



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

Appeal Number: PA/02153/2019

THE IMMIGRATION ACTS

**Heard at Bradford
On 24th July 2019**

**Decision & Reasons Promulgated
On 2nd August 2019**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**NQ
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, Counsel instructed on behalf of the Appellant

For the Respondent: Ms Hopkinson, Senior Presenting Officer

DECISION AND DIRECTIONS

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.
2. The Appellant with permission, appeals against the decision of the First-tier Tribunal (Judge O'Hanlon) (hereinafter referred to as the "FtTJ") who,

in a determination promulgated on the 17th April 2019, dismissed his claim for protection.

The factual background:

3. The background to the Appellant's protection claim is set out in the determination of the FtTJ at paragraphs 14-15 and in the decision letter of the Secretary of State issued on 20th February 2019.
4. The Appellant is a national of Iraq. He entered the United Kingdom on 16 August 2018 and made an application for asylum and/or humanitarian protection. His claim was based on his assertion that he was at risk on return to Iraq as a result of political opinion imputed to him and that he had received threats from the KDP and from his wife's family in Iraq.
5. The appellant claimed that his problems began on 13 November 2017 when working at a company based in Erbil. He also been working as a nurse. On that day, he was requested by the company to register a car purchased by his boss's wife and get the number plate. He attended the traffic police to do this but there were some issues at the police station because by another person jumping the queue. A dispute ensued between the appellant and members of staff and as the appellant attempted to leave, he was grabbed by three police officers and beaten up by them. The appellant went to hospital and following receipt of a medical report made a police report against the treatment he received.
6. Two days later police officers in the KDP came his place of work and told him that if he carried on with the complaint made, they would kill him. He told them that he would not pursue it any further but following this, he believed his name was blacklisted. Incident arose at his place of business and a proposed transfer of part of the business into his name did not go ahead. The KDP began interfering in his life in every way. It was told that he had to work full-time as a nurse and when the appellant refused to do so he ended leaving his job. He believed the KDP were responsible these problems.
7. The second limb of his claim related to problems with his wife's family. He claimed to have received threats from his wife's family due to problems in his marriage. He claimed that as they were not getting on, he sent his wife to her parents' home in about December 2017. They subsequently reconciled and that the problems continued even though they were living under the same roof at the time the appellant left Iraq. It was claimed that as a result of arguments with his wife's family, her brother had threatened to kill him. They had links to the KDP and were "powerful people".
8. In a decision letter dated 20th February 2019 the Respondent refused his claim for asylum. It was accepted that he was a national of Iraq and of Kurdish ethnicity. It was not accepted that as a result of a complaint made against traffic officers that the appellant was assaulted or that he came to the attention of the KDP. The respondent considered that the appellant's

account lacked detail and that he had provided inconsistent accounts of what occurred when he made as complaint and thus his credibility was damaged. The appellant had not adequately explained how problems at work were directly linked to the KDP or how problems at work were directly linked to that party or his complaint against the police.

9. The appellant provided documents in support however applying the decision in Tanveer Ahmed [2002] UKIAT 00439, the respondent gave reasons why those documents were not reliable.
10. Furthermore, it was not accepted that he had undergone threats from his wife's family. The respondent considered that he had provided inconsistent accounts of how his problems started with his wife's family, and given an inconsistent account of what house the family were currently living in nor was it accepted that having reconciled with his wife and living without in the same house before he left Iraq, that it was credible that the family would wish to kill him when he had no intention of taking the house from his wife. He had failed to demonstrate why his wife's family would want to kill him given that she is currently in possession of the family home which he had claimed they had threatened him about.
11. The appellant lodged grounds of appeal against that decision. The appeal against that decision came before the FtTJ on the 5th April 2019 and in the decision promulgated on 17th April 2019 his appeal was dismissed.
12. The judge set out his findings of fact at paragraphs 19-38. He identified the primary matters in issue as whether the appellant's claimed issues with the traffic police resulted in him coming to the adverse attention of the KDP and threats from his wife's family. In respect of the documentary evidence provided, the judge gave reasons at paragraphs 24 – 26 as to why the documents, which consisted of a medical report, police report and letter of complaint were not reliable documents. At paragraphs 27 – 37 the FtTJ gave reasons why he found his account to be both inconsistent and implausible. He found the account given of being beaten up by the police was inconsistent with the contents of the medical report. As to the claim that he had been blacklisted, the judge did not accept the evidence in respect of this claim. In particular, he had referred to the failure of his employer and close friend of putting the business in his name. The appellant not given any explanation of why that would be the case or why would be as a result of any intervention on the part of the KDP. No reasons were given as to why the electricity was cut-off and ongoing problems caused as a result of any intervention by the KDP. Furthermore, the appellant did not put any explanation forward as to why problems he had at the hospital were attributable to the KDP.
13. As to the account given of difficulties experienced with his wife's family, the judge rejected that for the reasons given at paragraphs 31 – 37. The FtTJ found that his account was inconsistent and there was a "degree of vagueness". He claimed that he and his wife were not getting on and as a result he sent her to her parent's home but that was inconsistent with the

position at the date he left Iraq in June 2018 when they were reconciled living under the same roof. In his witness statement, he had not explained what the problems were. In the evidence given, he stated that his in-laws interfered in their lives. Notwithstanding the account given by the appellant that he took his wife to her parents' home and stated that he did not like them interfering with his lives and his father-in-law threatened to kill him, four months later the appellant's wife moved back to live with him. The judge considered that the appellant's account that his family in-laws were threatening to kill him was undermined by the fact that the threats are being made in early 2018 but he had remained unharmed in Iraq until he left in June 2018. Furthermore, his wife returned to reside with him four months after the alleged dispute with her family.

14. The judge considered the appellant's account as a result of problems with the KDP he wanted to move from Erbil, but his wife would not agree to do it. His account was that he moved to another house in the same area. The judge considered that the fact that the appellant had moved from one area to another in the same area did not explain how he expected or hoped that such a move would stop the problems that he claimed he had with the KDP. Furthermore, his oral evidence was that he stated it was not possible to get a house or move houses without the approval of the KDP who would provide a letter from the local official of the party to the security forces to obtain a house move. In the light of the appellant's claim that he was blacklisted by the KDP and they were attempting to interfere with all aspects of his life, the fact that the appellant was able to move was inconsistent with his account that he was blacklisted by the KDP (see [32]). At paragraph 33, the judge found that the appellant had not demonstrated that his problems with employment at the hospital were as a result of the intervention of the KDP, and at [34] the judge rejected his account that his wife had now made a complaint against him. At [35] the judge took into account that in his screening interview the appellant only referred to being in fear of the government as a result of an incident in November 2017 and that no reference had been made as to any problems with his wife's family in Iraq. At [36] there was no other evidence to support his claim that his family relatives worked in the security services and this was inconsistent with his account that in light of the problems that he claimed to have had with the KDP and that he had not attempted to obtain the protection from any influential relatives. At [37], the FtJ made a finding under section 8 and the failure to make a claim in a safe country.
15. The judge therefore was not satisfied that the appellant had given a consistent and credible account and had therefore failed to demonstrate that he had well-founded fear of persecution on return to Iraq. The appellant did not raise any Article 8 issues (see [41]).
16. As the feasibility of return to Iraq, the judge at [42] relied upon his findings of fact and that as an Iraqi national Kurdish ethnicity from Erbil who continued to have contact with his family and on the basis that his Iraqi passport been sent to his brother, the judge found that it will be possible

for the appellant to obtain a replacement CSID card if unable to obtain the original from his family. At [43] did not find that the appellant could rely in the alternative on the grant of humanitarian protection. He therefore dismissed the appeal.

17. Permission to appeal that decision was sought and granted and on the 30th May 2019 by FtTJ Swaney.
18. The appeal was therefore listed before the Upper Tribunal. Mr Holmes, who appeared before the FtTJ and had settled the grounds of appeal, appeared on behalf of the appellant and Ms Hopkinson, senior presenting officer, appeared on behalf of the respondent.
19. I am grateful for the submissions heard from Mr Holmes and Miss Hopkinson on the issues that arise in the grounds advanced on behalf of the appellant. I confirm that I have considered those submissions in accordance with the decision of the FtTJ and the grounds which had been filed before the Upper Tribunal. I further confirm that I have given full consideration to those submissions which I have heard, and I intend to incorporate those submissions into my analysis of the grounds that are relied upon by the appellant.

Ground (a):

20. It is submitted that the judge made an error of law by making mistakes of fact. At paragraph 34 of the decision, the judge made reference to the appellant having failed to mention the making of a complaint against him at any point prior to the hearing. However, this was a straightforward mistake of fact when seen in the light of his answer to question 62 of the asylum interview and also question 75. Thus it was submitted that the FtTJ's finding that he had not previously referred to a complaint was wrong.
21. The second mistake of fact related to paragraph 33 of his decision. Mr Holmes submitted that the appellant's account made reference to him being required to obtain unpaid leave and when interviewed he made reference to the length of that leave being between six months and five years. However, the judge misread the reference to that at question 146 of his interview to the effect that the appellant was stating that it took between six months and five years for an individual to given permission to take unpaid leave from his work. In fact, the appellant said nothing about permission to obtain leave and had only referred to the potential duration of any unpaid leave. This mistake of fact was then used against the appellant to make an adverse credibility assessment.
22. Miss Hopkinson submitted there was no error of fact and that a careful reading of the determination in the light of his account demonstrated that the appellant had not raised the complaint on the factual basis now claimed and that this was what the judge was referring to at paragraph 34 his decision. As to the second error, she submitted that there may have

been a slight misinterpretation of the answer but that it was not material because it did not appear to form part of the credibility assessment of the appellant. At paragraph 33, the point made by the judge was that he was required to obtain permission notwithstanding the fact that he been blacklisted by the KDP, permission was given in June only two months after the request and that this did not indicate any interference by the KDP in the appellant's life.

23. I have carefully considered the decision of the FtTJ in the light of those submissions, but I have reached the conclusion that there is no error of law demonstrated in the FtTJ's decision based on any mistake of fact.
24. The grounds assert that the judge made a mistake of fact in his finding of credibility at [34] by reference to the appellant's evidence in interview. It is asserted that where the judge stated that the appellant had not previously referred to a complaint being made by his wife at paragraph 34, either in his witness statement or interview that this was incorrect as the appellant referred to a complaint in his interview at questions 62 and question 75.
25. The decision made by the judge should be read in its entirety and in the context of the factual claim asserted by him. Similarly, the answers given in interview also needs to be read in context.
26. The relevant questions and answers in the interview begin with question 61 where the interviewer sought to establish why the appellant's wife's family would wish to kill him when his wife and children had possession of the home and the appellant had not taken it from them. The appellant replied, "I had problem with my wife in the past and they interfered in our private life." At question 62, the interviewer then made reference to the appellant's witness statement that notwithstanding this, he had stated both he and his wife were still living together and had reconciled and had their house in Erbil. He was asked why the family would want to kill him if he had not taken the house from them? The appellant replied, "my wife's sister husband told me that they complaint against me to take off the house off me, but I have all text messages and voice messages in my messenger". At question 63, he was asked, "but if they have the house and you are unable to take it from them, can you tell me why the brothers want to kill you? The appellant responded "I don't know, what shall I say, I was able to sell the house while I was there, before I leave and come here, I was thinking badly with them stop I tried and sent the text messages my wife took my children but she did not let them talk to me".
27. The following questions and replies made reference to the house in Erbil and the appellants claim that he sold the house and then bought another in the same area and that his wife and children lived in that house. Against that background it was suggested to him that if he returned and left his wife in possession of the house, it would have solved the problems with her relatives. The appellant responded at question 70 stating that he had problems a year ago when he spoke to his in-laws and told them that he

didn't want them to interfere with his life. He said that he was insulted in front of his wife and they threatened him and that he said he was going to divorce his wife and they responded that if he did so they would kill him. Again the interviewer at question 71 referred to the appellant's failure to answer the question that had previously been put to him about leaving his wife in possession of the house and that this would solve his problems. The appellant's responses at questions 71 onwards were to the effect that the family would not leave him alone but that the appellant, when questioned as to what it was they wanted from him could not give an answer save for they were interfering with his private life (see question and answer to Q73).

28. When he was asked what the family wanted from him at question 74, the appellant replied "for instance the houses registered in my name, they are saying why not put the house in your wife's name, so what is to do with them. Sometimes when they are visiting us, asking me why you are not buying this thing, it is nothing to do with them this is my private life. For instance tried to sell my house why my brother-in-law telling me you are not allowed to sell the house, the house is mine."
29. The interviewer then asked a question 75 "so if they have such power and influence you say, why have they not simply had the house put in your wife's name anyway? The appellant replied "they complaint against me now. I asked them to send a complaint to me, but they haven't sent yet. I have these text messages on my mobile which was sent by my wife's sister's husband"
30. It is plain from reading the interview responses as set out above that the appellant was giving an account concerning the family relatives and his answer at question 62 refers to his wife's sister's husband had told him that "they complained against me to take off the house of me." When referring to "they" the appellant was referring to the wife's family members. When the interviewer sought to clarify why her brothers or other family members would want to kill him if they have the house, the appellant stated, "I don't know".
31. The thrust of the questions and answers relate to the appellant's concerns about the house. He does not identify in those answers any complaint made other than "they complaint (sic) against me to take off the house." The use of the word "they" does not refer to his wife and is in the context of the house. Question 75 is in a similar vein and refers to the house. When seen in the context of paragraph 34 of the FtTJ's decision, it is plain that there is no mistake of fact. The factual circumstances about the complaint made in oral evidence and set out at paragraph 34 was based on a completely different factual matrix - it was not about the house or anyone who could be referred to as "they" but a specific assertion that it was his wife as the person who had made a specific complaint via his proxy solicitor and the complaint was particularised in the appellant's oral evidence that she stated he had taken 7 million Iraqi dinars from her.

32. The judge was completely right to state that this complaint was not referred to in either the witness statement or the appellant's asylum interview. There is no reference in the interview to the appellant's wife making a specific complaint of him taking 7 million dinars from her. Furthermore, the appellant accepted in his evidence that he had not referred to it (meaning its detail) because he had not received the evidence. At paragraph 34 the judge properly referred to his account and that the appellant had not previously referred to any complaint having been made by his wife and that in his evidence at the tribunal he stated that he did not know who the complaint had been made to. The judge therefore found that the vagueness of the appellant's response in his oral evidence that he stated that he didn't know who the complaint was made to, alongside the failure to refer to this particular complaint, led the judge to make an adverse credibility finding. He stated "if the appellant had been aware that a complaint had been made by his wife he would know to whom such a complaint to be made and the fact that no previous reference to be made the complaint by his wife casts doubt upon the plausibility of the appellant's account in that respect."
33. I am therefore satisfied that there is no mistake of fact is asserted on behalf of the appellant. There were also a number of other adverse findings made in relation to his claimed problems with his family at paragraphs 35 and 36.
34. I am further satisfied that there is no mistake of fact made at paragraph 33 of the decision that was material to the outcome. At paragraph 33, the FtTJ makes reference to the appellant's interview at question 146. Earlier questions at questions 144 and 145 refer to the problems the appellant was having in attending his employment having moved areas. He had told his employers that he could not attend every day and that he would therefore request leave. The type of leave was then clarified at question 146 and that in April he told them that he should continue for one day until he was granted leave without salary from the government. He stated, "you can't request this leave and that could be between six months and five years." When asked what happened thereafter, at question 147, he clarified that the authorities did not give him permission until June and that they had accepted his request in June (question 148). The appellant was therefore referring to unpaid leave. The grounds therefore submit that his reference to 6 months to 5 years meant the duration of any unpaid leave and that the appellant had not said anything about the length of time for permission to obtain leave.
35. However when the interview responses are read together, even if the appellant was referring to the length of time as to unpaid leave (there is some ambiguity in his response in any event), it was open to the judge to find the when set against the appellant's claim that he was blacklisted by the KDP and any change of employment required the government to give permission, it took only two months before permission was given and therefore the fact that permission was given did not indicate adverse interference by the KDP. Therefore the point is still one that was properly

made and there is no error of fact which would be material to the outcome given that conclusion at paragraph 33. The ground also ignores the other adverse findings made by the judge when considering the appellant's claim.

Ground (b):

36. It is submitted that the judge erred in law at paragraph 29 of the decision by speculating upon what medical evidence should have shown as a result of the mistreatment that the appellant suffered. In particular, Mr Holmes identified that the determination set out that the injury described by the appellant was "somewhat inconsistent with having been beaten up by three police officers". He submits that there was no medical opinion or any other basis to support that opinion on this issue and that the appellant described no injuries as part of his account that would lead to any particular identifiable injury. Thus Mr Holmes submitted this was wholly inconsistent with the appellant's case.
37. Ms Hopkinson submitted the quoted passage relied upon had been shortened and that the paragraph should be read in its entirety and the judge had stated that the only injury referred to in the report was to a bump on the head which was inconsistent with an account given by him of being beaten by three men. The judge further made reference to the appellant's account that he had been punched to his torso and had suffered dizziness but none of that had been set out in the medical report. The she submitted overall it was open to the judge to reach the conclusion that the evidence of the injuries sustained was inconsistent with the medical report and was therefore not accepted.
38. I am satisfied that it has not been demonstrated that the judge erred in law in reaching his findings at paragraph 29. In that paragraph, the judge makes reference to the witness statement of the appellant and his factual account that he was beaten up by three police officers and later went to the accident and emergency department of the local hospital. The judge made reference to the only injury being referred to in the witness statement as a "bump on the head" which he stated was "somewhat inconsistent with having been beaten up by three men." This was a reasonable inference drawn from the appellant's account. Furthermore, I do not consider that this was speculation on his part when it is read with the remainder of paragraph 29. It was wholly open to the judge to consider the appellant's oral evidence as to the nature of the beating and the injuries he stated he received in the context of the contents of the report which only referred to a "bump on the head". The judge recorded his evidence at paragraph 29 which was that at the hearing in oral evidence he stated that he was punched in the upper part of his torso and that when he attended the hospital, he was feeling dizzy. The judge then stated there was no reference to any dizziness or injury to the torso either in the appellant's witness statement when giving his account and nor was there any specific injury referred to in the medical report beyond a "bump on the head." Therefore the judge concluded that the evidence concerning

the injuries was not consistent. Those findings were reasonably open to the judge to make on the evidence as a whole.

Ground (c):

39. It is submitted that the judge erred in law by speculating at paragraph 25 of his decision as to the nature of police reports in Iraq. It is submitted that the judge questioned why the report provided by the appellant was in "manuscript" and not typed. However, there was no evidence before the judge to suggest that they should appear in any other way that they did, nor they should appear in any particular form. Mr Holmes in his oral submissions made reference to accounts from complaints being routinely taken by hand in the United Kingdom and that to rely on any assumption as to what the practice was in Iraq was an unsafe basis upon which to criticise the appellant's evidence.
40. Ms Hopkinson submitted that the judge had made no error of law and had properly considered the documents in the light of their format and their contents.
41. I do not find that there is any error of law identified at paragraph 25. The judge gave adequate and sustainable reasons as to why the documentary evidence provided by the appellant was not reliable evidence upon which he could place any significant weight at paragraphs 24 – 27. The judge properly directed himself to the burden of proof upon the appellant to establish that the documents are reliable in the context of the decision of Tanveer Ahmed (as cited) at paragraph 24. No argument has been advanced that the judge made any inaccurate self-direction in law. As stated, what was required was an appraisal of the documents in the light of the evidence about its nature, provenance, timing and relevant background evidence in the light of all the other evidence in the case. At [24] the judge analysed the medical document and at [25] the judge undertook an analysis of the other documents (the police report and letter of complaint). The grounds refer only to part of the analysis undertaken by the judge in which he stated that both the police statement and the complaint to the court were in manuscript rather than type written. However, the judge gave other sustainable reasons as to why he did not attach significant weight to them. Firstly, in respect of the documents being in manuscript rather than type written, he stated that had been given no explanation as to why the original documents would be in manuscript rather than type documents. He stated that the complaint letter was not on any form of letter headed paper but there was a stamp. He took into account the appellant evidence that there was a judicial room and a police station in every accident and emergency department and that when asked why the stamp appeared to refer to a Court of Appeal, his evidence was the judge present at the hospital belonged to the police Court of Appeal and they had their own seal. The judge observed that so far as the complaint to the court was concerned, again it was on plain paper with what appeared to be the same seal as appeared on the police

statement. He also took into account that the documents had been produced four months after he had arrived in the United Kingdom.

42. In my judgement, the grounds seek to rely on only part of the reasoning and fails to take into account the analysis as a whole as undertaken by the judge.

Ground (d):

43. It is further submitted the appellant that the judge erred in his decision at paragraph 43 by going behind the applicable country guidance on Iraq without any invitation to do so by either party or that the scope of the judge's departure was not clear.
44. Mr Holmes was asked to explain the basis of that submission in the light of the appellant's place of residence and that in the light of the country guidance, it was not a contested area. He acknowledged that the appellant's place of residence was not in a contested area but that the ground identified that the FtTJ generally adopted the wrong approach by taking an issue that no one had invited him to undertake on Article 15 (c).
45. Ms Hopkinson submitted that there was no error of law given that the appellant was from Erbil and the judge was not departing from the country guidance and that in effect the judge was trying to clarify that there was no Article (15)(c) risk in the IKR and that it could not undermine the judge's overall decision.
46. I am not satisfied that there is any proper basis to challenge paragraph 43 as the written grounds assert in the light of the place of residence of the appellant which was in Erbil. There is no challenge made to paragraph 42 whereby the judge considered the feasibility of the appellant's return to Iraq and gave adequate and sustainable reasons by reference to the applicable country guidance that he would be able to obtain the necessary documentation to travel back to Iraq. Paragraph 43 referred to Article 15 (c) and made reference to the issue of contested areas. I would agree that the paragraph appears slightly muddled but the conclusion reached at the end of the paragraph that there is no real risk of indiscriminate violence in the appellants area of origin or within the KR I generally that would meet the threshold of article 15 (c) is consistent with the CG. Mr Holmes accepted that the appellant's home area was not in a contested area.
47. In summary, I am not satisfied that the decision of the FtTJ demonstrates the making of an error on a point of law. The decision to dismiss the appeal shall stand.

Notice of Decision

48. The decision of the FtTJ did not involve the making of an error on a point of law; the appeal is dismissed.

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 25/7/2019

Upper Tribunal Judge Reeds