



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05421/2017

THE IMMIGRATION ACTS

Heard at Glasgow
on 13 December 2017

Decision & Reasons Promulgated
on 15 December 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

N S M

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent refused the appellant's claim on all available grounds for reasons explained in her letter dated 26 May 2017.
2. First-tier Tribunal Judge A M S Green dismissed the appellant's appeal for reasons explained in his decision promulgated on 27 July 2017.
3. The appellant's grounds of appeal are set out in the application for permission filed with the UT on 4 September 2017, and are headed:
 - (1) errors of law in relation to section 8;
 - (2) errors of law in relation to the assessment of the screening interview;

(3) errors of law in terms of the appellant's documentation; and

(4) errors of law when assessing the best interests of the child.

4. Further to ground (1), Mr Winter submitted that although the judge directed himself correctly, based on *SM* [2005] UKIAT 0116, that section 8 was not the starting point, in fact he fell into precisely that error.
5. As Mr Govan observed, to address section 8 first is not the same as treating it as creating an overall presumption, or as decisive on its own.
6. There is no reason to think that the judge did not observe his own direction, or that he took matters related to section 8 out of context, rather than reaching his decision in the round. I find no error in terms of ground (1).
7. Ground (2) says that the "natural and unrestrained interpretation" which the judge gave the passage from the screening interview quoted at ¶15 is "not supported where the evidence supports the appellant being a police officer".
8. At first sight, the passage quoted can readily be interpreted as the judge says.
9. The ground gained some force when Mr Winter referred to passages in the screening interview (at 1.14 and 5.1), shortly before and shortly after the passage quoted, where the appellant clearly says that he was a police officer.
10. Mr Govan argued that the judge's point is a broader one, based on the appellant not mentioning (a) being targeted by ISIS or (b) working undercover as a police officer, at a stage when those matters might have been expected to emerge.
11. As the context broadens, and reading the whole of ¶16, where the judge analyses the matter, and bears in mind the caution to be exercised in relation to a screening interview, I find this ground to disclose no error.
12. Ground (3) is developed under sub-headings (i) – (v), but mainly depends on the previous grounds as a starting point for error in the judge declining to accept that the appellant has no identity documentation.
13. As the reasons for finding the appellant generally no credible are not undermined, there is no starting point for finding error in the conclusions about availability of documentation, or about the viability of relocation to Baghdad.
14. The appellant did not advance in the FtT any substantial case of difficulty in relocating there. Mr Winter submitted that there might be an obvious error of failing to apply country guidance, but the judge's conclusions offered no basis for any other outcome by reference to *BA*.
15. Relocation to the KRG was an alternative issue.

16. There is no force in the point at sub-heading (iv) that the respondent had to prove the appellant's wife had been "pre-cleared" to return there; cf. *Khedr v SSHD* [2017] CSIH 66.
17. The case is somewhat out of the usual in that the appellant says he is Arab, and has withdrawn his statement that he speaks Kurdish Sorani, while his wife is Kurdish; but generally, it is for him to establish the primary facts, and he has failed to do so. It is not for the respondent or the tribunal to divine matters which have been concealed. Inability to work out in advance the practical details of return is not a basis for protection.
18. Ground (4) complains that the judge made no assessment of background factors relevant to the best interests of the child. Mr Winter added that the general matters raised by BA were relevant also here.
19. The best interests of the child are obviously served by remaining with both parents. In the FtT, the appellant developed no substantial case that the child's best interests would be significantly affected by return as a member of an ordinary Iraqi family unit. This ground shows no error in the judge's analysis at ¶¶22 - 24 of the decision.
20. Sub-heading (iii) of this ground, based on the alleged difficulty of the appellant relocating to the KRG along with his wife and child, fails for the same reasons as ground (3).
21. Separately and together, the grounds are not in substance more than an attempt to re-argue and add to the case. They do not show that the making of the decision of the FtT involved the making of any error on a point of law, such that it ought to be set aside.
22. The decision of the FtT shall stand.
23. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity has been maintained herein.



14 December 2017
Upper Tribunal Judge Macleman