



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08483/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House *via Skype for Business*
On 15 September 2020

Decision & Reasons Promulgated
On 07th October 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

M H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. S Panagiotopoulou, Counsel, instructed by Immigration
Advice Service

For the Respondent: Mr. D Clarke, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Bowler ('the Judge') sent to the parties on 23 December 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant her international protection was dismissed.

2. Judge of the First-tier Tribunal Shimmin granted permission to appeal on all grounds by a decision dated 5 February 2020.

Hearing

3. The hearing before me was a Skype for Business video conference hearing held during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the cause list. I was addressed by the representatives in exactly the same way as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.
4. The parties agreed that all relevant documents were before the Tribunal. The video and audio link were connected between the representatives and the Tribunal throughout the hearing. At the conclusion of the hearing both parties confirmed that the hearing had been completed fairly.
5. The appellant did not attend the hearing. I confirmed with Ms. Panagiotopoulou that I took no adverse point on the appellant's non-attendance, as there was no obligation that she attend, she was not required to give evidence and was represented by counsel.

Anonymity

6. The Judge issued an anonymity direction, and the parties did not request that it be set aside. I confirm the direction pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 at the conclusion of this decision.

Background

7. The appellant is an ethnic Kurd and a national of Iraq. Prior to travelling to this country, she resided in the Kurdistan Region. She states that she met a man via Facebook, and they began to regularly contact each other. She felt forced to send culturally inappropriate photographs of herself. After they met, the appellant decided not to continue with the relationship. The man threatened that if she did not continue to send him photographs then he would make public those she had previously sent. She extended the relationship for approximately two further weeks because she was scared but after this time decided that she no longer wanted to remain in contact with him. The man then created a false Facebook account in her name and added her two brothers, university friends and relatives as 'friends' to the account before making her pictures available on the account. The appellant's brothers saw the photographs and assaulted her. They were aided by her parents. She was then imprisoned in a room in the house, whilst her brothers threatened to kill the man. She was subsequently able to escape from the family home and with the aid of the father of a friend she travelled to Turkey and then onto the United Kingdom, arriving in December 2018 two days after she left her home.

8. She claimed asylum on arrival and had a screening interview on the same day. Her substantive asylum interview was held on 14 August 2019. The respondent refused the application for international protection by a decision dated 21 August 2019.

Hearing before the FtT

9. The appeal came before the Judge sitting at Hatton Cross on 3 December 2019. The respondent was not represented. The appellant was represented and gave evidence. She relied upon an expert report from Dr Kaveh Ghobadi, a Kurdish academic and independent researcher residing in the United Kingdom, dated 17 November 2019. As to the report, the Judge noted in a section entitled 'the appellant's case', at [15]:

'15. ... The expert report from Dr Ghobadi confirms that it is plausible that the appellant would have been allowed a Facebook account despite coming from a strict family and that her mother would have been able to persuade her brothers to permit her to continue education. Dr Ghobadi also confirms that the appellant's account of being beaten by her brothers and imprisoned in her room is consistent with external information. He states that any perceived deviation from social and sexual boundaries is likely to attract some form of retribution or punishment and the honour codes are deeply embedded in Kurdish society.'

10. The Judge addressed several inconsistencies in the appellant's account of her personal history, as well as observing vagueness arising from her recounting of such history at [24] - [42] of the decision. An example of the approach adopted is identifiable at [25] - [33], which is quoted in full as it is subject to challenge by means of ground 4 of the appellant's grounds of appeal:

'25. In the appellant's asylum interview the appellant said that she had a Facebook account, met Darin through a group chat and sent him photographs of herself within the hijab via the Facebook messenger system. Her account of the background to her use of Facebook significantly altered at the hearing. For the reasons I now explain, the accounts are inconsistent, and I find that the new evidence was an attempt by the appellant to deal with apparent problems with her initial account.

26. The appellant said in her interview that Darin created a fake account in her name when she refused to continue sending him photos and that he posted the previously sent photographs of her to that account and joined her brothers as friends so that they would see what she had sent. She says at question 78 that her brother reported her Facebook account, and it was disabled or removed. She claims at question 81 that both the genuine and the fake Facebook accounts were disabled or cancelled. When asked why she could not reinstate her genuine account she said at question 82 that she could not remember the password and that once an account was cancelled it could not be reinstated. She said at question 83 that she could not take a screenshot of the account showing that [it] had been disabled because her brother had damaged her mobile phone. When asked why she could not attempt to login with another device she simply said that the account had been cancelled and she could not log on again. When asked why she was unable to show her brothers the messages on her genuine account and threats from Darin (which at question 100 she confirmed he had sent

through Facebook messenger) immediately the issue arose and before her account was disabled the appellant said that she had deleted all her chats and messages.

27. At the hearing the appellant's claim was different. I specifically asked for clarification of how the Facebook account was set up and removed, given that I was aware that it would not ordinarily be possible for other people to disable or cancel a person's Facebook account as the appellant claims her brother had. It was only at that point that the appellant claimed that around the time of starting university she had told her brother that she needed to open a Facebook account and he used his own email account and mobile phone to do that for her. At the hearing she said that she did not even know the password.
28. The circumstances described at the hearing were therefore not described by the appellant at the asylum interview. For example, when asked why she could not reinstate her genuine account she said that she did not remember the password. She did not say that she had never known it because it was set up by her brother.
29. At question 98 she was asked whether her brothers were aware that she had a Facebook account, and her answer was simply yes. That would have been an obvious time to say that in fact one of her brothers had set up the account for her.
30. I asked the appellant to clarify how she was able to access Facebook given that she had told me that she did not have a mobile phone. The appellant said that her brother gave her a mobile phone without a SIM card and without telling her the number. She said that her brother set up a Facebook [account] on the phone for her and as she never logged out, she did not need to use a password. She accessed her account using the internet at home. Again, this was not the situation described by the appellant at the interview. Instead, she said that she could not log on to her account because it had been cancelled; not that she never knew the password.
31. The version of events described at the hearing raised further potential inconsistencies. Clearly, if one of the appellant's brothers had set up the Facebook account and knew the password, the appellant would have been sending messages to Darin knowing that her brother could access those messages at any time and see the photographs sent by her at any time.
32. Given the appellant's description of her family and, in particular, her brothers being strict and controlling she would have been taking a significant risk chatting with the unknown man Darin and sending him photographs. I therefore asked the appellant whether she knew that her brother could access Facebook using the password. The appellant's initial response was that she did not know he could do so as she had not used Facebook before. I clarified with her that she was telling me that her account and password were only known by her brother, but she did not know that he could access her account. At the point her evidence changed to say that of course she realised that he could access the account, but she did not know how he would.

33. The appellant is an intelligent, well-educated young person and was aged 22 when the events she described took place. I do not find it credible that she would not have realised that her brother could access an account which she claims he set up and for which he alone knew the password.'
11. The Judge further found, at [35(c)]:
- '35.
- c. even if the accounts had in some way been deleted, the appellant would have been able to provide some evidence of that through logging on via another device when she made her claim for asylum less than a week after the events are said to have happened. The appellant was asked at the asylum interview why she could not take a screenshot to show that her account had been disabled. She said that her mobile phone was damaged by her brother and when the interviewer put it to her that she could login with any device the appellant provided an evasive response. She said at question 84 that the account had been cancelled, but that would not have prevented her taking a screenshot to show that it had been disabled. When the interviewer pressed this point the appellant simply said that she did not remember 'it', by which it must be assumed that she meant the password. (Again, this undermines the additional elements regarding her brother's control of the password introduced at the hearing.'
12. The Judge made several other adverse findings of fact such as the appellant not having sought to find the public on-line chat group through which she met Darin, observing that the appellant could open another Facebook account whilst in this country and reconnect with the group so as to secure evidence to support her claim. The Judge further found the appellant incredible as to the circumstances in which she fled the family home and secured support from the father of a friend who bought her a ticket to fly to Turkey and provided her with a small mobile phone to remain in touch so that he could secure an agent for her onward travel.
13. The Judge concluded at [52] - [54]:
- '52. Considering the numerous issues identified with the evidence above I have made an adverse credibility finding in relation to the appellant. I find that she has fabricated the claim to be at risk from her family in Iraq.
53. The appellant came to the UK with her CSID. She is therefore able to travel home to her family.
54. I therefore find for all these reasons that the appellant has not discharged the burden of proof of showing entitlement to the protection of the Refugee Convention, the ECHR or to humanitarian protection.'

Grounds of Appeal

14. The grounds of appeal were drafted on behalf of the appellant with a high level of care and precision by Ms. Panagiotopoulou who represented her at the hearing before the Judge. They are concise and elegant, running to 1 ½ pages. At their core, the grounds challenge the assessment of credibility as follows:

- i) The Judge failed to reach findings on the expert evidence.
 - ii) The Judge failed to take into account the expert evidence and other background evidence, placing undue emphasis upon purported inconsistencies between the appellant's evidence at the hearing and evidence presented during her Home Office interview.
 - iii) The Judge attached undue weight to the absence of evidence from the appellant's sister.
 - iv) The Judge made a factual error of significance in relation to the appellant's Facebook account.
15. The respondent filed a rule 24 response, dated 18 February 2020 and authored by Mr. A McVeety. The core of the response is that the grounds of appeal amount to no more than a disagreement with the Judge's findings of fact. At paragraph [4], the respondent observes:
- '4. The respondent is surprised by a grant of permission that in part relies on a claim that undue weight has been given on inconsistencies between the oral evidence and the evidence given at the Home Office interview. As consistency is one of the indicators of a credible account, an account riddled with inconsistencies is evidently not a credible one.'

Decision on Error of Law

16. The appellant's strongest ground is ground 4 where she challenges the assessment of her evidence conducted at [27] of the decision. She takes issue with the Judge's observation that 'it was only at that point', namely following a question posed by the Judge, 'that the appellant claimed that around the time of starting university she had told her brother that she needed to open a Facebook account and he used his own email account and mobile phone to do that for her'. The appellant observes that she detailed the same in her witness statement, prepared prior to the hearing. The statement details:
- 'When I say my brother reported the Facebooks accounts, what I mean is [that] he reported the fake one. He simply deactivated mine as it was on his mobile number. I believe he reported the fake one as I heard that in snatches of conversation I heard the family having.'
17. Before me Ms. Panagiotopoulou submitted that the factual error featured heavily in several paragraphs of the decision. I am satisfied that the Judge erred in fact in finding that the appellant first referred to her brother having activated the Facebook account with his own phone number at the hearing, as it was detailed in her witness statement.
18. When considering materially, I note Ms. Panagiotopoulou's request that I consider the grounds cumulatively and observe that she was correct to so request as, ultimately, they are challenges to the assessment of credibility.
19. There are no merits to the first ground of challenge. The Judge did make findings as to Dr. Ghabadi's evidence, as can be seen at [15] of the decision. Indeed, the problem for the appellant in respect of this ground is that the Judge further considers Dr

Ghabadi's evidence without adverse comment at [41]-[43] and [45]-[47]. The Judge's observation at [44] is not critical of Dr. Ghabadi, rather it is an observation that he interchanged the words 'indecent' and 'nude' in respect of the photographs. The Judge clearly had the evidence of the expert in mind.

20. Ground 2 can be appropriately broken down into two separate challenges. The first asserts that the Judge reached her credibility findings in isolation from the evidence of Dr. Ghabadi, or indeed without any reference to the other country background evidence before her. Ms. Panagiotopoulou did not place too great a reliance upon this challenge before me, and she was correct to adopt such an approach. The Judge's concern as to the appellant's credibility relates to internal inconsistency as to her personal history, particularly as to the Facebook account and her flight firstly from the family home and then from Iraq. On such issues neither the expert nor the objective background material could aid the appellant as she was referring to personal events. Dr Ghabadi could not claim to hold expertise on the issue of whether the appellant's brother did or did not open the Facebook account and withhold the password from his sister, or as to why a father of a friend would at short notice, and with no warning, buy her a ticket to fly to Turkey and arrange for an agent to help arrange her onwards travel from that country.
21. The second limb of ground 2 is a complaint that the Judge placed undue emphasis on claimed inconsistencies between the appellant's evidence at the hearing and her evidence during her substantive asylum interview thereby failing to have regard to the totality of the evidence in her assessment of credibility. I am satisfied that there is no merit to this ground of challenge. On two occasions, at [35] and [50], the Judge recognised that a person may embellish a genuine claim, that they may be incredible on certain elements of their stated history whilst being credible on others, and that a claim may lack plausibility but still be credible. In this matter, several adverse credibility findings were made, to which there have been no discrete challenges. This is particularly noticeable as to the finding that the appellant was not credible as to how she fled the family home, secured support from the father of a friend and was able to travel from Iraq to the United Kingdom via Turkey, reaching this country 2 days after she fled the family home.
22. Ground 3 is a complaint as to [49] of the decision, which details:
 - '49. The appellant's sister did not attend the hearing and there was no letter of support or witness statement from the sister. While I recognise that the appellant's sister would not be an independent witness, and as a result the weight given to her evidence would be reduced, that does not mean that no weight would be given to it. The appellant's sister would be in a good position to confirm the strictness of the family in Iraq. There are no rules in the tribunal preventing the reliance on hearsay evidence and the appellant's sister would be able to confirm what she had been told by the appellant. The appellant is legally represented and there is therefore no reason why she should not be aware that the evidence from her sister could be of assistance.'
23. Ms. Panagiotopoulou submitted that the Judge erred in attaching undue weight to the absence of evidence from the appellant's sister, someone who had not witnessed the appellant's problems as she was residing in the United Kingdom at the relevant

time, and so would be unable to give direct evidence regarding the incident that led to the appellant fleeing Iraq. However, the Judge expressly accepted that the sister could not give direct evidence as to the incident in late 2018 but was a witness to the family dynamics. It is long-established that a Judge will not err in law when relying upon the fact in their assessment of credibility that an appellant could secure independent supporting evidence and has given no credible account for its absence: *TK (Burundi) v. Secretary of State for the Home Department* [2009] EWCA Civ 40, [2009] Imm. A.R. 488. This ground of challenge enjoys no merit.

24. I therefore return to the error of law identified by ground 4. The question is whether it is material. Ms Panagiotopoulou has appropriately observed that the error permeates paragraphs beyond [27]. However, I am satisfied that there are several other adverse findings made by the Judge that are not infected by this error of fact, which have not been discretely challenged and which individually and severally significantly undermine the entire basis of the appellant's claim for international protection. One example is the adverse finding at [31], made in the alternative and accepting that the brother opened the Facebook account and knew the password, as to the appellant sending messages to Darin knowing that her brother could access the messages at any time and see the photographs she was sending. The Judge has given cogent and lawful reasons for finding that the appellant would not have taken such risk.
25. In the circumstances, the appeal is dismissed.

Notice of decision

26. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law.
27. The decision of the First-tier Tribunal dated 23 December 2019 is upheld and the appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

28. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Dated: 1 October 2020

TO THE RESPONDENT
FEE AWARD

The appellant did not pay a fee and her appeal has been dismissed. No fee award is made.

Signed: *D O'Callaghan*
Upper Tribunal Judge O'Callaghan

Dated: 1 October 2020