



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06344/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 27 April 2018

Decision given orally at hearing. Sent out
On: 22 June 2018

Before

MR C M G OCKELTON, VICE PRESIDENT

Between

MR AWAT RASOUL GHAFOOR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik, Counsel instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq, a Kurd and a Sunni Muslim. He appeals to this Tribunal with permission against the decision of First-tier Tribunal Judge Bannerman who in a decision sent out on 23 January 2018 dismissed the appellant's appeal against the Secretary of State's refusal to grant him asylum or humanitarian protection.
2. The appellant has a considerable history in this country having arrived what is now over ten years ago on 25 February 2008. He claimed asylum the same day. He gave an account of his history which indicated that he was brought up by his mother and a paternal uncle in Mosul, that he and his brother with whom he had lived until then, left Iraq together, were then separated, his brother ended up apparently in prison in

Turkey and then went back apparently with the uncle to Mosul. By the time the matter came on for hearing of the appellant's first asylum appeal in 2010 the appellant's position was that he had not heard from his family members for some time: he thought they were all in Syria. He was unable to provide any positive evidence of their absence from Iraq. All he said was that he had no contact with them.

3. His asylum appeal was determined by Judge Lever, who was not satisfied that the appellant was telling the truth about his family. He decided therefore in 2010 that the appellant was not a person whose evidence on his family was to be regarded as credible, and decided also at that time that the appellant had not established that he was without family in Iraq.
4. The appellant made as I have indicated a further claim, and there was a further decision against him, and so the matter came before Judge Bannerman on a second appeal. Judge Bannerman took as his starting point the decision of Judge Lever and concluded after careful consideration of the facts before him that there was no reason to depart from the decision of Judge Lever. He referred to Devaseelan [2002] UKIAT 00702 and regarded the finding of Judge Lever in 2010 as essentially concluding the matter because he was not persuaded that there was any reason to depart from it. He therefore treated the appellant as a person who was not worthy of credit, and who had not established that he had no family in Iraq. He then went on to conclude that because the appellant therefore could be regarded as a person who did have family in Iraq, he could properly be returned to Baghdad from where he could, or might chose to, relocate to the IKR and would with the help of his family be able to able to obtain a CSID or whatever other documents were necessary to enable him to function properly within the Iraqi regime as it currently operates in either of those two areas.
5. The grounds of appeal are essentially that the judge erred in applying Devaseelan in the way he did, and that the judge ought to have reached his own conclusion on the two matters to which I have referred, bearing in mind the passage of time and the events since 2010 in that part of the world.
6. Mr Bates, who appears for the respondent, has drawn my attention to the defects as he sees it in the appellant's evidence about personal matters since 2010 but has accepted that if the judge's conclusion on the appellant's family was wrong the Secretary of State's case is in some difficulty.
7. The issue of the appellant's family was certainly determined by Judge Lever in 2010. The question is whether in the circumstances of this case Judge Bannerman ought to have either accorded less weight than he did to the conclusions of Judge Lever as operative at the time when he was making his decision in 2018, or whether he should have in some other way departed from Judge Lever's conclusions. It seems to me that the conclusions of Judge Lever do put the appellant in the position that he needs to show some good reason for departing from it. That is, it may be said, the essence of the decision in Devaseelan. However, different cases raise different issues. It is clearly not open to a person whose account is rejected, particularly if it is rejected because a judge does not find his evidence credible, simply to raise the same matter before another judge and say that he is entitled to have the matter determined afresh.

Devaseelan is precisely intended to avoid time being wasted or judgments not being regarded as final on that sort of basis. Nevertheless it does appear to me in this case that there were factors which needed to be taken into account that had arisen since 2010.

8. The first is that another eight years have passed with no evidence or any contact at all between the appellant and his relatives. Of course that is not an absolutely persuasive factor in itself but this is not a case where, for example, another relative has been found in the United Kingdom with whom, after claiming that there were no relatives, the appellant has had a loving reunion. This is a case where the number of relatives was at the beginning small and where there is in a period now of ten years no trace of them.
9. Secondly, there was evidence from the appellant that he had made some, albeit wholly inadequate, attempts to trace them. That is to say he had contacted the Red Cross to see if his mother and other family members could be traced. The absence of a positive response from the Red Cross does not of course mean that they cannot be traced, although it does mean that they have not been yet, but the appellant's willingness to put that process in action through a well-respected non-governmental organisation might be regarded as adding something to his credibility on that issue.
10. There is a third factor which is perhaps not exactly to the point, but which may assist, which is simply that the circumstances in Syria, the place to which the appellant's family are said to have gone, and Mosul, and northern Iraq, and indeed other parts of Iraq in the period between 2010 and 2018 might tend to the suggestion that individuals who may have been alive and well in 2010 might not be today.
11. None of those factors of itself demonstrates that the appellant was telling the truth in 2010 or that he did not have relatives in Iraq in 2010. Each of them separately however is a point which as it seems to me Judge Bannerman ought to have taken into account in determining whether he should apply Judge Lever's determination without departing from it or whether it was right to depart from it. It seems to me that the combination of the three factors is amply sufficient to show that the judge's refusal to depart from it was an error in law.
12. I have therefore considered the material myself. I look to see whether the material before Judge Bannerman is material which ought to have been regarded by Judge Bannerman as establishing the absence of any relatives of the appellant in Iraq. It is fair to say that Judge Bannerman made no conclusion himself on the appellant's credibility. He said specifically that nothing that had been said in the evidence before him caused him to find that the appellant has become a credible individual based on the evidence and the way he gave it. That might well have been an appropriate way of dealing with the matter if it were right to regard himself as bound by Judge Lever's determination but once that prop disappears then the judge was evidently required to make a conclusion as to credibility himself. Nothing that I find in his determination causes me say that the appellant properly ought to have been regarded as not a witness of credit in the hearing before Judge Bannerman, based on the evidence that he gave, and based as I have said on the events since 2010, in particular his willingness to see whether anybody else could find the relatives that he had not been able to find.

13. For that reason my conclusion is, on the facts as presented on the evidence before me that to the standard applicable in an asylum appeal that the appellant did establish on the evidence available that he has no family in Iraq. To put that in another way, there is simply no basis at all for anybody to act now on the premise that he has family in Iraq who would be able to assist him to re-establish himself there.
14. The consequence is that if returned to Iraq, whether to Baghdad or to some other place that he might choose to take himself after arriving in Baghdad, he would be a person who has difficulty in establishing his Iraqi identity, who has no CSID, who is a member of two minorities, as a Kurd and as a Sunni Muslim. As Mr Karnik on his behalf has said, he has also the disadvantage of having been outside Iraq for ten years and having therefore wholly failed to learn the way in which from time to time minorities in that country may be able to save themselves from difficulties. Noting what Mr Bates said about the Secretary of State's position if the finding on presence or absence of family members could not stand, it seems to me that the appropriate thing to do now after the ten years that the appellant has been in the United Kingdom, is to put an end to debate about his status and to recognise, as I do, that he has established a well-founded fear of persecution in Iraq as a person who is liable to ill-treatment on account either of his race or his religion or both, and cannot, because of the difficulty about documentation, reasonably be expected to find himself a place to live in reasonable conditions away from such persecution.
15. Therefore, for the reasons I have given I find that Judge Bannerman erred in law in his approach to the application of Devaseelan to this case. I set aside his determination. I re-determine the appellant's appeal and allow it.

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 11 June 2018