



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000401

First-tier Tribunal No: PA/50693/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

28th September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SILLS

Between

NMK
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan
For the Respondent: Ms Young

Heard at Phoenix House (Bradford) on 2 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Respondent appeals against the decision (the Decision) of Judge Fisher (the Judge) dated 29 December 2022 allowing the Appellant's appeal on asylum grounds.

Factual Background

2. The Appellant is a citizen of Iraq. He entered the UK in 2018 and claimed asylum. That claim was based on the Appellant's claim to be at risk from his stepfather. His asylum claim was refused and his appeal dismissed, with the account found not to be credible, on 12 March 2020. By 22 January 2021 the Appellant was appeal rights exhausted.
3. On 18 November 2021 the Appellant lodged further submissions. They were refused with a right of appeal and the appeal was heard on 11 October 2022. The Appellant relied on his *sur place* political activities, including on Facebook, criticising the Kurdish authorities. The Judge found that there was no basis for departing from the findings of the previous Judge in relation to the Appellant's claims about events in Iraq that had been previously considered. The Judge noted that the Appellant had claimed his political activities had begun in 2019 but had not mentioned this in the previous proceedings. However, as this issue had not been raised with the Appellant by the presenting officer, the Judge considered it would be unfair to make an adverse credibility finding on that basis. The Judge found the Appellant's attendance at demonstrations was something of importance to him and that he was more than a mere observer. The Judge did not consider that the Appellant would be at risk solely on account of attending demonstrations in the UK. The Judge found that the Appellant was posting his own materials on Facebook and that the views expressed were genuinely held. The Judge accepted that the Appellant's interview on NRT had been watched by 92,000 people and that there was a reasonable possibility that this had been seen by the Iraqi authorities. The Judge accepted that the Appellant would wish to continue his opposition to the regime in the IKR on return. The Judge found that the only reason that the Appellant may not persist with his activities was the risk he would face. The Judge allowed the appeal under the Refugee Convention.
4. The Respondent applied for permission to appeal. The grounds argue that the Decision was not adequately reasoned given the Appellant's profile. Further, the Judge did not pursue the matter of the *sur place* activities not being raised at the previous appeal. The Judge's finding that the Appellant would be at risk on return was perverse as the Judge had found that the Appellant was not known to the authorities. The findings were perverse given the credibility issues. The Judge failed to consider that the Appellant's political activity was self serving and that the Facebook account could be deleted.
5. The UT granted permission on 6 March 2023. The UT Judge considered that it was at least arguable that the reasoning of the FTT was inadequate. It was also arguable that the FTT had not adequately addressed whether the *sur place* claim was an attempt to bolster an otherwise weak protection claim. It was arguable that too much weight was given to incomplete Facebook evidence. It was arguable that the finding that the Appellant was genuinely of the political opinion claimed was inadequately reasoned.

The Hearing

6. I heard submissions from Ms Young in line with the Respondent's pleaded case. Mr Khan for the Appellant argued that the grounds were mere disagreement and that it was not incumbent upon the Judge to raise matters not taken by the Respondent's representative. I reserved my decision.

Findings

Error of Law

7. The Court of Appeal gave guidance on appeals on points of fact in Volpi & Anor v Volpi [2022] EWCA Civ 464 (05 April 2022). At [2], Lewison LJ drew together the principles applicable:

“2. The appeal is therefore an appeal on a pure question of fact. The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

8. I am satisfied that the decision does not contain any error of law. This is an adequately reasoned decision in which the Judge made findings open to him on the evidence.

9. The Judge considered the evidence about when the Appellant became politically active and the fact that this had not been raised in the previous proceedings at [19]. The Judge was entitled to find that it would be unfair to make any adverse credibility findings on this issue as the matter had not been put to him in cross examination. The context in which this issue arose is relevant. This issue was not something raised in the decision under appeal. The Respondent's Review seems to raise a different point, that the Facebook posts were all a significant period of time after the Appellant claimed asylum. This issue arose in the course of the Appellant's evidence as set out at [6] of the Decision, where the Appellant is recorded as stating that his political activity began in 2019. The Appellant's oral evidence was hedged somewhat in that he stated that the dates when he began his activity should be shown on the Facebook account. However, as Ms Young pointed out, the dates of many of the Facebook posts are unclear as the year of the post is omitted. The oral evidence was that the attendance at demonstrations began in 2021. So, the issue was based on the Appellant's oral evidence at the hearing alone, and not on the basis of any documentary evidence of political activity. I do not consider the Judge can be criticised for not pursuing a line of questioning that the Respondent herself failed to pursue, based on an

answer given by the Appellant in oral evidence. It was for the Respondent's representative to ask the questions he saw fit of the Appellant. As the issue was not put to the Appellant and so he was not given the opportunity to provide an explanation, the Judge was entitled to find it would be unfair to make an adverse credibility finding against the Appellant based on the fact that he had not raised the political activity in the earlier proceedings.

10. The Judge gave clear reasons for finding the Appellant would be at risk and made findings that were open to him. I must not subject the decision to a narrow textual analysis. Read as a whole, and with reference to [15] to [18] in particular, it is clear that the Judge was aware of and took into account the fact that the Appellant's account had been found not to be credible in his previous claim. The Judge states in terms at [18]:

Furthermore, as the Appellant has already been disbelieved by the Tribunal, I am entitled to approach his evidence before me with caution and to look for support before accepting it.

While this is stated in the section dealing with the matters considered by the previous judge, read as a whole I am satisfied that the Judge took this into account when considering the *sur place* activity. The Judge also took into account the suggestion that the Appellant's political activity may not be genuine and that he may be trying to 'bolster his claim'. The Judge referred to this explicitly at [21] but found that the Appellant gave a 'full and persuasive account of his motivation for becoming politically active'. Reading the judgement as a whole, I am satisfied that the Judge took into account the previous adverse credibility findings and the fact that the Appellant might be trying to 'bolster his claim' when considering the *sur place* activity.

11. The Judge gave adequate reasons for finding that the demonstrations were a matter of importance to the Appellant, noting that he was more than a mere observer and referring to his detailed account in evidence and his account of his role [20]. The Judge also gave adequate reasons for finding that the political opinions expressed on Facebook were genuinely held, referring to the content of the posts [21]. The Judge took into account that he had not been provided with the full Facebook account. The Judge found that the Appellant was posting his own material rather than just reposting material produced by others. The Judge was entitled to find that this was significant. As noted, the Judge also considered the Appellant gave a full and persuasive account of his motivation for becoming politically active.
12. The Judge gave adequate reasons for finding that the Appellant's interview with NRT would have come to the attention of the authorities, in the IKR. In particular, the Judge accepted that the footage had had 92,000 views [23]. As a result of his finding that the political opinions expressed were genuinely held, the Judge was entitled to find that the Appellant could not be expected to delete his Facebook account [24]. The Judge was entitled to find that the Appellant was genuinely opposed to the regime in the IKR and gave adequate reasons for doing so. The Judge gave adequate reasons for finding that the Appellant would wish to continue his political activities on return to the IKR and would be at risk if he did so. Hence the Judge's findings were open to him and adequately reasoned. The decision to allow the appeal on asylum grounds was one open to the Judge and adequately reasoned. The Decision does not contain any error of law.

Notice of Decision

The Respondent's appeal is dismissed.

Judge Sills

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 September 2023