



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/03086/2015

**THE IMMIGRATION ACTS**

**Heard Birmingham Civil Justice Centre  
On 4 October 2018**

**Decision & Reasons  
Promulgated  
On 9 November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY**

**Between**

**A Z I  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Claimant: Mr J Dewa, IAS Birmingham

For the Secretary of State: Mr D Mills, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Iraq. He claimed asylum in the United Kingdom and asked to be recognised as a refugee on 25 June 2015. The Respondent refused his application in a letter dated 11 November 2015. The Appellant appealed this decision to the First-tier Tribunal and his appeal was heard and dismissed by First-tier Tribunal Judge Row in a decision promulgated on 10 August 2016. The Appellant sought permission to appeal this decision which was granted on renewal to the Upper Tribunal on 15 December 2017.

2. Permission was granted by Upper Tribunal Judge Plimmer who found that it was arguable that, having accepted aspects of the Appellant's evidence, the First-tier Tribunal inadequately reasoned why his evidence that he was involved in a committee investigating fraud was rejected, beyond its view is that there was inadequate support in the documentary evidence. It was further arguable that the First-tier Tribunal had unlawfully required corroboration of part of the Appellant's evidence, without giving reasons as to why his own detailed account was not accepted.

## **The Grounds**

3. The grounds assert that the First-tier Tribunal, having accepted a number of aspects of the Appellant's account, then appeared to raise the required standard of proof finding that the documents he provided did not advance his case and then recommending the type of evidence which would have sufficiently satisfied the standard of proof. It is said that this evidence would no doubt have been strong enough to satisfy the standard of the balance of probability, however that was not the standard required. Further, it is stated that the First-tier Tribunal did not take into consideration the evidence given in the Appellant's witness statement where he provided a very detailed account. Further, the First-tier Tribunal failed to take into account explanations given in oral evidence as to why the Appellant was unable to provide the type of evidence suggested by the First-tier Tribunal. The Appellant confirmed that the documents the First-tier Tribunal suggested he obtained were sensitive government documents. It is further asserted that the First-tier Tribunal did not make any adverse credibility findings on the oral and written evidence provided by the Appellant and therefore the First-tier Tribunal had not justified why the documentary evidence was not accepted and the written and oral evidence not considered.

## **The Hearing**

4. The appeal therefore came before the Upper Tribunal in order to determine whether there was an error of law in the decision of Judge Row and if so whether to set that decision aside.
5. I heard submissions from both representatives. Mr Dewa submitted that the Appellant could not get further evidence. It would have exposed him to a risk. It was not in dispute that he was a government auditor. It was his case that a member of the committee he was on was murdered despite having police protection. It was not disputed that he died. It was this that that made it impossible for the Appellant to find redress from the police. The Judge equated the environment in the UK to the one in Iraq. It was in transition and because it held elections did not mean that they respected the rule of law. When it came to corruption it had been reported that there was a culture of corruption by public officials. An

auditor would have been at risk if trying to expose what he was seeing. The decision of the First-tier Tribunal was not sustainable as some aspects were accepted and the Judge came to a conclusion which was not consistent with his findings. The Appellant did not have redress in Iraq nor could he avail himself of internal relocation. As an Arab and Sunni and he could not be able to go to Kurdistan and could not resettle there. Mr Dewa reminded me of the facts of the case and asked me to find that there was a material error of law.

6. Mr Mills submitted that there was a genuine and important principle that corroboration can be expected. Whilst that was the general principle there were exceptions (**TK (Burundi) v SSHD (2009) EWCA Civ 40**). When evidence was likely to be available but had not been produced without explanation the Judge was entitled to make an adverse inference. Despite what we knew about Iraq it was a relatively developed country with a very developed bureaucracy. If the Appellant was able to produce some evidence, why could he not produce other evidence. The Judge was entitled to come to those conclusions. Beyond the documents that he accepted from the Ministry of Oil, the question was why he could not get the others. If the risk emanated from the authorities that would be explained but he said that it was corrupt people who were linked to militias who were the ones who were after him. He could have got the information from the Ministry of Oil.
7. Mr Dewa said that IAS took the decision not to get the documents because they risked exposing him. It was difficult to see how he could have trusted corrupt employers.

## Discussion

8. It is the Appellant's case that he worked as an auditor for the Ministry of Oil and when investigating a contract between a company owned by the government and a privately owned company, he, and others who were part of his committee, discovered irregularities. It is the Appellant's case that there were corrupt dealings involving a manager of the government owned company and an individual in the private company. Consequently, a formal investigation was started. The Appellant and the other members of the committee were asked to conduct this investigation and a report was prepared, and threats were made by the allegedly corrupt individual. The private company was blacklisted by the government as a result of its corrupt involvement in the contract. It is the Appellant's case that the corrupt individual threatened revenge and murdered one of the members of the committee by the instigation of a militia. All other members of the committee had fled.
9. The First-tier Tribunal Judge accepted that the Appellant was an employee of the Ministry of Oil, a matter which was in issue between the parties. However, the Judge found that the documentary evidence adduced by the Appellant did not advance his case. He found that the

report which caused the problems could have been obtained, his employer could have confirmed that he was on the committee and that the other members had fled. The First-tier Tribunal Judge made a number of adverse credibility findings and concluded that although the Appellant was employed in a minor capacity as an auditor, he was not involved in any committee investigating fraud or a joint author of any report.

10. It is argued that the First-tier Tribunal Judge unlawfully required corroboration when obtaining such documentation would put him at risk. In **ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119** the Tribunal held that it was a misdirection to imply that corroboration was *necessary* for a positive credibility finding. However, the fact that corroboration was not required did not mean that a Judge was required to leave out of account the absence of documentary evidence, which could reasonably be expected. In **Gedow, Abdulkadir and Mohammed v SSHD 2006 EWCA 1342** the Court of Appeal concluded that the Tribunal was entitled to draw conclusion from the absence of corroboration as long as it bore in mind the difficulties faced by asylum seekers in producing corroborative evidence. In **TK (Burundi) v SSHD (2009) EWCA Civ 40** the Court of Appeal said that where there were circumstances in which evidence corroborating the Appellant's evidence was easily obtainable, the lack of such evidence must affect the assessment of the Appellant's credibility. Where a judge in assessing credibility relies on the fact that there is no independent supporting evidence where there should be and there was no credible account for its absence, there is no error of law when he relies on that fact for rejecting the account of the Appellant.
11. It is clear that the absence of corroborative documentary evidence was not the only reason the Judge rejected the Appellant's account but that he considered it to be material matter. The Appellant sets out in his detailed witness statement that the corrupt individual in question still works for the government despite the corruption which the report unveiled and had been able to arrange the murder of a colleague on the committee. The First-tier Tribunal Judge did not take this into account as an explanation or consider that he could be exposed to risk by seeking to obtain further documentation and that this was capable of being a credible explanation for its absence. In the circumstances, I find that the First-tier Tribunal failed to take into account the Appellant's explanation as to why the documentation could not reasonably be expected and in so doing unlawfully made adverse credibility findings based on the absence of corroboration. I find that this error was material because it clearly affected the assessment of the Appellant's credibility.
12. In the light of the fact finding required in accordance with part 7.2 of the Practice Statement I remit this matter for a de novo hearing before a Judge other than Judge Row.

### **Notice of Decision**

The decision of the First-tier Tribunal contained a material error of law and I set it aside.

I remit the appeal for a de novo hearing.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 October 2018

A handwritten signature in black ink, appearing to be 'L J Murray', enclosed in a thin black rectangular box.

Deputy Upper Tribunal Judge L J Murray