



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05541/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 24 August 2017

Decision & Reasons Promulgated
On 25 August 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

BAKTYAR HAJI BAPIR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr J Chaudry, of Latta & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by First-tier Tribunal Judge David C Clapham SSC, promulgated on 8 February 2017, dismissing his appeal against refusal of asylum.
2. The appellant states 3 grounds.
3. The first, "use of speculation", is directed against the findings at ¶40 that it was incredible that the appellant would be given a telephone warning of an attempt to be made on his life or that the paid assassin would telephone him to gloat after the failed attempt.
4. The second, "failure to consider all the evidence and failure to provide clear reasoning", says that the judge gave no reason for rejecting evidence about tribal feuds, or about a document about threats to his life, and that "should therefore have

been taken at highest". The ground refers to evidence about how Kurds might be traced; a tribal deal for the appellant's departure from Iraq; and risk arising from breaking that agreement, if he were to return – which evidence was either overlooked, or no clear reasoning given for rejecting it.

5. Ground 3, "incorrect application of the standard of proof", says that the judge made no finding about the authenticity of a letter from the Ministry of the Peshmerga, which "should therefore have been taken at highest", and that "in failing to apply the low standard of proof correctly the judge erred in law ... this appellant has more than discharged the burden of proof".
6. (That proposition appears to suggest that the decision was irrational, and should be reversed; but the grounds conclude by seeking a remit to the FtT.)
7. In a rule 24 response the SSHD says that under the heading of speculation the grounds are mere disagreement, identifying no error of law; the finding was open on the evidence; and the case referred to in the grounds is irrelevant. The reply further argues that failure to take account of evidence about the likelihood of tracing is immaterial, as at ¶44 – 46 the judge clearly found there had been no attempts or threats on the appellant's life.
8. Mrs O'Brien maintained the position that grounds 1 and 2 disclose no error of law, but conceded that ground 3 discloses a failure to consider a document the assessment of which was incumbent on the judge; that in the absence of such assessment, it could not be said the outcome could safely stand; and the case should therefore be remitted to the FtT.
9. Mr Chaudry was content with that outcome.
10. The ground of appeal is incorrectly framed in terms of the standard of proof, and of the implications of the error; but the respondent's concession recognises the nature of the oversight.
11. Of consent, the decision of the FtT is **set aside**. None of its findings are to stand, other than as a record of what was said at the hearing. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge David C Clapham SSC.
12. No anonymity direction has been requested or made.



24 August 2017
Upper Tribunal Judge Macleman