



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11054/2019

THE IMMIGRATION ACTS

Heard at Field House
On 1 March 2021

Decision & Reasons Promulgated
On 9 March 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

I A H (IRAQ)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Alex Coyte, case worker with Fountain Solicitors

For the respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of I A H who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 25 October 2019 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Iraq.

Background

2. The appellant was born in Iraq in 1988, in the IKR. When he was 9 years old, he became infected with polio and has a withered left leg, and also scoliosis, as well as considerable ongoing pain which requires management. There is no suggestion in the evidence before me that this appellant is experiencing post-polio syndrome, which can lead to new weakness and loss of function, many years after the original infection.
3. There are considerable divergences in the appellant's core account and in his account of his journey. The persecution element of the appellant's account was that in 2006, 2014, and 2015 while living in Iraq, he was beaten by members of the Braima Rwt family, who are said to have links to the Patriotic Union of Kurdistan (PUK) and that a blood feud exists between the Braima Rwt family and the appellant's family. The appellant also claimed to fear the Kurdish Democratic Party (KDP) because he took photographs of the KDP building in Zharawa which had been the subject of an arson attack. The arson attack did occur, according to country materials.
4. In August 2016, the appellant left Iraq by plane, or perhaps on foot, travelling to Turkey, where he spent a week before travelling on to Italy by boat. In Italy, he was arrested and fingerprinted, but he did not claim asylum. He met some fellow Iraqis in Italy, and they all travelled on to Calais together.
5. The appellant made multiple attempts to enter the United Kingdom clandestinely in a lorry. The respondent's records show that he was caught trying to board a lorry in Dunkirk on 26 and 30 September 2016, and served with a form IS 151A. On both occasions, the lorry driver's previous stop before Dunkirk was in Belgium. In one version of his account, the appellant said that he was caught twice in France and was returned to Iraq, which he left again in November 2016.
6. On 7 December 2016, the appellant entered the United Kingdom clandestinely in a lorry, was discovered in Thurrock, and claimed asylum promptly when detained there.
7. The Secretary of State considered his application with reference to *N v Secretary of State for the Home Department* [2005] UKHL 31 but was not satisfied that the appellant could bring himself within paragraph 276ADE of the Immigration Rules HC 395 (as amended), nor that his circumstances met the high Article 3 ECHR test.

First-tier Tribunal decision

8. The First-tier Judge heard the appellant's oral evidence and rejected the core account entirely. The First-tier Judge found that all of the appellant's account lacked credibility, save for his national and ethnic origin and his polio and scoliosis disability.
9. The First-tier Judge's decision does not engage with a country expert report of 19 March 2020 which was before the First-tier Tribunal, prepared by Dr Rebwar Fatah of Middle East Consultancy Services, nor with detailed medical evidence in the appellant's bundle as the effects of his polio and scoliosis disabilities and the pain he experiences.
10. The First-tier Judge dismissed the appeal, finding that the appellant was agile and energetic, despite his disability, that he had been able to try to get on lorries on several occasions, and could return to Iraq the same way. The First-tier Judge disbelieved the appellant's account of his brothers having rejected him, of his leaving school early and of disability-related harassment and attacks when he lived in Iraq.
11. The appellant appealed to the Upper Tribunal.

Permission to appeal

12. Ground 1 of the appellant's grounds argued that the First-tier Judge had failed to make a properly reasoned decision on paragraph 276ADE(1)(vi). He contended that, the judge having accepted the existence of the appellant's polio/scoliosis disability, the First-tier Judge's factual findings were inconsistent with the medical evidence in the appellant's bundle, and with Dr Fatah's report as to the difficulties for disabled persons in Iraq, both as to social exclusion (including rejection by their families), and lack of employment, and the evidence regarding the inability of the appellant's mother, who has her own health problems, to assist him on return.
13. On 2 October 2020, Upper Tribunal Judge Norton-Taylor granted limited permission to appeal, on that ground alone, in the following terms:
 - "1. It is arguable that the First-tier Tribunal did not adequately address the paragraph 276ADE(1)(vi) issue in light of the appellant's particular circumstances.
 2. Having regard to the judge's decision as a whole, grounds 2 and 3 are unarguable. ... "

Rule 24 Reply

14. On 19 October 2020, the respondent's Rule 24 Reply was as follows:
 - "...3. The respondent considers that permission to appeal has been granted on a very limited basis on an alleged failure by the First-tier Judge to consider the appellant's claim in respect of paragraph 276ADE(1)(vi) of the Immigration Rules.
 4. The respondent respectfully submits that it would appear that the only factors the appellant identified in respect of [paragraph] 276ADE(1)(vi) at the appeal were those related to his asylum claim, which the judge has comprehensively dismissed

(and upheld by the [Upper Tribunal] in the permission grant) and the appellant's disability, which the judge has considered at paragraph 30 of the determination.

5. As such the respondent respectfully submits that there is no material error of law in the decision of the First-tier Tribunal."

15. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

16. At the Upper Tribunal hearing, Ms Everett accepted that there was in the decision no analysis of the medical evidence or the country evidence. She sought to persuade me that the appeal, if set aside, should be remade on the narrow basis of the effect of these documents on the assessment of whether there would be very significant obstacles to reintegration in Iraq if the appellant were to be returned now.

17. Ms Everett argued that the appellant's disability, with which he had been living since he was 9 years old, would not now constitute a significant obstacle to reintegration.

18. I did not find it necessary to call on Mr Coyte for the appellant.

Analysis

19. As to paragraph 276ADE(1)(vi), the appellant's case is that the conditions in which he would have to live on return, and the lack of familial support from his brothers and his mother, would amount to very significant obstacles, given his polio disability. Dr Fatah's report sets out international NGO materials about the treatment of disabled individuals in Iraq: see in particular [98]-[99] and [102].

20. I note that the respondent's decision was taken before the decision of the Supreme Court in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17 which replaced the test in *N v Secretary of State for the Home Department* [2005] UKHL 31 with the *Paposhvili* test. That change may be relevant when considering the medical evidence in this appeal, although as the appellant's polio disability seems stable at present, perhaps not.

21. In *QC (verification of documents; Mibanga duty)* [2021] UKUT 33 (IAC), the Upper Tribunal reminded judges that:

"The Mibanga duty

(2) *Credibility is not necessarily an essential component of a successful claim to be in need of international protection. Where credibility has a role to play, its relevance to the overall outcome will vary, depending on the nature of the case. What that relevance is to a particular claim needs to be established with some care by the judicial fact-finder. It is only once this is done that the practical application of the "Mibanga duty" to consider credibility "in the round" can be understood (*Francois Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367). The significance of a piece of evidence that emanates from a third party source may well depend upon what is at stake in terms of the individual's credibility.*

(3) *What the case law reveals is that the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in which the fact-finder goes about this task is a matter for them.*

As has been pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome."

22. I bear in mind the narrow circumstances in which it is appropriate to interfere with a finding of fact by a First-tier Judge who has heard the parties give oral evidence: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 and *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90] in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed.
23. It seems to me from reading the expert evidence of Dr Fatah that much of the international material which he quotes in his report could be regarded as corroborative of parts of the appellant's evidence which the First-tier Judge found to lack credibility. There is also the failure to evaluate the medical evidence as to the extent of the difficulties which the appellant experiences.
24. In failing to engage with Dr Fatah's report, or to examine properly the medical evidence about the appellant's current physical difficulties arising from his polio disability and scoliosis, the First-tier Judge failed to carry out his *Mibanga* duty to reach conclusions of fact and credibility on the basis of all the evidence before him, and not just the appellant's unsatisfactory oral and written accounts of his history. I am not satisfied that the First-tier Judge's reasoning is legally adequate.
25. For all of the above reasons, it is necessary to set aside this decision in its entirety and remit it to the First-tier Tribunal for rehearing afresh.
26. The only findings to be preserved are that the appellant has a polio disability (including scoliosis) and is an Iraqi Kurd. All other findings of fact and credibility are set aside.

DECISION

27. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 1 March 2021