



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01482/2020 (V)

THE IMMIGRATION ACTS

Heard remotely on *Skype for Business*
On 6 January 2021

Decision & Reasons Promulgated
On 18 January 2021

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

P H
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the appellant: Ms P Yong, Counsel, instructed by M&K Solicitors
For the respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Paul ("the judge"), promulgated on 20 April 2020, in which he dismissed the appellant's appeal against the respondent's refusal of his protection and human rights claims.
2. The appellant, a citizen of Iraq, arrived in the United Kingdom in 2011 and claimed asylum. An initial appeal was dismissed in March 2011. Further representations were submitted to the respondent some six months later. It then took the respondent six years to make a decision on these representations. Having done so, they were treated as a fresh claim with a right of appeal.
3. In essence, the appellant's case was that he had been a soldier in the Iraqi army, a special bodyguard for a senior politician, and had access to the International Zone (otherwise known as the Green Zone) in Baghdad. He claimed that as a result of his position he had been told by terrorists to take weapons and explosives into that restricted area of the capital. He refused and claims that as a result he was the subject of threats against his life. This claim was thoroughly rejected by the First-tier Tribunal in 2011, although it was accepted that the appellant had been a soldier with a role as a bodyguard, and that he had had access to the International Zone. In support of his second appeal, the appellant produced what was said to be two threat letters, which the appellant had only obtained after the dismissal of his first appeal. It was said that these disclosed a real risk on return. The skeleton argument provided on the appellant's behalf also raised the issues of a risk on return based solely on the accepted fact of his role with the military and that Article 8 would be breached by removal from the United Kingdom on account of the significant delay in the respondent making a decision on the further representations.

The judge's decision

4. The judge made it clear that the appellant's case on appeal was focused on the two threat letters.
5. The reliability of these two letters was rejected on the basis of a significant contradiction in the appellant's evidence as regards an individual, Mr K. In his witness statement, the appellant had asserted that he knew Mr K well and that it was he who had given the threat letters to the appellant. However, in oral evidence, the appellant has stated that he had never in fact met Mr K at all.
6. Having dealt with this documentary evidence, the judge went on to conclude that the respondent was correct in asserting that the appellant could return to his home area of Kirkuk without being at risk, and that he was in contact with family and friends in Iraq. Nothing was said about the Article 8 claim at all. The appeal was dismissed on all grounds.

The grounds of appeal and grant of permission

7. The grounds of appeal seek to challenge each aspect of the judge's conclusion set out in the previous paragraph. Permission was granted on all grounds.

The hearing before me

8. Ms Yong relied on all the grounds of appeal. She submitted that even if the judge had been entitled to reject the reliability of the two threat letters, he should nonetheless have dealt with the argument that the appellant would be at risk purely on the basis of his accepted history as a soldier. She relied on paragraphs 295 and 310 of SMO MO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) ("SMO"). She submitted that a proper consideration of this issue could have made a difference to the outcome of the appeal. In respect of Article 8, Ms Yong submitted that the judge had simply failed to address this live issue.
9. Mr Melvin relied on his rule 24 response. In his submission, it was unclear as to whether the issues referred to in the previous paragraph had been properly canvassed before the judge. In any event, the accepted past history could not have been sufficient to disclose a risk on return. Although the judge had not addressed Article 8, there appeared to be little substance to that claim in any event.
10. I reserved my decision as to whether the judge had materially erred in law.

Decision on error of law

11. I am entirely satisfied that the judge was entitled to conclude that the two threat letters were unreliable. There was a clear contradiction in the appellant's evidence relating to the acquiring of this evidence and it was plainly open to the judge to conclude that this completely undermined the weight to be attached to the letters. There is no error here.
12. However, I am (just) persuaded that the judge has committed material errors of law in respect of his failure to address the alternative argument based upon the appellant's accepted history, and also in respect of the failure to consider the Article 8 claim. I am not entirely confident that these matters were canvassed in real detail before the judge, but the skeleton argument which I accept was before him did make the arguments.
13. These two errors are material, albeit by a relatively narrow margin. It cannot be said that they "could" not have made any difference to the outcome of the appeal.
14. I therefore set the judge's decision aside.

Remaking the decision

15. At the hearing I canvassed the possibility that could receive submissions on the merits of the appellant's case without the need for either a resumed hearing or additional written submissions. Both representatives agreed with this course of action.

16. Ms Yong then asked for permission to see whether or not the appellant would wish to submit any further evidence in respect of Article 8. I refused. The appellant had had every opportunity to adduce relevant evidence, both before the First-tier Tribunal and in advance of the hearing in the Upper Tribunal (by way of an application under rule 15(2A) of the Upper Tribunal Procedure Rules). Without criticising Ms Yong, she was unable even to say whether there was in fact any relevant evidence available to the appellant.
17. In all the circumstances, including the presumption that a decision should be remade on the available materials if the decision of a First-tier Tribunal Judge is set aside, I concluded that it was fair for me to proceed by way of submissions only.
18. Mr Melvin relied on the reasons for refusal letter. The appellant was not a truthful witness. There were no problems with documentation. The appellant could go and live in his home area of Kirkuk, or alternatively internally relocate to the IKR or Baghdad. His accepted past history would not give rise to a risk on return. As to Article 8, the delay, whilst not insignificant, could not permit the appellant to succeed.
19. Ms Yong relied on the submissions made in respect of the error of law issue. She also submitted that the appellant's accepted past history might be detected on return and this would place him at risk. This was the case even if the threat letters were taken out of the equation. The time spent away from Iraq was not fatal to the protection claim. On Article 8, the length of residence in the United Kingdom, together with the respondent's delay, or sufficient for him to succeed.

Findings

20. There is no sound basis whatsoever for departing from the findings of fact made by the two previous First-tier Tribunal judges. I find that the appellant is of Kurdish ethnicity and was a soldier (described as a promoted soldier in the evidence) in the Iraqi military from November 2005 until he left the country in December 2010. I accept that he was part of a contingent of bodyguards to a prominent Iraqi politician, Mr Salih, and that he had access to the International Zone in Baghdad.
21. Beyond those basic facts, which had been accepted by the First-tier Tribunal in 2011 and re-affirmed in the latest First-tier Tribunal decision, I do not accept that the appellant has been truthful about any aspect of the remaining elements of his claim. There is no reliable evidence before me to disturb the findings made in paragraphs 20-25 of the First-tier Tribunal's 2011 decision, having regard to the well-known principles set out in Devaseelan. As mentioned earlier in my decision, the reasons given by the judge in the most recent Tribunal decision as to the reliability of the threat letters were entirely sound. I find that the letters are unreliable.
22. The effect of the above is as follows. The *only* accepted facts relating to the appellant's protection claim are that he was a promoted soldier, acting as a bodyguard for a limited period of time, and that he had access to the International Zone in Baghdad. His claim to have received adverse attention of any sort as result

of his occupation is untrue in all respects. He has never been the subject of any such attention.

23. Like the judge, I too find that the appellant is in contact with family members in Iraq.
24. There has never been any issue as regards documentation. Certainly, no issue was raised either in the grounds of appeal or in submissions to me. I find that the appellant either has relevant documentation in the United Kingdom or that it could readily be obtained either in this country or in Iraq, having regard to the relevant guidance set out in SMO.
25. I find that the appellant's home area is Kirkuk.
26. As regards the appellant's circumstances in United Kingdom, I find that he is healthy, single, and has not established any significant ties here. As a matter of simple fact, he has resided in this country since January 2011 without any leave to remain.

Conclusions

27. For the reasons set out below, I conclude that the appellant is not at risk on return by virtue of his accepted history as a soldier in the Iraqi military, or on any other basis.
28. There is no issue arising as to a risk by virtue of a lack of relevant documentation.
29. Ms Yong relies on paragraph 310 of SMO to support her contention that the appellant would, if his past were detected, be perceived as a collaborator and would therefore be at risk. The passage referred to states as follows:

"310. Perceived collaborators of Western organisations/armed forces. This group was considered in BA (Iraq) to be likely to be at risk in those parts of Iraq which were under ISIL control or had high levels of insurgent activity. The risk was thought to be lower in Baghdad, although there was evidence at that time to show that groups including ISIL were active and capable of carrying out attacks there. That assessment must be revisited because of several durable changes. Firstly, ISIL is no longer in control of swathes of territory in Iraq. Secondly, there is considerably less involvement of Western armed forces in what is accepted by the respondent to be an internal armed conflict in Iraq. Thirdly, there is considerably less evidence of ISIL and other insurgent groups carrying out attacks in Baghdad. We do not consider that this group would be at enhanced risk in Baghdad as there is insufficient recent evidence to support such a conclusion. In respect of the risk to such individuals in the Formerly Contested Areas, the situation is clearly different to that considered in BA (Iraq). As noted at 1.9 of the EASO report on *Targeting of Individuals* "working for the coalition was less sensitive than in the past." In areas where ISIL remains active, its primary target is those associated with central or local governance or the security apparatus and there is little recent evidence to show that those with a current or historical connection to Western organisations or armed forces would be at enhanced risk on that account alone. That is not to say that such an association is irrelevant for the purposes of the sliding scale analysis; were such an association to become known at a fake checkpoint, for example, then such an individual might well be at enhanced risk as

compared to a civilian without such an association. We accept, therefore that a past or current association to a Western organisation or allied forces is a relevant factor in the Article 15(c) analysis, albeit one with less significance than before.”

30. What is said in paragraph 310 must be seen in context. The particular risk category was derived from an EASO report entitled “Targeting of Individuals” and what was said in BA (Iraq) CG [2017] UKUT 18 (IAC). These two sources were considering the position of individuals who might be targeted by ISIL at a time when that brutal organisation was in control of a significant proportion of the country (see paragraph 309 of SMO). However, as is made clear in paragraph 310, the situation had moved on by the time SMO was decided. The issue of past or current association with a Western organisation or allied forces carried with it less significance than had previously been the case. The Tribunal that such an association could put an individual at enhanced risk if, for example, this fact was to emerge at a fake checkpoint operated by ISIL.
31. The difficulties facing the appellant’s case in respect of Ms Yong’s central submission are as follows. First, the appellant has not, on my findings, ever suffered any problems on account of his past association with the Iraqi army and its collaboration with allied forces. Second, he would be returning as a civilian and his association with the military is now a decade in the past. Third, and in any event, I have not been referred to any evidence, and SMO does not support a contrary position, that the appellant would face the reasonable likelihood of being stopped at a fake checkpoint operated by ISIL on this route from Baghdad to Kirkuk, nor would he be at risk once re-settled in his home city. Thus, it is not reasonably likely that the issue of his past occupation will come to light, at least not in the context of any actors who would wish to do him harm as a consequence. Fourth, I conclude that, in light of his particular circumstances and characteristics, he would, in the alternative, be able to internally relocate to either Baghdad or the IKR:
 - i. he has family members in Iraq who could provide support in respect of any place of relocation;
 - ii. he is healthy and clearly able to work;
 - iii. he has resided in Baghdad in the past when working as a soldier;
 - iv. his past association with the military would not cause him material difficulties;
 - v. he would be documented;
 - vi. there is no reason why he would not be permitted entry into, and residence in, the IKR.
32. It has not been suggested that the appellant would be at risk for any other reason.
33. Ultimately, the appellant cannot show that he would be at risk of persecution, Article 3 ill-treatment, or serious harm pursuant to Article 15c of the Qualification Directive. Even if a risk existed in his home area, he could internally relocate.
34. The protection claim fails.

35. The Article 8 claim is also unsuccessful, having regard to the well-known case law and section 117B of the Nationality, Immigration and Asylum Act. The appellant has been in the United Kingdom since the beginning of 2011, but this has been on an entirely unlawful basis. There is no evidence of any significant ties in this country going beyond the simple fact of a fairly lengthy residence. The appellant is healthy and single. There are clearly no very significant obstacles to him reintegrating into Iraqi society. I am willing to assume that the appellant speaks sufficiently good English and that he has not been reliant upon public funds. These factors would be of neutral value only. If I were wrong about either, there would exist a further factor against him.
36. As to the respondent's delay in making a decision on the further representations, I attach some weight to what is a relatively significant period of time. Having said that, there is no evidence to show that the appellant (or anyone on his behalf) chased the respondent during this time or that he sought to challenge the respondent's failure to make a decision by way, for example, of judicial review proceedings. There is no evidence to show that the appellant suffered any particular detriment as result of the delay: indeed, all that occurred was that he continued to reside in this country unlawfully following his unsuccessful appeal in 2011. There is no evidence to show that he established significant ties in this country during the period of delay. The delay was not in my view particularly egregious. I bear in mind that the respondent had considered the appellant's original asylum claim expeditiously. There was no particular timeframe within which the further representations should have been decided.
37. In all the circumstances, I do not regard the delay as constituting a particularly significant feature of the Article 8 claim such as to permit the appellant to succeed, whether this factor is considered in isolation or cumulatively. The respondent's refusal of human rights claim was proportionate unlawful.

Anonymity

38. The First-tier Tribunal made an anonymity direction and I maintain it, given that the appellant has made a protection claim.

Notice of Decision

39. **The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**
40. **I set aside the decision of the First-tier Tribunal.**
41. **I remake the decision by dismissing the appeal on all grounds.**

Signed: *H Norton-Taylor*
Upper Tribunal Judge Norton-Taylor

Date: 7 January 2021