



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01835/2018

THE IMMIGRATION ACTS

Heard at Field House
On 5 July 2018

Decision & Reasons Promulgated
On 19 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

D V N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Knight, Counsel, instructed by Rahman & Company Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

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 his 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.

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Page (the judge), promulgated on 11 April 2018, dismissing his appeal against the Respondent's refusal of his protection and human rights claim, dated 18 January 2018.

The judge's decision

2. In a brief decision consisting of just over four pages, much of which is taken up by simple recitation of the basic legal framework, the judge concludes that the Appellant's protection claim was fabricated. At [15] he states as follows:

"I will now record my conclusions about the evidence before me, which includes all the evidence not just the evidence referred to above. The standard of proof may be low but it is still there to be met. It is not met in this case for the following reasons. Having considered all the evidence independently of the Home Office I have reached the same conclusions as the Respondent has that this asylum story has been invented."

3. [16] reads:

"I start with the point made by the Respondent that it is not credible that the police, if they had such an adverse interest in the Appellant to take him to a police station two hours away from where he was arrested and detain him for two weeks, would have been so negligent in allowing him to escape from an unlocked cell and walk past guards who were looking the other way. If there was no escape, the asylum claim falls away as invention. I accept that there are such arrests in Vietnam where people protest and that the authorities are not tolerant of dissenters. However, the issue in this appeal is whether the Appellant has truthfully been of such adverse interest - not whether others have."

4. In [17] the judge places weight upon the fact that the Appellant did not make his protection claim until after he was arrested in this country. It is also said that the Appellant's representative (not Mr Knight) had effectively conceded that there was no trafficking claim being pursued. In [19] the judge records that a further concession was made in respect of Article 8, namely that it was not argued on appeal.

The grounds of appeal and grant of permission

5. There are three grounds. The first asserts that the judge failed to provide any or any adequate reasons for his finding that the Appellant had made up the protection claim, at least that aspect relating to his alleged involvement in political dissent. Ground 2 asserts that the judge failed to deal with what was said to be a live issue in the appeal, namely a trafficking claim. Ground 3 is based on the alleged failure of the judge to deal with Article 8.

6. Permission to appeal was granted by First-tier Tribunal Judge Hodgkinson on 2 May 2018.

The hearing before me

7. I asked Mr Knight to take the grounds out of order and begin with ground 2. He provided me with a copy of the NRM conclusive grounds decision dated 14 July 2016. I was informed that he had no note of the hearing from previous Counsel in respect of whether any concessions had been made as regards the trafficking issue.
8. Mr Avery indicated that the Presenting Officer's note of the hearing showed that a concession had been made by the Appellant's Counsel, and that it had been accepted that the Appellant had not been trafficked to the United Kingdom. Upon inspection of my file, this corresponded with the Record of Proceedings.
9. Mr Knight did not in fact seek an adjournment of the hearing to adduce any further evidence on this point. I asked him to address me on the judgment of the Court of Appeal in MS (Pakistan) [2018] EWCA Civ 594 and the recent Upper Tribunal decision in AUJ (Trafficking – no conclusive grounds decision) Bangladesh [2018] UKUT 00200 (IAC), particularly what is said at paragraph 62(ii). Mr Knight suggested that if indeed the matter had been dealt with by the judge as a preliminary issue at the hearing, as it should have been, there were arguments to show that the conclusive grounds decision was perverse.
10. Moving to ground 1, Mr Knight submitted that the first sentence of [16] was not in fact a finding at all but simply a recitation of what the Respondent had said in the reasons for refusal letter. There was no express independent finding by the judge on important aspects of the Appellant's account. It was submitted that the only actual finding made by the judge was contained in [17] and this related to issues connected to section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
11. In respect of ground 3, Mr Knight indicated that he was not pursuing this insofar as it depended on anything in isolation from the protection issue.
12. For his part Mr Avery submitted that in relation to ground 1 I should read the decision as a whole, including what is said in [15]. The judge was in effect agreeing with what the Respondent had said, having looked at the evidence for himself. The first part of [16] was one significant example of the reasons for refusal letter points, and there were a number of additional factors that he could have mentioned. I was referred back to [4] of the judge's decision. On the Appellant's evidence there was very good reason not to have believed the claim. In respect of [17] the section 8 issue was clearly relevant.
13. On ground 2 Mr Avery submitted that the trafficking argument had simply not been run before the judge, as indicated by the Record of Proceedings and the Presenting Officer's note. There had been no need for the judge to consider the NRM decision at all. It was noted that MS (Pakistan) predated the hearing before the judge.

14. In reply Mr Knight referred me back to [15] and submitted that the use of the term “conclusions” did not equate with an adoption of or an agreement with the reasons put forward by the Respondent.
15. When I asked whether there were any irrationality arguments relating to the reasons provided in the reasons for refusal letter, Mr Knight emphasised the fact that, in his view, the judge had given no reasons in the first place and so this point simply did not arise. In addition, he suggested that issues relating to the plausibility of the Appellant’s account could/would render parts of the Respondent’s reasoning to be irrational.
16. At the end of the hearing I reserved my decision.

Decision on Error of Law

17. Having thought very carefully about this case and endeavouring to read the judge’s decision sensibly, in the round, and on the basis that judges in the First-tier can, at least in principle, be presumed to have done what they have expressly said they have done, I conclude that there are no material errors of law such that the decision should be set aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
18. My reasons for this conclusion are as follows.

Ground 1

19. In [15] the judge has clearly stated that he had referred to the evidence as a whole. In the third sentence he then makes it clear that he was finding that the lower standard of proof had not been discharged, “for the following reasons”. Immediately thereafter, he confirms that he has considered all of the evidence “independently” of the Respondent and in doing so had reached the same conclusions, namely that the account had been invented. I appreciate that Mr Knight has sought to draw a material distinction between the use of the term “conclusions” in [15] and the reasons given by the Respondent for rejecting the account and coming to the conclusion that the account was false. On one level there is a difference between “conclusions” and “reasons”. However, in my view, the terminology needs to be read sensibly and in context. In my view, what is said in [15] and what I say about [16], below, is sufficient to indicate that in reality the judge was actually agreeing not simply with the ultimate conclusion of the Respondent, but also the reasons employed for reaching those conclusions.
20. Following on from the previous point, whilst I acknowledge that the judge could have expressed himself more clearly both in [15] and in the first sentence of [16], it is tolerably clear that what he says at the beginning of the latter paragraph is a finding, a finding based on his independently considered agreement with one of the points taken by the Respondent in the reasons for refusal letter. The Appellant’s account of his escape from detention, clearly a core issue in his claim, had been rejected by the Respondent and was also being rejected by the judge. This was a key element in the alleged chain of events which underpinned the protection claim. The judge was entitled to say, as acknowledged by Mr Knight, that if no such escape had occurred

the rest of the account fell away. In my view, this is what the judge has found to be the case. The implied reference to country information showing that political dissenters are arrested in Vietnam really makes no difference here. It is very often the case that there will be generalised country information which has the potential of lending some support to the plausibility of an account, but all depends on the particular case in question, something rightly stressed by the judge in the final sentence of [16].

21. The judge was also entitled to place weight, indeed significant weight, on the section 8 issue. It was not the sole reason relied upon, something that would have been impermissible.
22. The preceding points are sufficient to dispose of the challenge under ground 1.
23. As an additional observation, I note that whilst the judge has given two reasons in [16] and [17], with reference to the reasons for refusal letter itself and [4] of his decision, there were a number of other issues that could have been expressly referred to as well.
24. In light of the above, it was open to the judge to conclude as he did in respect of the political dissent aspect of the Appellant's protection claim.

Ground 2

25. I now turn to ground 2. The Record of Proceedings and the Presenting Officer's note of hearing are consistent. They indicate that no trafficking claim was pursued before the judge. Mr Knight has not been left with any note of hearing by previous Counsel, something that is unfortunate. Notwithstanding what is said very clearly by the judge in [17] about the way in which the Appellant's case was put, there has been no evidence from the Appellant's side by way of a statement from previous Counsel or suchlike in support of the contention that a trafficking claim had in fact been run. I also take into account the fact that no relevant case law on trafficking is referred to in the judge's decision, and I regard that as an indication that this was because no such submissions or materials were put before him. The absence of the NRM decision from the evidence before the judge is a further indication as to the way in which the Appellant's case was, or more specifically was not, put.
26. I have also referred myself to the first instance grounds of appeal to the First-tier Tribunal, following the Respondent's refusal decision. There is no specific reference there to a trafficking claim.
27. I am satisfied that no such claim was in fact pursued before the judge. Therefore the judge cannot be criticised for what he says in [17] and for failing to deal with this issue.
28. If I were wrong about that I would nonetheless conclude that there are no errors, at least no material errors, on this point. MS (Pakistan) had been handed down way in advance of the hearing before the judge and there is now the benefit of the Upper Tribunal's decision in AUJ. Given that there was a negative conclusive grounds decision from the NRM in this case, the only way in which the Appellant could have

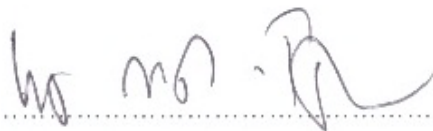
pursued the trafficking claim was by showing that the NRM decision was irrational. I see no basis whatsoever for a conclusion that the NRM decision was indeed irrational. Certainly, nothing said at the hearing before me indicates any proper basis for such a conclusion and any such hypothetical challenge, as it were, could and should have been set out in detail in the grounds of appeal. Nothing said before me had indicated that any challenge could properly have succeeded.

Ground 3

29. Finally, the third ground has quite rightly not been pursued by Mr Knight. In any event, I am satisfied that this matter too was effectively conceded by previous Counsel at the hearing.

Notice of Decision

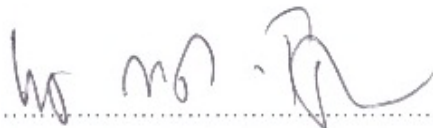
There are no material errors of law in the decision of the First-tier Tribunal and that decision shall stand.



Signed
Deputy Upper Tribunal Judge Norton-Taylor

Date: 17 July 2018

I have dismissed the appeal and therefore there can be no fee award.



Signed
Deputy Upper Tribunal Judge Norton-Taylor

Date: 17 July 2018