



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

Appeal Number: PA/00240/2019

THE IMMIGRATION ACTS

Heard at Birmingham CJC

**Decision & Reasons
Promulgated**

On 8 November 2019

On 21 November 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

**MR D A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharif, Fountain Solicitors

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of Judge of the First-tier Tribunal Boylan-Kemp MBE dated 2 May 2019 dismissing the Appellant's appeal against the Respondent's decision of 23 November 2018 refusing his human rights and protection claim.

2. The Appellant is a national of Iraq of Kurdish origin and from Sulamaniyah in the IKR. He gave an account that he was at risk of serious harm in the IKR by reason of his family and extended tribe being in a feud with another tribe in the IKR. The Appellant was not able to give many details of the origins of the feud but stated that one family member had been killed as a result of it and that he himself had experienced two incidents; one being that unknown persons had fired upon a car in which he was travelling and his cousin had been injured in the shoulder, and another occasion when the house in which he lived was fired upon.
3. The Respondent in its decision refusing the protection claim disbelieved the Appellant's account that there was any feud on the grounds that the Appellant knew very few details of the alleged feud. There was also said to be a discrepancy as between the Appellant's evidence in interview as to how many occasions the Appellant experienced any problems himself (refusal letter, para [26]) and a discrepancy between an alleged fear of his own father (resulting from the Appellant refusing to take part in the feud) and information given in an age assessment interview in which he had stated that he had a good relationship with his family members (para [31]).
4. The Appellant appealed against that decision and the matter came before the judge at the Birmingham hearing centre on 18 March 2019. The Appellant was represented and gave evidence. At the date of that hearing the Appellant would have been 18 years of age. A further document was relied upon by the Respondent at that hearing, being a EURODAC search result, demonstrating that a person in the Appellant's identity was fingerprinted in Dresden in Germany on 22 March 2016. The Appellant's account as given in his SEF interview and confirmed in oral evidence before the judge was that he only left Iraq in December 2017. The Appellant denied before the judge that the person identified in the EURODAC search was him but the judge stated that she was satisfied by the details contained within the document, and looking at the clear photograph on the EURODAC match, that the person fingerprinted in Germany was indeed the Appellant.
5. The judge found at paragraph 14 onwards as follows:

“16. The evidence provided by the EURODAC document is unequivocal. The photograph contained within the document is clearly the Appellant who appeared before me and I have no reason to doubt that the document relates to him. Therefore this document upon which I am satisfied I can place significant weight puts him in Germany on 22 March 2016. Consequently I find that this evidence undermines the credibility of his entire account and his credibility as a witness in his own cause and that it renders his entire account unreliable.

17. Further I also find his inability to recall the details of the alleged feud which caused him to leave his family and flee the country to also not be credible. If a young man was leaving his life behind because of his reluctance to become involved in an ongoing family feud then I would anticipate that he would have knowledge of what he is in fear of and so I do not find it plausible that he would not know the details of this feud if he held such a genuine fear. Also I note that even on his own evidence there has been no specific risk or threat made to him which would cause him to fear for his own safety beyond what is a more general tribal threat and of which he cannot provide much detail.

...

18. As I have found the Appellant's alleged reasoning for leaving Iraq to not be credible then I also find that it is not plausible that his family have consequently threatened him as claimed due to his alleged desertion because of the alleged feud. Instead I find that he has travelled to the UK with the assistance and knowledge of his family for reasons other than escaping a risk of persecution. As such I find that his family would therefore be able to assist him with obtaining a copy of his identification documents and CSID which would help facilitate his return to Iraq. I also find that he would be able to return to the help and support of his family there."

The judge dismissed the Appellant's appeal.

6. The Appellant appeals to the Upper Tribunal on grounds dated 15 May 2019 which argue very briefly that the judge erred in law at paragraphs 15 to 20 by giving inadequate reasoning for finding the Appellant's account to not be credible and secondly that the judge had failed to apply relevant country guidance.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Keane on 24 June 2019. The judge stated as follows:

"The judge arguably had regard to irrelevant considerations in finding that the Appellant had not given a credible account of events. The judge's findings as to the credibility were to be found at paragraphs 15 to 18 inclusive of her decision. At paragraph 15 the judge attached weight so as to undermine the Appellant's credibility to a EURODAC printout provided by the Respondent which as the judge found proved that the Appellant was photographed and printed in Germany on 22 March 2016. The judge however did not explain why such circumstance damaged the Appellant's credibility. If the judge had in mind the Appellant's apparent failure to claim asylum in Germany the judge arguably should have stated so. At paragraph 16 of the decision the judge again accorded weight to the EURODAC document without stating why. At paragraph 17 of the decision the

judge stated that the judge would have anticipated that the Appellant would have had knowledge of the alleged feud which on his case caused him to leave his family and indeed his country. The judge arguably substituted her own understanding of what constituted reasonable conduct in circumstances where arguably she should not have done so. At paragraph 18 the judge stated that it was not plausible that the Appellant's family have consequently threatened him on account of his ostensible desertion and the judge was arguably disbelieving the Appellant's account without providing any or adequate reasons. It was incumbent on the judge in resolving the issue of credibility to embark upon a global assessment of the Appellant's credibility and to provide adequate reasons in support of a finding that he had not done so. This the judge arguably failed to do."

Submissions

8. Mr Sharif relies upon the grounds of appeal and the admittedly more extensive grant of permission to appeal in support of his Appellant's case.
9. Mr Sharif points out that the only date given in the Appellant's account for any particular incident was in relation to the incident when the car in which the Appellant was travelling had been shot at. The date for that is to be found in the SEF interview at [86] and was simply '2016'. The Appellant gives no other dates for the matters that he relies upon in support of the proposition that he is at risk because of a blood feud in Iraq. He does however consistently state that he left Iraq in December 2017. Mr Sharif argues that the Appellant had accepted in the course of his evidence that he had travelled through Germany and therefore the evidence from the EURODAC search confirming that did not alter the credibility of the Appellant's account. Mr Sharif also argued that the judge's findings in relation to it being incredible that the Appellant would not have had more knowledge about the details of the feud was an irrational finding on the part of the judge.
10. For his part Mr Mills defends the judge's decision and argues that the dishonest statement that the Appellant had remained in December 2017 was clearly capable of affecting the credibility of the Appellant's account. I raised with him whether or not such a discrepancy could be treated as determinative of the account given that there were no dates given in the Appellant's account of matters occurring in Iraq any later than 22 March 2016. Mr Mills appeared to accept that it was right to say that the Appellant's credibility was not determinatively decided by the discrepancy of his whereabouts in March 2016. However Mr Mills points to the other findings at paragraph 17 in support of the judge's reasoning.

Discussion

11. I find no material error of law in the judge's decision. The suggestion in the grant of permission to appeal by Judge Keane that the judge had

arguably had regard to irrelevant considerations is difficult to sustain. The Appellant has clearly given inconsistent evidence about his whereabouts, on the one part insisting that he remained in Iraq in December 2017 but incontrovertible evidence existing from the EURODAC search result that he was present in Germany on 22 March 2016. These two items of evidence simply cannot sit together. True it is that there are no details of the Appellant's account of any incidents that he has set out which are dated any later than 22 March 2016, and therefore being shot at in '2016' and him departing Iraq prior to 22 March 2016 does not necessarily make his account impossible to believe, but it is clearly a very significant matter that the Appellant has lied about his continued presence in Iraq up to the point of December 2017 and the judge was fully entitled to treat that as a very significant matter. Whether or not she was entitled to treat it as rendering 'his entire account unreliable' is moot.

12. However the judge does not stop there in her credibility findings because she continues, as is clear at paragraph 17, to set out other reasons for finding the Appellant's account incredible. Whereas it may be expected that a young person may not be as fully informed about the details of a feud affecting his family and the wider tribe as might a fully-grown adult, the judge's point is that the Appellant decided, together with the assistance of a relative, to leave Iraq because of this feud and the judge was entitled to find that it was implausible that the Appellant knew so little about the feud whereas it had been the specific cause of his decision to leave the country. I find that it was not irrational for the judge to make the findings that she did at paragraph 17. There are a number of reasons therefore given by the judge for finding the Appellant's account incredible and I find that none of those reasons is vitiated by any error of law.
13. Judge Keane in granting permission did not comment upon the Appellant's actual second ground which was that the judge had failed to apply country guidance relevant to the issue of obtaining documents for readmission and residence in Iraq. However in the light of my decision that the judge's credibility findings are sustainable it is also sustainable that the Appellant can have the assistance of family members in Iraq to obtain any replacement documents that are needed to facilitate his return to, and residence in Iraq.

Notice of Decision

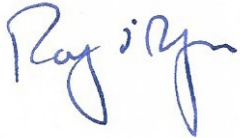
The judge's decision did not involve the making of any material error of law.

I do not set aside the decision.

The Appellant's appeal is dismissed.

Signed

Date 20.11.19



Deputy Upper Tribunal Judge O’Ryan

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 their 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 20.11.19



Deputy Upper Tribunal Judge O’Ryan