



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/00206/2020 (V)**

THE IMMIGRATION ACTS

Heard by “Microsoft Teams”

**Decision & Reasons
Promulgated**

On the 30th June 2021

On the 12th July 2021

Before

UT JUDGE MACLEMAN

Between

SHABAZ SALIM HAMID

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Burns, of Latta & Co, Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of a panel comprising FtT Judges Grimes and Komorowski, promulgated on 3 March 2020.
2. Ground 1 is entitled “failure to consider relevant material and country guidance on enhanced risk through perceived association with ISIS [or ISIL]”. It contends that the finding at [29] of no basis for such suspicion overlooks (i) circumstances in the area, specified in *SMO, KSP & IM* (Article 15(c); identity documents)(CG) 2019 UKUT 400 at [50, 60, 76, 260, 261, 296, & 315] and (ii) the appellant’s circumstances as a single Kurdish male of fighting age, a farm worker, absent from the area since 2014.
3. Ground 2 is entitled “failure to consider relevant material and country guidance on enhanced risk through religion and ethnicity”. It contends that failure to consider the evidence specified in ground 1 vitiated the risk

assessment in these respects, and refers (i) to materials about ISIS attacks on members of minority groups, including Kaka'is, who are in an "extreme level of minority", and (ii) to *SMO* at [300], on the need for an evaluation "with particular care, with reference to the composition of the area in question, the local balance of power and the extent of ISIL activity in the area...".

4. Mr Burns submitted along the lines of the grounds. The principal points I noted were these:

- (i) The issue was the appellant's location on the sliding scale of Article 15 (c) risk, as specified in *SMO*.
- (ii) The FtT went wrong on ground 1, perceived association with ISIS, and ground 2, ethnicity and membership of a religious minority.
- (iii) *SMO* at [315] required the tribunal to look at the background evidence of ISIS activity in relation to the background of the appellant. The decision of the FtT at [29] was "essentially dismissive of those circumstances".
- (iv) There was before the FtT an expert report by Dr Fatah, whose comments on the appellant's area were incorporated almost word for word in [29] of the decision. However, the report was completed in 2018, prior to *SMO*. Material specified in *SMO* and in the appellant's skeleton argument was "not considered in sufficient detail".
- (v) The panel gave "no good reason for not following *SMO*".
- (vi) The materials overlooked showed an increased threat from ISIS in the appellant's area to members of the rural population, as he was.
- (vii) On a proper application of *SMO* to the evidence, the conclusion of no risk of being associated with ISIS could not stand. His characteristics - being of fighting age, a member of an "extreme" religious minority, having left in 2015, shortly after significant ISIS activity in the area, and returning after a long absence - placed him at the higher end of the sliding scale.
- (viii) *SMO* at [296] emphasised that reasons for suspicion of ISIS links might be tenuous.
- (ix) The decision should be set aside, and the case should be remitted to the FtT for a fresh hearing on updated evidence.

5. The main points which I noted from the respondent's submissions were these:

- (i) The panel dealt clearly with the two main points relied upon by the appellant, the risk of a false perception of association with ISIS, and his membership of a religious minority.

- (ii) The appellant did not refer to anything which had been overlooked and which might have led to another conclusion on either aspect.
- (iii) As the panel noted, the alleged risk of suspicion was based only on ISIS having occupied the appellant's home area for 2 days, which happened 2 years after he left.
- (iv) The panel's succinct reasoning at [29 - 31] was based on applying *SMO* and the absence of material to show risk based on particular characteristics of the appellant.
- (v) The relevant evidence from the expert report for the appellant was accurately quoted. It was beside the point that the report pre-dated *SMO*, as evidence of developments since then did not strengthen the appellant's claim. By the time ISIS was in his area, he was in the UK.
- (vi) *SMO* at [296] gave examples of those who might be suspected even for tenuous reasons: those who remained in an ISIS controlled area for a period of time, and those who provided legal services to ISIS suspects or their families. The appellant fell into no similar category.
- (vii) The appellant referred to *SMO* at [300] on careful assessment, but the last sentence was also instructive, "Membership of an ethnic or religious minority may increase risk ... but a contextual evaluation rather than a presumption is required."
- (viii) The panel made no error on either element of the claim, and the appeal should be dismissed.

6. In reply Mr Burns submitted that:

- (i) By relying on the expert report, the panel overlooked evidence of later ISIS resurgence in the area.
- (ii) The appellant's return after a lengthy absence was likely to provoke suspicion that he had been involved with ISIS during those missing years.
- (iii) Paragraph [296] was not an exhaustive list of suspicious factors.
- (iv) It was accepted that there was no presumption, but the appellant fell at the higher end of the scale.

7. I reserved my decision.

8. Mr Burns referred to the appellant as a member of an "extreme religious minority"; for avoidance of doubt, this meant not that he was a religious extremist, but that his is a very small minority.

9. I accept that [296] is not intended to provide an exhaustive list of reasons for suspicion. That is explicitly how it is framed. The examples are nevertheless instructive. Far from remaining in an ISIS controlled area, the appellant was long gone.
10. I accept that reasons for suspicion might be tenuous, but for all that was referred to by the appellant, either in the FtT or in the UT, the reasons were beyond tenuous.
11. The submission on return after years away overlooks that the appellant would not be arriving from ISIS territory; there would be no reason to suspect that he was; and he would return with documentation of his period and location of absence (see *SMO* at headnote 25).
12. ISIS may have been active in the appellant's home area since the date of Dr Khaki's report, but that is even longer after he left. There was no reference to anything to persuade the FtT that such developments might enhance the risk that he would be suspected of having anything to do with ISIS.
13. Decisions should not be supported by additional reasons; but in the context of suspicion of ISIS links, the appellant's ethnic and religious identity makes that *less* likely.
14. Mr Burns has advanced the appellant's claim assiduously before both tribunals. However, it has not been shown that the FtT failed to follow *SMO*, dismissed the claim out of hand, or failed to refer to anything which might have made a difference. *SMO*, in the nature of country guidance, is full of detail and nuance, but in applying it to the present case all the panel needed to say was at [28], no basis for suspicion of ISIS links, and at [31], no material to show particular risk through personal characteristics (Kurdish and Kakis identity not being enough to create a presumption, without more). The grounds and submissions hint at an infinity of further detail, but do not specify anything necessary which was omitted.
15. The decision of the FtT shall stand.
16. No anonymity direction has been requested or made.

Hugh Macleman

2 July 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.