



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02541/2019

THE IMMIGRATION ACTS

Heard at Birmingham
On 17th December 2019

Decision & Reasons Promulgated
On 4th February 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

DDK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Bashow, instructed by Parker Rhodes Hickmotts Solicitors

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

DECISION AND REASONS

1. No anonymity direction was made by the First-tier Tribunal ("FtT"). However, as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, DDK is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst others to all parties.

Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a national of Iraq. He arrived in the United Kingdom 15th December 2016 and claimed asylum. His claim was refused by the respondent for reasons set out in a decision dated 5th March 2019. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Ford ("the judge") for reasons set out in a decision promulgated on 29th May 2019.

The decision of First-tier Tribunal Judge Ford

3. The judge summarises the appellant's immigration history at paragraphs [1] of her decision. The background to the claim for asylum is set out at paragraphs [3] to [9] of the decision. The judge records at paragraph [10]:

"The Secretary of State accepts that the appellant is a national of Iraq from Kirkuk. It is accepted that he is an ethnic Kurd."

4. At paragraph [23], the judge referred to two documents that were relied upon by the appellant at the hearing of the appeal. The judge admitted the documents because they were relevant to the matters in issue. The first document was a letter from the appellant's GP which confirmed, on examination, that the appellant has scarring and muscle wasting at the back of the right thigh close to the knee and the front of the left thigh. The judge noted, at [24], that the GP offers no opinion as to causation or whether the scarring observed was consistent with the appellant's claim. The second document relied upon by the appellant was an email from the appellant's representative to the respondent commenting upon the interview record dated 1st February 2019. In that email, the appellant claimed that he was not sure if he can obtain his ID card from Iraq, but he has asked his mother and is awaiting a response.
5. At paragraph [26], the judge records the evidence of the appellant at the hearing of the appeal that his mother has moved to a new house from one part of

Kirkuk to another. His evidence was that his mother had been unable to find his CSID since the move.

6. The judge's findings and conclusions are set out at paragraphs [30] to [50] of her decision. The judge refers to the evidence before her regarding the appellant's CSID at paragraphs [31] to [34] of the decision. At paragraphs [34] and [35], the judge concluded as follows:

"34. He had not rung his solicitors to tell them of the change in his mother's situation or the loss of the CSID and said that it was only on the day of the hearing that he told his representative for the first time of his mother having lost his CSID. I did not find this to be credible. The appellant knew from the date of the refusal letter that the respondent was relying on his statement that his CSID was in Iraq with his mother and I am satisfied that he knew the importance of this issue. He had asked his mother for the CSID and as at early February he was waiting for her to respond to his request.

35. I do not find it credible that he would leave it until two weeks before the hearing to get a clear response from his mother about his CSID and I do not find it credible that having only just signed his witness statement six days before the latest phone call with his mother, that he would not realise that it was important to tell his solicitor about the lost CSID. Nor do I accept that his mother would have been so careless as to lose the CSID given the importance of this document to the appellant's functioning in Iraq and especially given that he was returned to Iraq when he previously left and claimed in Sweden. He resumed his former employment as a lorry driver when he returned from Sweden and the only time he said he was in hiding was in 2016 when he was discharged from hospital and hiding from Ibrahim and the IS group to which he belonged. I do not accept even to the lowest standard of proof that the appellant has told the truth about his CSID and I find that he can secure it on request from Iraq where he left it in the care of his mother."

7. The judge considered the appellant's account of events following his return to Iraq from Sweden in 2013. The judge noted the appellant had previously claimed asylum in Sweden on the basis that his life was at risk from IS because of what had happened to his father and to his brother. At paragraph [38], the judge stated:

"His older brother apparently knows the details of the killing of his father and of his brother and he lives in Sweden. I had no evidence from the appellants brother either concerning his own situation in Sweden and the account he gave of his family history to the Swedish authorities or of the appellant's history. While

there is no requirement for corroboration in asylum claims, if evidence is relevant and available then it should be produced. The appellant has not produced any death certificates for his father or his brother. He has not produced any evidence of his father's claimed employment as a driver with the police. At the hearing he was asked which part of government his father had worked for and he said there were 2, PUK and KDP and he thought his father was working for the PUK. In re-examination he was asked if he was sure that his father was working for the PUK and he said that he was not sure, that his father was working for the government, but he did not know which government. This evidence suggests strongly that his father was working in the IKR and that the appellant's home area is in the IKR and not Kirkuk."

8. The judge refers, at [39], to the vagueness and lack of detail in the appellant's evidence about his father's and his brother's death. That vagueness and lack of detail led the Judge to conclude, at [39], that even to the lower standard the appellant has not discharged the burden of proof the rests with him and the judge did not accept that the appellant's father and/or his brother were killed by ISIS. At paragraph [40], the judge refers to the matters relied upon by the appellant:

"The appellant's current claim rests on events since early 2016. Three years on from those events the appellant has not produced any medical records from Iraq. He was made aware at his screening interview that any relevant medical records should be secured and submitted as quickly as possible. He has stated that he was treated in hospital in Kirkuk for 4-6 months for severe injuries in 2016 caused by beating and electric shock and had to have extensive skin grafts. He has been able (*sic*) in contact with his mother and has conceded at interview that he could contact her if he needed to do so. He could have requested that his mother help him in accessing those records but gave no account of doing so. His representatives could have contacted the hospital direct and sought the records, but I had no account of any efforts being made in this regard."

9. The judge noted at paragraph [41], that the letter relied upon by the appellant from his GP is far from satisfactory. She noted the letter says nothing about causation and whilst the Judge accepted that the appellant has some serious scarring to his legs, she concluded the scarring observed by the GP during the examination in February 2019 could have been caused in a number of ways. At paragraphs [43] to [45], the judge concluded:

"43. I am not satisfied even to the lower standard of proof that this appellant was ever tortured in 2016 by IS or Daesh or any militia group interested in forcing him to become a suicide bomber. His account of being left for dead but

then recovering and of Ibrahim somehow finding out what his phone number was and repeatedly threatening to kill him is completely lacking in credibility for the reasons given in the refusal letter.

44. The appellant could have produced his CSID or his brother's details from Sweden as evidence of his home area in Iraq. The respondent has never conceded that the appellant is from Kirkuk, just that he is an Iraqi Kurd. I am not satisfied that he is from Kirkuk.

45. But even if he is from Kirkuk (and I do not believe that he is) then he can still be returned safely to Iraq. His mother has his CSID and can get it to him. He can travel from Baghdad to the IKR or alternatively fly direct to Erbil as he did before and if he does not wish to return to Kirkuk he can stay in the IKR. He has a viable relocation alternative."

10. At paragraph [47], the judge found the appellant will be able to secure entry to the IKR as an ethnic Kurd with a CSID. The judge did not accept that the situation on the ground in the IKR is such that the appellant will, merely by his presence as a civilian, face a real risk of serious harm. The judge noted there was no evidence to suggest the appellant will not be able to work or to secure the necessities of life as he did before he left Iraq.

The appeal before me

11. The appellant advances two grounds of appeal. First, the judge found the appellant is not from Kirkuk, whereas the respondent had accepted the appellant is an Iraqi Kurd from Kirkuk, following extensive questioning of the appellant by the respondent during his interview. The appellant claims it was irrational for the judge to require documentary evidence to corroborate the appellant's claim that he is from Kirkuk, and it was procedurally unfair for the judge to find in her determination that the appellant is not from Kirkuk, when he was not challenged about that during his evidence, or given an opportunity to address any concerns. The appellant claims that the issue as to whether the appellant is from Kirkuk or the IKR is relevant to the question of internal relocation. The appellant claims the judge does not adequately address the issue of internal relocation, and the judge fails to adequately address the question as to whether the appellant can internally relocate.

12. Second, the judge erred requiring the appellant to provide corroborating documentary evidence to support his claim generally, contrary to the general principle that documentary corroboration is not required if the person can substantiate their claim with coherent evidence, and if the evidence is not available. The appellant claims that his account of events is consistent with evidence referred to in the country guidance decisions that torture by ISIS is systemic in contested areas such as Kirkuk. The appellant gave detailed information during his interview as to the events that had occurred when he returned to Iraq from Sweden and he explained how he had been beaten and tortured when he was detained. The appellant had provided a letter from his GP confirming the extensive scarring on his leg, and the judge failed to evaluate the appellant's claim but rejected it as untrue, simply because of a lack of very specific background material supporting the claim.
13. Permission to appeal was granted by First-tier Tribunal Judge Haria on 18th June 2019. The matter comes before me to determine whether the decision of the First-tier Tribunal Judge is infected by a material error of law, and if so, to remake the decision.
14. At the outset of the hearing before me Mr Mills conceded the judge went behind the concession made by the respondent that the appellant is from Kirkuk. However, he submits, that is not material because the judge immediately, at [45], deals with the position as it would be, even if the appellant is from Kirkuk.
15. Ms Bashow submits that although at paragraph [45], the judge appears to consider the matter on the alternative basis that the appellant is from Kirkuk, that consideration is tainted by the Judge's view, expressed again at paragraph [45], that she did not believe the appellant is from Kirkuk. Ms Bashow submits it is an issue of fairness and the appellant can have no confidence the judge properly considered the claim with anxious scrutiny when the Judge starts off on the premise that the appellant is not from Kirkuk. The appellant's home

area is fundamental to the consideration of the claim because it impacts upon the decision as to whether the appellant can internally relocate. The judge concludes the appellant has a viable relocation alternative but fails to address whether it would be reasonable to expect the appellant to relocate given his own background and the support that would be available to him.

16. Ms Bashow submits that in addressing the credibility of the appellant, the judge imposed a higher burden by imposing a requirement for evidence to corroborate his account of events. She submits that corroboration is not necessary and refers to the decision of the Court of Appeal in TK (Burundi) -v- SSHD [2009] EWCA Civ 40. She submits the question is whether evidence to support the account given by the appellant is or should readily be available. Here, the appellant had been treated in a hospital in Iraq and it is far from clear that any medical records would be available. She submits that throughout her consideration of the credibility of the claim made by the appellant, the judge required evidence to corroborate the appellant's account, and in reaching her findings regarding the appellant's account of events since 2016, at paragraphs [40] to [42], the judge relies entirely upon the lack of evidence to support the claim. Ms Bashow submits the judge is not entitled to say that there may hypothetically be evidence, that could support the account. She submits that at paragraph [42], the judge simply states that there was no evidence that ISIS would use torture to force the appellant to agree to becoming a suicide bomber. The background material acknowledges that ISIS do use torture. Ms Bashow submits that in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC), the Upper Tribunal, at [31], acknowledged the evidence from Amnesty International that in areas held or contested by ISIL there remained substantial dangers of killing and other human rights abuse of the utmost gravity, including torture and sexual violence.
17. In reply, Mr Mills submits, that although the judge erred in finding the appellant is not from Kirkuk, that is immaterial because the judge addressed the question of internal relocation from Kirkuk to the IKR. He accepts the

consideration is not particularly thorough, but, he submits, there is nothing on the facts found, that could possibly demonstrate that it would be unduly harsh for the appellant to internally relocate. As the judge recognised, the availability of the CSID is key. The judge found the appellant has a CSID and has access to it. Mr Mills submits the appellant is a young single male of working age, with some health issues, that would not prevent him working. He has access to a CSID and in the circumstances it was open to the judge to find that he has a viable relocation alternative for the brief reasons set out in the decision. The judge was entitled to conclude that the appellant can secure entry to the IKR with a CSID.

18. Mr Mills submits it was open to the judge to note the absence of evidence to corroborate the appellant's account. When the decision is read as a whole it is plain that the judge gives a number of reasons for rejecting the core of the appellants claim. The judge noted, at [38], that there is no requirement for corroboration in asylum claims, but if evidence is relevant and available, it should be produced. That is undoubtably true. In TK (Burundi), the Court of Appeal noted there is a lower standard in asylum claims, but if there is no good reason why the evidence that should be available is not produced, the judge is entitled to take that into account in the assessment of the credibility of the account. Here, the judge was concerned that the appellant had not provided information from his brother that would be readily available regarding the basis of his claim for refugee status in Sweden and his knowledge of events that had occurred in Iraq. Documents from Iraq might be less readily available, but here the judge found that the appellant has continued contact with his mother and there had been no attempt to obtain any evidence to support the claims being made, and no explanation for the absence of such evidence. The judge noted the appellant had been admitted to hospital for a period of between four to six months. In assessing the claim, it was open to the judge to refer to the lack of any medical records from the hospital at which the appellant had been extensively treated.

19. Mr Mills submits at paragraph [42] of her decision, the judge was addressing the particular claim made by the appellant that he was beaten and tortured by Daesh who wanted him to become a suicide bomber. When the decision is carefully read it is clear the judge does not go as far as to say that ISIS do not use torture. Mr Mills submits the judge was specifically addressing the claim by the appellant that was at the core of his account. The judge was entitled to find that the account is not credible and is not supported by background material.

Discussion

20. I have carefully read the decision of First-tier Tribunal Judge Ford and the evidence that was before the Tribunal. The account of events relied upon by the appellant following his return to Iraq from Sweden is carefully set out by the judge at paragraphs [6] to [9] of the decision.
21. At paragraph [38] of her decision the Judge refers to the evidence given by the appellant at the hearing regarding his father's work as a driver with the police. The appellant referred to the PUK and KDP, and initially had said that he thought his father was working for the PUK. In re-examination the appellant then said he was not sure that his father was working for the PUK, but his father was working for the government. It was this evidence that the judge said "*... strongly suggests that his father was working in the IKR and that the appellant's home area is the IKR and not Kirkuk.*". However, the judge had noted at paragraph [10], that the respondent had accepted the appellant is a national of Iraq from Kirkuk and Mr Mills is right to acknowledge the judge went behind the concession that been made by the respondent.
22. That error is not in my judgement material to the outcome of the appeal. I accept, as Mr Mills submits, the judge addressed the risk upon return in the alternative, even if the appellant is from Kirkuk. It is now well established that although there is a legal duty to give a brief explanation of the conclusions on

the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge. It was in my judgement open to the Judge to conclude that even if the appellant is from Kirkuk, he has a viable relocation alternative available to him. The judge found the appellant has access to a CSID, and the appellant can safely be returned to Baghdad as he has access to his CSID and can fly from there to the IKR. The judge was satisfied that the appellant will be able to secure entry to the IKR as an ethnic Kurd with a CSID. The judge noted there is no evidence to suggest that the appellant will not be able to work or to secure the necessities of life as he did before he left Iraq. At paragraph [9] of the decision the Judge noted the appellant's account that he had previously left Kirkuk, to live in Sulaymaniyah for his own safety, where he managed to work in order to pay in part at least, for his hotel room.

23. I accept corroborative evidence is not necessary for a positive credibility finding. However, the fact that corroboration is not required is not to say that a judge is not entitled to take into account the absence of documentary evidence, which could reasonably be expected. The judge was entitled to comment upon the absence of relevant documents. In particular, the judge was entitled to note the absence of death certificates for the appellant's father and brother, and the absence of any evidence regarding his father's claimed employment as a driver with the police. Furthermore, the judge was entitled to note the absence of any medical records from Iraq in circumstances where the appellant claimed to have been treated in hospital for 4-6 months and was still in contact with his mother. These were issues of fact that related to the core of the appellant's account that the judge was required to consider. Ms Bashow relies upon the decision of the Court of Appeal in TK (Burundi). The Court of Appeal confirmed that where an immigration judge in assessing the credibility of an asylum seeker relied on the fact that there was no independent supporting evidence where there should be supporting evidence, and, no credible account for its absence, the judge committed no error of law when he relied on those facts in rejecting the asylum seeker's account. Thomas LJ stated, at [16]:

“16. Where evidence to support an account given by a party is or should readily be available, a Judge is, in my view, plainly entitled to take into account the failure to provide that evidence and any explanations for that failure. This may be a factor of considerable weight in relation to credibility where there are doubts about the credibility of a party for other reasons....”

24. The assessment of credibility and the risk upon return is always a highly fact sensitive task. The judge was required to consider the evidence as a whole. In assessing the credibility of the appellant and the claim advanced by him, the judge was required to consider a number of factors. They include, whether the account given by the appellant was of sufficient detail, whether the account is internally consistent and consistent with any relevant specific and general country information, and whether the account is plausible. In my judgement, the judge carefully considered the core of the claim advanced by the appellant, noting the inconsistencies in his account, and the lack of detail in material respects.
25. On the evidence before the Tribunal and the findings made by the Judge, it was in my judgement open to the Judge to conclude the appellant will not be at risk upon return for the reasons given and to dismiss the appeal.
26. It follows that in my judgement there is no material error of law in the decision of First-tier Tribunal Judge Ford and I dismiss the appeal.

NOTICE OF DECISION

27. The appeal is dismissed.
28. The decision of First-tier Tribunal Judge Ford promulgated on 29th May 2019 stands

Signed

Date 27th January 2020

Upper Tribunal Judge Mandalia