UT Neutral Citation number: [2024] UKUT 00065 (IAC)

Azizi (Succinct credibility findings; lies)

Upper Tribunal
(Immigration and Asylum Chamber)

Heard at Field House

THE IMMIGRATION ACTS

Heard on 23rd June 2023
Promulgated on 13th August 2023

Before

THE HON. MR JUSTICE DOVE, PRESIDENT
MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE BLUM

Between

ALAN OMER AZIZI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mark Symes instructed by Barns Harrild & Dyer
For the Respondent: Mr Clarke, Senior Presenting Officer

1. *A determination in relation to an appeal must deal with the principal controversial issues presented to the judge, and it may be possible in some circumstances to provide adequate reasons in relation to those issues succinctly, provided they deal with the points raised by the party and enable the parties to understand why the decision has been reached.*

2. *Where an appellant accepts that he has told lies during his immigration history it will be appropriate to consider his explanation for telling those lies, and whether that explanation is accepted, as part of the fact finding process.*

INTRODUCTION

1. The appellant is a national of Iraq who was born on 14th October 1979. He appeals with permission from a decision of the First-tier Tribunal ("FtT") dated 11th February 2023.

The appellant's first asylum claim

2. The appellant initially arrived in the United Kingdom on 5th December 2007 and claimed asylum on the same date. That asylum claim was eventually refused on 23rd April 2010. The appellant appealed to the FtT, and his appeal was dismissed by a determination dated 25th August 2010. The appellant's claim to refugee status, which was supported by the evidence which he gave in that appeal, was that he was in fact a citizen of Iran (although this was explicitly not accepted by the respondent). The appellant claimed that his father was a member of the KDPI, who had been arrested and tortured and who had involved the appellant in carrying out duties for the KDPI. These duties included travel to a nearby settlement to support the distribution of propaganda and the hanging of posters and the writing of slogans upon walls. Having been warned by his father that the person who he had assisted had been arrested he went into hiding, following which he received a message that his father had been arrested and held as hostage for the appellant. This led to the appellant departing Iran and claiming that if he were returned there, he would be arrested, ill-treated, and imprisoned for his KDPI activities.
3. In addition to the appellant giving evidence, he called a witness who he had encountered by chance in the United Kingdom and who claimed that he knew the appellant's father from party meetings between 2000 and 2004. This witness was called to support the appellant's account that he came from the village that he claimed as his home and that his family were involved in the KDPI.
4. Having heard this evidence the FtT Judge concluded that the evidence of the appellant's witness was wholly unreliable and lacking credibility. The FtT Judge went on to conclude, based on errors in the appellant's understanding of the Farsi calendar, the implausibility of his story, his account in relation to contact with his family and the fact that he could have claimed asylum in France, that the appellant's account was also not credible and that he was an unreliable witness. He concluded that "his story is a fabrication and that he has never been involved with the KDPI and is not known to, or wanted by, the authorities in Iran". On this basis the appeal was dismissed.

5. Whilst the appellant was granted permission to appeal to the Upper Tribunal on 9th December 2011 the Upper Tribunal dismissed his appeal on all grounds. The appellant therefore became appeal rights exhausted on 11th January 2012 and although further submissions were lodged on his behalf on 6th August 2012 these were refused on 21st August 2012. Following this it appears that the appellant returned to Iraq.

The Current Proceedings.

6. The appellant claims that he left Iraq in August 2019, and then travelled via Turkey, Greece and Italy to France, prior to coming to the UK by lorry. On 3rd January 2020 the appellant lodged further submissions in his case explaining in particular that he would be at risk of being traced and killed by his in-laws on return to Iraq due to having married their daughter without their approval. This claim was refused by the respondent in a detailed refusal letter addressing a number of potential issues, but commencing from the application of the principle established by the starred case of *Devaseelan* [2002] UKIAT 00702, and in particular relying upon the comprehensive adverse credibility findings which had been made in the earlier appeal by the FtT Judge who had found that he was not a reliable witness. The respondent was not able to identify any basis upon which the appellant's claim could be allowed.
7. For the purposes of the FtT hearing the appellant produced a witness statement in which he explained that in fact when he came to the UK for the first time it was as a result of fear for his life as a result of potential violence from his wife's family which had forced him to flee Iraq. He said this in the witness statement in relation to his earlier account:

   "5. I did not tell the Home Office my true reason for claiming asylum previously. When I was in France on my way to the UK, I met some Kurdish migrants who asked me where I was from. They said that if I was from Iraq then I would definitely be sent back to my home country once I got to the UK. As I was fearful, at my asylum interview, I lied about my nationality and the reasons that I feared returning home to Iran. I thought that if I said I was from Iraq then I would be sent back to Raina and my problem with the other family was still ongoing and they had not been resolved yet.
   6. I was advised to say that I supported the Democratic party and that I was from Iran. I did not mean to mislead the authorities, but I relied on other people who spoke my language in the UK. I genuinely believed that if I told the Home Office what my true nationality was, then I would be sent back to Iraq."

8. The witness statement went on to explain that having fled Iraq in 2007, his wife had first got married in 2008 but her family were unhappy because of her earlier relationship with the appellant and the fact that

she was not a virgin at the time of this wedding. This led to the failure of the marriage. Her first husband became violent, leading to the grant of a divorce. The appellant provided a copy of the divorce document which he furnished to the hearing. There followed a "Sullah" in which a negotiated family settlement was arrived at permitting the appellant to return to marry his wife and leading to him returning to Iraq in 2012 and marrying her in 2013. The witness statement went on to describe the appellant continuing to move around Iraq driven, he stated, by his fear of his wife's family and their persistent threats and pursuit of him. This fear led him to flee Iraq again leaving his wife and children with his mother-in-law. The fear that he has would not permit him to relocate anywhere within Iraq.

9. In addition to the documentation relating to the divorce, the appellant produced identity documentation with respect to his wife and children along with text messages from 2020 threatening him and his wife and children.
10. A skeleton argument was submitted on behalf of the appellant which made reference to objective evidence related to the resolution of tribal matters, and the risk to family members of reprisals, which identified as follows:

"A also accepts that he accepted voluntary return to Iraq but only after his father spoke to his wife's family and they agreed to accept the marriage between A and his wife [AB: WS: para 9]. A instructs that there was still animosity because in the meantime the family had arranged a marriage between his wife and a third party but this marriage ended in divorce once the husband was made aware of A's relationship with his wife before her marriage. A instructs that the family still believe that he brought shame and dishonour on their family and so A's life and the life of his children are at risk as intimated by the messages received by A

• It is submitted that despite the resolution of *tribal matters that objective evidence still point to the risk of family members of reprisals. In Honour Crimes against Men in Kurdistan Region of Iraq (KRI) and the Availability of Protection, 'Report from Danish Immigration Service's fact-finding mission to Erbil, Sulemaniyah and Dahuk, KRI' dated 6 to 20 January 2010* at page 5 states that: Mahdi M. Qadr and Fakhir Ibrahim, PAO, Erbil, stated that the concern of a wrongdoing against a family's honour does not diminish over the years. Wrong-doing against honour is considered unforgivable.

And:

Sardasht Abdulrahman Majid, Director, and Aree Jaza Mahmoud, Lawyer, Democracy and Human Rights Development Center (DHRD), Sulemaniyah, emphasized that honour is not a short-term matter. Honour is eternal in the sense that the offended family may seek retribution for years to come, or even for generations.

Issue 2 – *Whether A can obtain sufficient protection from his aggressors.*

• In *Honour Crimes against men* in KRI, it states: *Possibility for protection for heterosexual men* There are no shelters for men in KRI.131 There are very few actors protecting men in conflicts; one source pointed to an organisation called 'Men's Union Organisation'; the same source said that this organisation

will not be able to protect men in a broader sense.132 A man might be protected by friends, or he has to run away. For a man who flees abroad, sometimes Interpol will be contacted in case he is accused of rape or killing. The threat against him will remain, but he can easily survive. A man can easily change his name, which makes it easier to survive."

11. The determination of the FtT Judge commenced with setting out the appellant's immigration history, and then the observations in the reasons for refusal letter from the respondent in respect of the earlier FtT Judge's findings that the appellant was not a credible witness. The FtT Judge recorded the basis of the appellant's claim and his reliance upon the witness statement which he provided and which has been summarised above. He also recorded the nature of the documentation which the appellant relied upon. The FtT Judge recorded that the appellant was cross-examined, and that despite him being married to his wife with her family's agreement he persisted in his claim that her family were not happy with him, even though she was a divorced woman at the time he married her. He continued to claim that her family sought to harm him. The FtT Judge then recorded his findings and conclusions in paragraph 10 of his decision as follows:

"10. The appeal is dismissed. The appellant is not entitled to any relief in the UK. I reach this conclusion for the following reasons;
A. The appellant has shown himself to be completely incapable of belief as a result of his actions in his previous claim. He admits lying about his nationality and lied about the reasons he sought protection. That is unforgiveable in terms of his credibility. He is, in my view, completely incapable of belief after those actions. I reject in its entirety his reasoning for giving completely false information on the last occasion. He is a grown man and if he was genuinely at risk then he should have said so. It shows he is capable of lying to serve his own means and endeavours.
B. The messages he relies upon are not in the remotest persuasive. They could be from anyone. They could even be from the appellant himself using another phone. I place no weight and reliance upon them
C. The marriage documents do not assist him in his claim. They do not show that he is at risk.
D. His claim is not even plausible. The marriage was arranged by her family and his family and they have lived together for a non-insignificant period of time and had children. It seems highly unlikely that the appellant would be at risk considering it was all agreed."

12. The FtT Judge went on to conclude that the appellant had and could obtain the necessary documentation to be returned to Iraq and that on the basis of his rejection of the appellant's account the FtT Judge concluded that there was no basis to grant him any form of protection or conclude that there would be any unlawful infringement of his human rights.

Submissions and Conclusions.

13. Mr Symes on behalf of the appellant submits that the determination in this case lapses into errors of law associated with a failure to have regard to material considerations in reaching the conclusions which the judge did, and also failing to provide adequate reasons. The particular points raised in connection with this ground are, firstly, that the reasoning provided needed to show that every factor which might tell in favour of the applicant had been properly taken into account consistent with the understanding of anxious scrutiny in asylum claims provided Carnwath LJ in *YH* [2010] EWCA Civ 116. Secondly, following the decision in *Uddin* [2020] EWCA Civ 338 there was a failure by the judge to administer to himself what would be known in the context of a criminal case as a *Lucas* direction, namely to ask why, if a person has admitted to lying about something, they had done so, since simply lying about one matter would not necessarily imply that they had lied about everything or indeed other matters. Mr Symes submits that the judge failed to take this approach. Thirdly, the judge failed to adopt a proper approach to credibility examining the details, consistency and plausibility of the appellant's account prior to arriving at his conclusions. Fourthly, it is submitted by Mr Symes that the judge failed to assess the potential corroborative value from available country evidence. Fifthly, it is submitted that following the recent decision of the Court of Appeal in *MAH (Egypt)* [2023] EWCA Civ 216 the reasoning betrays that the judge failed to apply the correct standard of proof.
14. Having carefully considered each of these criticisms of the judge's decision we are unable to accept that there is any substance to them. As both the reasons for refusal letter and also the FtT Judge identified, the starting point for the consideration of the appellant's appeal was, in accordance with the well-known *Devaseelan* principles, the previous decision reached in 2010. In that first decision the FtT Judge concerned had reached the conclusion, having analysed the appellant's account, that he was not a credible witness, and indeed that he had adduced further evidence from another witness also lacking credibility in relation to the key issues. The starting point was, therefore, whether there were reasons to depart from those earlier findings in order to conclude that the appellant was credible in relation to his current account or which would justify reaching a different conclusion.
15. As is evident from what is set out above, in that the appellant accepted that his previous account had been completely false it follows that in fact the judge in 2010 had been entitled to conclude that that account was lacking in credibility. It turns out that this is the appellant's case in the current appeal. This perhaps then brings into focus the appellant's submission in relation to the need for a *Lucas* direction in respect of those earlier lies. It appears to us that there are two difficulties for the appellant in making that submission. Firstly, if one enquires as to why the appellant previously told lies, then the reason for doing so was to seek to persuade the authorities to grant him

protection on an entirely false basis so as to avoid being returned to Iraq. They were not lies which arose from some unrelated motivation, such as shame, humiliation, or confusion. Indeed, his observation in his witness statement that he did not mean to mislead the authorities by giving them a false account does not assist in this connection either. In the particular circumstances of this case, therefore, the administration of a *Lucas* direction is of very limited assistance to the appellant. The second difficulty which lies in the way of this submission is that the judge addressed his explanation for lying on the earlier occasion in paragraph 10a, and rejected it on the basis that if he had been genuinely at risk then he should have said so. Thus, the judge did consider the question of why the appellant lied on the previous occasion whether the motivation or explanation for those lies was of any assistance to him and, in our view understandably, rejected the appellant's submission.

16. Given the particular circumstances of this case, and in particular the earlier findings in the 2010 appeal, we are unable to accept the submission that the judge failed to have regard to the detail, consistency and plausibility of the appellant's case. Whilst the reasons which the judge gave were brief, they addressed each of the points in the appellant's evidence upon which reliance was placed to suggest that his current account might establish a genuine claim for asylum. As set out above the judge dealt with the appellant's explanation for why he had lied in his previous claim and dismissed that for the reasons he gave.

17. The judge went on to consider both the messages upon which the appellant relied and also the marriage document explaining why, in his view, neither of those pieces of evidence were material which persuaded him of the appellant's account. The judge then went on to consider plausibility and, again, for the reasons which he gave, concluded that bearing in mind the marriage had been arranged by the appellant's wife's family, and that they had lived together for a period of time and had children together, it was highly unlikely the appellant would be at risk. This led to the judge concluding that the claim was not plausible.

18. The appellant's contention that it may be that the judge had applied the wrong standard of proof is not supported by the reasoning which the judge gives for his decision. Bearing in mind the background of the earlier 2010 appeal, and his concerns in relation to the quality of the evidence the appellant had produced in the current appeal, it was open to the judge to conclude as he did that the appellant was "completely incapable of belief". Having considered the judge's reasons we are unable to identify any evidence that the wrong standard of proof was applied.

19. Finally, whilst it is correct to observe that an extract of country evidence was referred to in the appellant's skeleton argument, and not expressly referenced by the judge, we are not satisfied that this could

amount to an error of law in the particular circumstances of this case. In reaching his conclusions in paragraph 10 of the determination the judge had in our view focused on the principal controversial issues in the appeal related to whether the appellant's account of his own circumstances based on his own evidence and supporting documents was to be found credible. Bearing in mind the fundamental difficulties that the appellant faced, a reference to selected gobbets of country information from sources suggesting that wrongdoing against a family's honour did not diminish over time was peripheral and provided very little assistance to save the credibility of the appellant's case which was already fundamentally undermined. It is not a necessary requirement for the FtT judge to engage with each and every point that is made on behalf of an appellant, but rather in reaching a reasoned conclusion to address the principal contentious issues which require to be resolved. It was not an error for the judge not to address this point directly against the background of the strength of his other conclusions in relation to the credibility of the appellant's account. Whilst in his skeleton argument Mr Symes references other aspects of the country evidence which he submits would be of relevance to risk on return, in so far as it is suggested they provide further context to the appellant's account they were not matters which it appears were drawn to the judge's attention and relied upon in the presentation of the appellant's case.

20. Having considered each of the points raised on behalf of the appellant as criticisms of the FtT judge's credibility findings we are satisfied that none are of substance and, in reality, the judge engaged with and took account of all of the matters which might have told in favour of the appellant in the particular circumstances pertaining to this case. As we have stated, he dealt with all of the principal controversial issues upon which the decision in this case turned, and thus no lengthier decision was required. The FtT judge was not required to give reasons for his reasons, and had adequately explained in this succinct determination why he had dismissed this appeal. In short, the determination was of adequate length to serve the purpose of explaining the decision in the case.

21. Mr Symes accepted during the course of argument and indeed at paragraph 9 of his skeleton argument that ground 2, namely the assessment of risk on return, followed from the establishment of flaws in the FtT judge's credibility findings under ground 1. For the reasons that we have given we are not satisfied that there is any error of law in the FtT judge's credibility findings for the reasons which we have given and, therefore, it follows that ground 2 does not arise. For all of these reasons, therefore, this appeal must be dismissed.

Notice of Decision

The appeal is dismissed.

Signed Ian Dove Date 7th August 2023

The Hon. Mr Justice Dove
President of the Upper Tribunal
Immigration and Asylum Chamber