



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

Appeal Number: PA/05330/2018 (V)

THE IMMIGRATION ACTS

**Heard by *Skype for Business*
On 24 February 2021**

**Decision & Reasons Promulgated
On 04 March 2021**

Before

UT JUDGE MACLEMAN

Between

H A A

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Caskie, Advocate, instructed by Latta & Co, Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Kurdish citizen of Iraq, aged 32. His wife and son are dependants on his claim. He and his wife now also have a daughter.
2. The appellant claimed to be at risk from (a) his wife's cousin (M) who had wanted to marry her, and who is a member of the Kurdistan Democratic Party (KDP), and (b) the general situation in his area.
3. The respondent refused his claim by a letter dated 10 April 2018, on the view that apart from his nationality and ethnicity, his account was not credible, and that even if there were difficulties in his area, he could return to Erbil.
4. Designated Judge Murray dismissed the appellant's appeal by a decision promulgated on 11 March 2019, concluding at [58] that there is no credibility in the claim, and the appellant is from Erbil.

5. The appellant sought permission to appeal to the UT, on grounds framed mainly in terms of the FtT applying too high a standard of proof. The FtT and the UT refused permission.
6. The appellant petitioned the Court of Session. By an interlocutor dated 3 March 2020, the Court reduced the decision of the UT (refusing permission) in terms of the parties' joint minute. On 23 March 2020, the UT granted permission, in that light.
7. The appellant filed quite extensive written submissions. These cite the material part of the joint minute, as follows:

The parties are agreed that the UT arguably erred in law in:

Holding in its [refusal of permission] that there was no ... arguable ... error ... relative to the FtT's treatment of the issue [at [15] - [16] of the petition] ... The FtT erred in law in placing weight upon the [appellant's] failure to mention the attack at the market in his screening interview ... without addressing the circumstances in which the screening interview took place (at 1:30 am immediately following ... having disembarked from a lorry in the UK with his wife and child) and the request to provide "brief details" ... of his claim. There is no indication in the decision that the circumstances of the ... screening interview were considered.

For the avoidance of doubt:

(i) the [appellant] maintains all ... the grounds of appeal; and

(ii) while accepting there was an error ... in the terms narrated above, the respondent does not accept that this was ... material ... or that the challenge ... is otherwise well-founded.

8. The submissions go on to deal with materiality, and with other errors alleged in the grounds. They ask for a rehearing in the FtT.
9. Mr Diwnycz, properly, drew attention to a decision I made in this case at a previous stage, remitting it to the FtT; but representatives agreed that was no obstacle to my resolution of this appeal.
10. The main points which I noted from the submissions by Mr Caskie were these:
 - (i) At [54] the judge said, "*The appellant's evidence is not conclusive as he made no mention of the attack at market at his screening interview*". The expression "not conclusive" was not a fatal error, but it was problematic, and could stand only if everything else of relevance had been considered.
 - (ii) The circumstances of the interview had not been mentioned.
 - (iii) The appellant, in effect, was not believed because he complied with a request to give only brief details. Similar errors appeared at [53].
 - (iv) The judge looked for corroboration of the rank of M whereas there was nothing to suggest that such evidence might be easy to obtain. The opposite might be the case.
 - (v) The appellant produced strong evidence about injuries he had sustained, injuries to his son, and court proceedings he instigated in Erbil, where his

brother is a lawyer. There was no reason to doubt the court documents, which corroborated the appellant's account. It was inconceivable that he might have fabricated evidence in 2011 to use in a false claim, not made until the end of 2017.

- (vi) The judge identified a discrepancy between the evidence from the appellant and from his wife, over whether threats continued during a time when M was confined to a wheelchair, which did not accurately reflect their evidence.
- (vii) The evidence, on proper scrutiny, was so strong that the UT should substitute a decision allowing the appeal.
- (viii) Alternatively, the case might be retained for re-making in the UT at a further hearing.

11. Mr Diwnycz submitted:

- (i) It was for the judge to decide if the evidence of the appellant and his wife was probative. She was entitled not to be impressed by their evidence. She gave legally sufficient reasons.
- (ii) The medical evidence about the appellant and his son, on direct reference, was not strongly corroborative. It did very little to advance the claims. It was doubtful if it showed that the appellant had been shot, rather than injured in some other way; although shooting appeared to have been accepted.
- (iii) The court documentation established nothing beyond a complaint made in 2011. The appellant could have taken this further, particularly as his brother is a lawyer on the spot.
- (iv) If the decision were to be set aside, the case required an entirely fresh hearing, which should be in the FtT.

12. Mr Caskie replied:

- (i) The respondent's points about the medical and court evidence might have been apt for the FtT but were not relevant to error of law.
- (ii) Although Mr Diwnycz mentioned "redocumentation" issues, this case was not put on any such basis.

13. I reserved my decision.

14. Judges are entitled, with appropriate caution, to take failure to mention matters at screening interview as adverse to a claim. Each such instance turns ultimately on its own facts and circumstances.

15. In the present case, as well as the passage at [54], the judge said at [53], "*The appellant did not mention this incident in his screening interview although this forms an extremely important part of his claim*", and, "*I do not believe this happened ... the fact this was not mentioned at screening interview ... means that the appellant's credibility is lacking*".

16. I was not taken directly to the interview record, but the relevant part appears to be at 4.1:
- Q. Please BRIEFLY explain ALL of the reasons why you cannot return to your home country?
- A. Problem with wife's paternal cousin. We got married in 2011 and he didn't like it and he shot me in the leg. In 2013 we had a child and he started to threaten me.
17. There is some tension between "*briefly*" and "*all*", both emphasised in the question, which looks for a very succinct and accurate reply.
18. The attack by vehicle on the appellant's wife, mother and son at the market was an important part of the account. A judge might legitimately take absence of specification at screening interview as an adverse matter. However, the judge's comments verge on treating this as conclusive, without reference to the particular circumstances of the interview (conceded by the respondent) and in absence of any specific self-direction.
19. I conclude that this was an error on a point of law, on a matter so central to the decision that it cannot stand.
20. The submissions for the appellant do not disclose a case of such obvious strength that the UT should simply substitute a decision in his favour.
21. While it is unfortunate that the case is remitted for a second time, the requirement is for an entirely fresh hearing, which is more apt for the FtT.
22. The decision of the FtT is set aside. The case is remitted for a fresh hearing, not before Judge Murray or Judge Kempton.
23. An anonymity direction remains in place.

Hugh Macleman

25 February 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.