AI in moving to Jordan to live with the appellant. Whilst I accept AI does suffer from anxiety/depression and that there is some vulnerability, the onus is on the appellant to evidence he and AI would face insurmountable obstacles in accordance with paragraph EX.2 - and on the evidence before me, I find that they have not. Whilst I have had regard to the appellant's claim that AI has tattoos and would not wear a hijab, there is no objective evidence to suggest either of these issues and prevent them from continuing their family life in Jordan.*"

17. For completeness I note that at paragraph 28 the Judge makes a positive finding in respect of a genuine and subsisting relationship between the Appellant and AI, makes reference to the Respondent's position in respect of paragraph EX.2, and refers to the contents of a GP letter dated 25 January 2021 (i.e. some 17 months prior to the date of hearing) and AI's evidence in respect of the incident referred to in the GPs letter.

18. Paragraph 15 of the Grounds is in these terms:

> "*The A contends that you did not need any medical evidence from the clinician setting out "impact" to assess whether the A's partner would face insurmountable obstacles. The difficulties which she is currently facing in the UK were significant and she had the support of her family in the UK . Even with that family support she was facing a high degree of mental difficulties. Such family support would not be available in Jordan and even without further clinical medical evidence, the impact of withdrawal of that family support would be obvious. The Judge simply does not properly address the A's partners feared difficulties that she would face in Jordan. The Judge's conclusions with regard to Ex1 and Ex 2 are unsafe.*"

19. In my judgement the pleading amounts in substance to no more than a challenge to the factual evaluation of the existence, or otherwise, of insurmountable obstacles to family life. I do not accept that in referring to the lack of contemporaneous medical evidence the Judge was making medical evidence a requirement. Rather, what was being said was that in the absence of anything more contemporaneous by way of medical evidence the Appellant and AI had not otherwise established a factual foundation to support their contention in respect of insurmountable obstacles. It is otherwise plain that the Judge had in mind AI's mental health difficulties and vulnerabilities, as well as other factors advanced on behalf of the Appellant (i.e. the tattoos and the unwillingness to wear an hijab).

20. As Ms Nwachuku observed, it is to be recalled that the insurmountable obstacles test is a stringent test, and that the onus is on the Appellant. Notwithstanding the mental health difficulties described, it was open to the Judge to reach the conclusion that she did. It may be that other decision-makers would have reached a different conclusion, but that is not sufficient to impugn the decision of the First-tier Tribunal for error of law.

Ground 3

21. Ground 3 pleads that the First-tier Tribunal "*failed to consider how the Appellant's private life as a musician would be impacted upon return and consequently how his livelihood would be impacted*", and that in consequence "*It is arguable that... the Appellant would face very significant obstacle to reintegration in Jordan*". As such, it was argued, the assessment of paragraph 276ADE(1) at paragraph 27 of the Decision was "*unsafe*".

22. In my judgement this ground fails for two reasons. Firstly, it is not apparent that any such submission was ever advanced before the First-tier Tribunal: it cannot therefore be an error that the Judge did not engage with such an argument. Secondly, there was no evidence that the Appellant had ever been dependent on income made as a musician - either in Jordan or in the UK; as such there was no evidence that his livelihood if returned to Jordan would be contingent on his ability to express himself as a musician.

23. For completeness, I note that during the course of submissions in respect of ground 1 Mr Schwenk sought to argue that there was an additional '**Robinson**' obvious error in the Judge's approach to the protection claim in that no consideration had been given to the Appellant's right to express himself as an artist, and that consideration should have been given to the consequences of him seeking to do so upon return to Jordan, analogous to, and in accordance with, the guidance set out in **HJ (Iran)**. When asked to identify where such a ground was pleaded in the application for permission to appeal, Mr Schwenk submitted that it was encompassed by the reference to the Appellant's private life as a musician under Ground 3.

24. I do not accept that the argument now sought to be advanced is encompassed by Ground 3 which is limited to the context of interference with private life by way of obstacles to integration - and is pleaded therein with particular reference to livelihood (i.e. the ability to earn a living). Ground 3 is not premised on, and does not plead, a risk of ill-treatment that might engage the threshold required under the Refugee Convention or Article 3. Further, I do not accept that there was a '**Robinson**' obvious error in circumstances where it is not possible to identify anything in the materials before the First-tier Tribunal, whether by way of statements or more particularly by way of the Appellant's Skeleton Argument, that sought to advance a protection submission on the premise that the Appellant would feel restricted in expressing himself as a musical artist because of the consequences of so doing. It is in any event to be recalled that the undisturbed finding of the First-tier Tribunal was that whilst in the

past the Appellant's musical activities may have attracted a degree of harassment and discrimination this did not amount to persecution.

25. In all such circumstances I did not allow Mr Schwenk to develop the argument, and did not require Ms Nwachuku to make any reply. In my judgement the submission was not formally before the Tribunal because it had not been pleaded in the Grounds and did not amount to a '**Robinson**' obvious error.

26. For the reasons given I conclude that the grounds of challenge do not disclose an error of law on the part of the First-tier Tribunal. The Appellant's challenge fails.

Notice of Decision

27. The decision of the First-tier Tribunal contains no material error of law and accordingly stands.

28. The appeal of MSMA remains dismissed.

I. Lewis
Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)
15 December 2024