Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/08036/2016**

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision & Reasons Promulgated**
On December 8, 2017	**On December 12, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MR SARBAST AHMED OMER
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Tabassum (Legal Representative)
For the Respondent: Mr McVeetie, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity direction.

2. The appellant is an Iraqi national. The appellant came to this country as a Tier 4 student on June 16, 2014. He returned to Iraq in December 2015 and then returned back to this country. He claimed asylum on January 18, 2016. The respondent refused his protection claim on October 6, 2016 under paragraphs 336 and 339M/339F HC 395.

3. The appellant lodged grounds of appeal on October 20, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His

appeal came before Judge of the First-tier Tribunal A Davies (hereinafter called "the Judge") on February 27, 2017 and in a decision promulgated on March 31, 2017 the Judge refused his appeal on all grounds.

4. The appellant appealed the decision on April 13, 2017. Permission to appeal was initially refused by Judge of the First-tier Tribunal Dineen on April 27, 2017 but following renewed grounds of appeal Upper Tribunal Judge Pitt granted permission on July 13. 2017 finding the grounds arguable. The respondent lodged a Rule 24 response dated August 2, 2017 in which she argues there was no error in law.

5. The matter came before me on the above date and the parties were represented as set out above.

SUBMISSIONS

6. Miss Tabassum adopted the grounds of appeal and submitted the appellant had published from the United Kingdom a number of articles which were highly critical of the Kurdistan government. She submitted that as a returning journalist, who had published a number of critical articles, the appellant would be at risk. In distinguishing between internet publications and newspaper articles the Judge had erred. At [48] the Judge failed to explain why he would not be at risk.

7. Miss Tabassum further submitted that the publication of articles and the appellant's ongoing beliefs placed at risk in line with HJ (Iran) [2010] UKSC 31. The Judge also failed to grasp the point being made that he had already been targeted because his funding had been stopped whereas all other students' funding continued.

8. Mr McVeetie relied on the Rule 24 statement and submitted there were differences between what the appellant claimed to have done and journalists who submitted articles to newspapers. The latter were at risk if their views were against the authorities whereas Mr McVeetie submitted the appellant's action were akin to a blogger. The fact the website may be scrutinised did not mean he would be targeted. Whilst blogging articles to the web he had returned to Iraq and encountered no problems either on arrival or departure. Mr McVeetie submitted the Judge's findings were open to him.

9. With regard to the HJ point he submitted the Judge did not accept he was genuine in his views and consequently HJ was not engaged. The Judge concluded he was trying to create a claim to support his claim. With regard to the final ground the Judge was not required to consider why the authorities stopped his funding because he had rejected his claim overall.

10. In response Miss Tabassum submitted that her final ground was a standalone ground and not just connected to the first ground of appeal. The appellant had returned to sort out some money issues and he only realised there was a problem when he returned. Whether he blogged or printed articles she submitted HJ applied.

11. Having heard submissions I reserved my decision but indicated that if there was an error in law then I would remake the decision by allowing it on protection and article 3 ECHR grounds.

FINDINGS ON THE ERROR IN LAW

12. The appellant originates from Sulaymaniyah in the Kurdish region of Iraq and his wife's family come from Erbil. He came to this country to study and he was able to afford the cost of his studies due to the financial assistance offered by the Kurdish authorities. He was not significantly involved in politics in Iraq but his claim is that once he was in the United Kingdom he began criticising the Kurdistan government.

13. The Judge accepted he was funded by the Kurdistan government and that he left the country legally in 2014. He returned in December 2014 to bring his family to this country and the Judge found he had no problems up to December 2014 which suggests anything he had written had either not come to the attention of the authorities or they were simply not interested in it.

14. The Judge accepted at [33] the appellant wrote a number of critical articles after he arrived in the United Kingdom but commented at [34] that such articles were at odds with what he had previously written in Iraq but identified the real issue was whether such articles would place him at risk of harm from the Kurdistan government.

15. Miss Tabassum submits that the Judge's approach hereafter was flawed. The Judge examined the country evidence and accepted that people who wrote critical articles risked being detained and abused by the authorities. However, the Judge drew a distinction between professional journalists and the defendant. He considered the HJ point and concluded at [38] that the appellant, based on his previous activities in Kurdistan, would not be politically active in Kurdistan. It is this for this reason that he concluded HJ did not apply to this case. This was an argument adopted by Mr McVeetie although both Upper Tribunal Pitt and Miss Tabassum raised concerns over this approach.

16. In giving permission to appeal Upper Tribunal Pitt found it arguable that the Judge incorrectly approached HJ because the Judge accepted the appellant had written articles and that his claim political parties watched website was plausible.

17. The Court in HJ stated:

> "(a) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But I would regard this part of the test as having been satisfied if the applicant's case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case.

> (b) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. The Home Office's Country of Origin report will provide the background. There will be little difficulty in holding that in countries such as Iran and Cameroon gays or persons who are believed to be gay are persecuted and that persecution is something that may reasonably be feared. The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry.
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> (c) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin.
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> (d) The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded. Page 18
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> (e) This is the final and conclusive question: does he have a well-founded fear that he will be persecuted? If he has, the causative condition that Lord Bingham referred to in Januzi v Secretary of State for the Home Department [2006] 2 AC 426, para 5 will have been established. The applicant will be entitled to asylum."

18. Mr McVeetie argued the Judge's decision was not flawed and there is merit in that argument. The appellant had clearly not experienced any problems prior to leaving the country. He was clearly highly thought of because he received funding from the government for his studies. Clearly, if there were concerns about him this would not have been the case. The appellant stated that he submitted critical articles to the website but whenever he

returned he experienced no problems whatsoever. He was able to enter the country without difficulty and then leave the country without difficulty.

19. Miss Tabassum's argument is that when he returned in late December 2015 he found his funding had ceased. The appellant's claim was that he had been singled out and this was due to his critical articles. However, there was nothing to support his claim this was the reason his funding had ceased and the Judge spent some time considering the events of his time in the KRG in December 2015.

20. Returning therefore to the HJ questions I accept the Judge was entitled to conclude the appellant did not fall within the test set by the Court. As he did not fall within the risk category the Judge was entitled to reject the HJ argument as long as he reasoned his findings which he did.

21. There is therefore no error of law on any of the issues. Whilst they are separate arguments they are intertwined because unless the articles would place him at risk the HJ point would not arise and the reason for his funding was consequently for a reason other than that claimed by the appellant.

DECISION

22. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the decision.

Signed Date 08.12.2017

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as the appeal was dismissed.

Signed Date 08.12.2017

Deputy Upper Tribunal Judge Alis