



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/12389/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams **Decision & Reasons Promulgated**
On 30 July 2021 **On 16 September 2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**H O A
[ANONYMITY DIRECTION MADE]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was not made by the First-tier Tribunal. However, this is an appeal on protection grounds. It is therefore appropriate to make that order. Unless and until a Tribunal or court directs otherwise, the Appellant 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 both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the Appellant: Mr K Khan, solicitor, Kings Law solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Young-Harry promulgated on 20 March 2020 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 3 December 2019 refusing his protection and human rights claims.
2. The Appellant is a national of Iraq, coming from the Kurdish area of that country. He was born in Sulaymaniyah. The Appellant was encountered in the UK on 5 September 2017, having entered illegally. He claimed asylum on 6 September 2017. The Appellant claims to have worked for Asayish (Kurdish intelligence). He claims that he was threatened by an unknown individual as a result of his job. He was threatened in four telephone calls between July and August 2015. Although he was given protection by his employers, the Appellant says that this was insufficient and so he left Iraq in September 2015. He says that before he left Iraq, he had an argument with his superior officer about the level of protection afforded him. The Appellant says that a warrant has been issued against him since he left Iraq as he has been absent without leave from Asayish (“the Arrest Warrant”). He also says that the PUK would have an interest in him as he has information which would be of interest to other countries or political parties which the PUK might consider he had divulged. The Appellant claims to have posted details of corruption in the party on Facebook.
3. The Respondent accepted that the Appellant worked for Asayish before leaving Iraq. The Respondent also accepted that the Appellant had received threatening phone calls in 2015 but noted that the Appellant had received protection against those threats. It was also accepted that the Appellant had a disagreement with his superior and that a warrant had been issued for his arrest. The validity of the Arrest Warrant was not put in issue. However, if action were taken in accordance with the Arrest Warrant, the Respondent concluded that this would be prosecution and not persecution. The Respondent did not accept that the Appellant would be at risk from the PUK nor, it seems, that he had posted adverse comments about the party on Facebook.
4. The Respondent noted in the decision letter under appeal that the Appellant is in possession of a valid passport. The Respondent also holds a copy of the Appellant’s CSID (Civil Status Identity Document). It appears that some of the Appellant’s original documentation may be in Sweden where he previously claimed asylum.

5. The Appellant appeared at the First-tier Tribunal in person. However, he produced a skeleton argument which has clearly been drafted by someone with some legal knowledge (“the Skeleton Argument”). I note that, until shortly before the First-tier Tribunal hearing, the Appellant had been represented by experienced immigration solicitors (Halliday Reeves). The Skeleton Argument takes issue with the Respondent’s conclusion in relation to risk from the PUK. The Respondent’s acceptance of the remainder of the protection claim is noted. It is asserted that the Appellant is at risk if arrested and detained by the Asayish. Reference is made to an expert report. That is to the report of Alison Pargeter dated 12 February 2020 (“the Expert Report”). I will come to the substance of that report in due course. It is asserted that there is “a risk of serious harm to the Appellant if he is arrested, detained and/or convicted”. It is said that, as the risk emanates from the State, there is no sufficiency of protection or internal relocation option. That position is consistent with the grounds of appeal against the Respondent’s decision which are directed at the Respondent’s conclusions as to risk only.
6. The Judge noted the elements of the Appellant’s claim which were accepted. At [16] to [18] of the Decision, she dealt with and rejected the disputed element, namely the risk from the PUK. In relation to the Arrest Warrant, the Judge concluded that there was no evidence that any action arising from that would breach Article 3 ECHR or amount to persecution for a Refugee Convention reason ([22]). The Judge referred at [23] of the Decision to the country guidance decision in force at that time (SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) – “SMO”). She found that the Appellant could return directly to IKR as he has a valid passport and CSID. He could return to join his family in that area or to a different area within IKR if he so chose.
7. The Appellant appeals on six grounds. I do not rehearse those here. I deal with them in turn below.
8. Permission to appeal was granted on 26 February 2021 by First-tier Tribunal Judge Scott-Baker. The decision is quite a lengthy one and I therefore cite only the relevant paragraphs as follows:
 - “... 5. The respondent had accepted that the appellant had a limited involvement with the PUK and at [16] the judge rejects the appellant’s claim of holding secrets about the PUK, taking into account at [18] the appellant’s claim that he had posted compromising information about the PUK on Facebook but no evidence was produced. The judge however had arguably failed to consider the issue holistically factoring in the accepted fact that the appellant was a member of Asayish, a security organisation.
 6. At [19] the judge considers the arrest warrant and notes at [21] the concession that the respondent had accepted that a warrant had been issued and finds that it was likely that he was wanted for a breach of an internal Asayish rule.

7. In considering the issue of return at [23] the judge records that the respondent held the appellant's passport and CSID. She found that the appellant could return to his home area or another part of the IKR but there were no reasons given or any reference to background material.

8. The decision arguably discloses errors of law in that inadequate findings have been made on the appellant's claim and the risk on return.

9. Permission is granted."

9. The matter comes before me to decide whether there is an error of law in the Decision and, if I conclude that there is, whether to set aside the Decision for re-making. If the Decision is set aside, I may either retain the appeal in this Tribunal for redetermination or remit it to the First-tier Tribunal to re-hear the appeal.
10. The hearing was conducted via Microsoft Teams. There were no technical issues affecting the hearing generally.
11. The Appellant has changed his solicitors and is now represented by Kings Law solicitors. The Tribunal did not have before it the complete Appellant's bundle and requested a copy of that from Kings Law. In response some documents were sent prior to the hearing but it was indicated that not all documents had been received from the previous solicitors. It is not clear why that should be so. I asked Mr Khan at the outset if he had the Expert Report as that was pertinent to one of the grounds before me and was not in the bundle as sent. He managed to find that document and to provide it before I heard submissions. I am satisfied that I had the necessary documents in order to determine the grounds challenging the Decision.

DISCUSSION AND CONCLUSIONS

Ground two

12. I begin with two of the grounds which I can take shortly. The first, ground two, complains that the Judge "failed to consider or adequately consider the witness statement of the Appellant". It is asserted at [26] of the grounds that the Appellant, who appeared in person before Judge Young-Harry, was not cross-examined at the hearing. Somewhat surprisingly, it is suggested that the Judge herself should have cross-examined the Appellant. As I observed, had the Judge done so, there might very well have been a challenge on the basis that the Judge had descended into the arena.
13. This ground is in any event misconceived. Unfortunately, I do not appear to have the Appellant's witness statement as before the First-tier Tribunal. I only have one apparently drafted for the hearing before this Tribunal (dated 13 April 2021 - "the Witness Statement"). The grounds do not identify what of the Appellant's evidence the Judge is said to have

ignored. Mr Walker confirmed that the Appellant had been cross-examined by the Presenting Officer.

14. The Judge refers as fact at [8] of the Decision to the Appellant having given evidence and having been cross-examined. As the Judge says at [9] of the Decision there was no need to record the evidence and arguments in detail as those are set out in the record of proceedings. The Judge has fairly summarised the essence of the Appellant's claim at [10] and [11] of the Decision and the Respondent's case in response at [12] and [13] of the Decision. Absent a reference to relevant evidence which the Judge is said to have ignored, this ground does not identify any error of law in the Judge's approach.

Ground three

15. By this ground, the Appellant criticises the Judge's approach to the Appellant's case regarding posts said to have been made on Facebook. I do not understand the Appellant's case to be that he claimed to have divulged secret information about the PUK via Facebook as yet but rather that he has posted material which was critical of the organisation. The basis of the challenge is that the Judge erred by requiring corroboration of that claim because there was no evidence that the Appellant had published the information on Facebook.

16. The Judge dealt with the claimed risk from the PUK at [16] to [18] of the Decision as follows:

"16. The respondent accepts that the appellant was involved with the PUK, but only to a limited extent. It was not accept [sic] that the appellant was so involved, that he would be privy to the secrets of the party or that the party leaders would be concerned about the appellant disclosing information about the party.

17. I do not find the appellant has shown, even to the lower standard, that he was privy to valuable secrets about the PUK or that the party leadership would be concerned about him disclosing such secrets. The appellant has failed to explain how he obtained this sensitive information, what the information is, why he believes the party is concerned about it or how he knows they are concerned.

18. Neither has he provided any supporting evidence to show that he has posted any compromising information about the PUK on Facebook or any other social media site. One would expect supporting evidence in this regard would be readily available. I therefore do not accept this aspect of the appellant's claim. I am not satisfied that the appellant has shown that he will face a risk on return due to his association with the PUK. I find the appellant has failed to show that the PUK has any interest in him."

17. Those three paragraphs have to be read together. The reference to the absence of corroboratory evidence has to be read in context. The Facebook posts were material to which the Appellant ought readily to have access as the Judge observes. He did not explain why he could not

produce it. The reference to the lack of corroboration when read with the rest of that section of the Decision is therefore merely making the observation that, for the reasons given at [17] as well as [18] of the Decision, the Appellant had not made out his case on this aspect. There is no error of law in the Judge's approach.

18. I add that the Witness Statement now produced does make reference to some of the information to which the Appellant says he had access due to his role. However, the Witness Statement was not before Judge Young-Harry and the Decision cannot be impugned on the basis of evidence she did not have.
19. I observe in addition and although the Judge does not make reference to it, that the Expert Report is equally sceptical about the Appellant's claim in this regard. At [6.1] of the report, Ms Pargeter says that she is "unable to understand what secrets the party may believe he has and would divulge". At [6.2], she concludes that the Appellant "should not have any problems" arising from critical Facebook posts provided those were general in nature. The Appellant has not, as I have already noted, provided evidence about what was or is said to have been included in those posts if indeed any were made (which the Judge did not believe).

Grounds one and five

20. The focus of the Appellant's first and fifth grounds is the Arrest Warrant and I therefore take those grounds together. Ground one asserts that the Judge "failed to look at all the evidence in the round before coming to her conclusion and dismissing this document as reliable". It is there noted that the Respondent had accepted the validity of the Arrest Warrant. At ground five, it is asserted that the Judge "failed to make any finding on accepted material issues in the case".
21. The Judge dealt with the Arrest Warrant and claimed risk on return in that regard at [19] to [22] of the Decision as follows:
 19. The appellant further claims that an arrest warrant has been issued for being absent without leave from Asayish. I have regard for the translation of the document the appellant relies on. I consider the documents in the round, with **Tanveer Ahmed** in mind. The documents [sic] is headed the Kurdistan Region Government, Council of Ministers - Kurdistan Region - Iraq Asaish Institute - Kurdistan Region and is dated the 25th January 2016.
 20. The document states that the 'convicts' listed below should be arrested, in order to comply with 'urgent and legal acts for the performing of the order'. Three names are listed, the appellant's name is among them. There is reference to a Rule 5 Punishments Law - Interior Asaish Forces - Number 14 on [sic] 2008.
 21. It is not clear what the order is for or why the appellant is referred to as a convict. I note also that the document is dated the 25th January 2016, yet the appellant left Iraq in September 2015.

The respondent however accepts that the document is a warrant for the appellant's arrest. I note there is reference to what appears to be an internal Asaish rule or law, thus it is likely the appellant is wanted for breaching an internal Asayish rule. The specific law or breach is not given.

22. It is likely therefore, if the appellant is correct and he is to face punishment for being absent without leave, it is likely that he will face an internal process conducted by Asayish. The appellant however has failed to show that the process, resultant consequences or punishment for being absent without leave, would breach Art 3 or would amount to persecution for a convention reason. According [sic], although the appellant would prefer to avoid the consequences of leaving without permission, the appellant has not established a claim for international protection."

22. Although I accept that the Judge there expresses some doubts about the validity of the Arrest Warrant, there is no error of law in her treatment of that document for two reasons. First, she has taken into account the guidance in Tanveer Ahmed when considering that document and explained why she considers that it raises some issues. Second, and more importantly, the Judge thereafter proceeds on the basis that the Arrest Warrant is valid based on the Respondent's concession and considers risk on that basis.

23. Contrary to the suggestion in the fifth ground that the Judge has failed to make findings about the risk arising from the material facts which are accepted by the Respondent, the Judge has done precisely that. In relation to the Arrest Warrant, the Judge explains why there is no risk arising at [22] of the Decision (cited above). In relation to the other aspects, the Judge records at [12] of the Decision the facts which were accepted but notes that the Appellant was given protection against the threats from the unknown caller.

24. In his oral submissions as regards the risk arising in particular from the Arrest Warrant, Mr Khan relied on the Expert Report. Although there is no reference to this document in the grounds of appeal to this Tribunal, I permitted him to rely on that report as it is said in the Skeleton Argument to be the source of the assertion that the Appellant would be at risk based on the material facts of his claim which were accepted. The following passage of the Expert Report is of relevance:

"2.12 As I understand it, therefore, under this law, [HOA] would be liable to a prison sentence of up to six months. Indeed, there is no mention of desertion in this law, and to the best of my knowledge, his fleeing Iraq would be dealt with as a crime of absence.

2.13 Whilst the punishment for being absent without leave is a prison term, Article 39 of the law stipulates that a prison terms of less than three years can be replaced with a fine by the Internal Security Forces' Court (which is regulated by Law 17 of 2008) if the court can justify its decision.

2.14 Despite this law, I have been unable to find any evidence of Asayesh members being punished for being absent from duty without

leave. This also holds true for the Peshmerga. According to the Kurdish Human Rights Watch, as at 2016, no cases of desertion from the Peshmerga forces has been brought to court [footnoted source is a 2016 document]. I have not been able to find any cases of Asayesh members being punished for crimes of absence. This does not necessarily mean that there have been no such cases and it should be remembered that the Asayesh are not subjected to government oversight and are under the control of the two main ruling parties. As such, their internal workings remain somewhat opaque. However, it does not appear to be commonplace for Asayesh members who go absent without leave to be imprisoned.”

25. Ms Pargeter sets out at section 3 of the Expert Report what might occur on the Appellant’s return to Iraq. She notes that the Appellant may have been tried and convicted in his absence. If there had been a trial in absentia, the Appellant would likely be detained on arrival. However, she goes on to say that the Appellant would in such circumstances be entitled to appeal and to seek a retrial. Ms Pargeter does refer to material concerning the independence of the judiciary but notes at [3.4] of the report that the Appellant would not be considered to be a political prisoner “meaning that there is no particular reason to suggest that his trial would be unfair”. Similarly, although Ms Pargeter refers to incidents of suspected torture in detention, she says that “she would be surprised if [the Appellant] were subjected to the same kinds of abuse” as his crime is not political.
26. For completeness, I note that the Expert Report also deals with the Appellant’s claim that he is at risk for arguing with his superior officer about the level of protection the Appellant was given against the threats. Ms Pargeter deals with this at [2.15] onwards. She refers to the section of the penal code relevant to this crime (not I note the section set out in the Arrest Warrant) and refers to the potential penalty being imprisonment for one year. Ms Pargeter expresses some surprise at [2.18] of the Expert Report that someone in the Appellant’s position would have access to someone as senior as the person he has named. She goes on to note however that if he were to have insulted that person as the Appellant asserts “he could find himself liable to punishment under this law”. As I have already noted, however, there is no reference in the Arrest Warrant to the sections of the penal code to which Ms Pargeter there refers.
27. Mr Khan placed reliance on [2.12] and [2.13] of the Expert Report as set out above. However, those paragraphs have to be read in the context of [2.14] of that report. To Ms Pargeter’s knowledge there have not been any cases of punishment for crimes of absence. She does not discount the possibility that there may be cases but she regards the risk as not being “commonplace”. If the Appellant were detained, Ms Pargeter “would be surprised” if the Appellant would be subject to any abuse in detention. She also has “no particular reason to suggest that [the Appellant’s] trial would be unfair”.

28. Based on the Expert Report, the Judge was clearly entitled to conclude that there was no real risk to the Appellant on return, stemming from the Arrest Warrant or the fact of him being absent without leave.

Grounds six and four

29. Ground six includes a number of factors which it is said the Judge has failed to consider. I will come to the ones on which focus was placed at the hearing. Before I do so, I note that [37] of this ground raises the risk of detention on return as being in breach of Article 3 ECHR. I have already dealt with that issue in relation to grounds one and five above. I do not repeat what is there said.
30. Similarly, I do not need to deal with [38] of ground six concerning the Appellant's credibility. As I have already noted, much of the Appellant's claim was accepted by the Respondent and therefore also the Judge. The Judge has dealt with the risk arising from those aspects and, as I have already concluded, there is no error in her conclusions that the facts accepted do not give rise to a real risk on return. I have also concluded when dealing with ground three that the Judge did not err in her findings regarding the credibility of those aspects of the claim which were not accepted. What is said at [38] of the grounds adds nothing to the challenge which I dealt with under the heading of ground three above.
31. The focus of the remaining paragraphs of ground six and ground four go to the general risk on return.
32. The main thrust of the Appellant's case in this regard is that the Judge failed to take account of the guidance given in SMO. Although SMO has been accepted to contain an error of law and has been remitted to this Tribunal, that occurred in February 2021 and after the hearing and Decision in this case. The Judge was therefore required to consider and apply SMO in its reported form at that time.
33. The Judge referred to SMO at [23] of the Decision. In that regard, she said this:
- “23. In relation to an Art 3 risk on return due to the general security situation in Iraq, I consider ***SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)***, I find as the appellant is a Kurd, he can be returned directly to the IKR. The appellant confirmed in evidence that the respondent is in possession of his passport and his CSID.
24. I find it is likely his family remain in their home, so accommodation and support can be provided by his family and he can reside with them without legal impediment or requirement. I find the appellant can safely return to his home area or to a different area within the IKR if he so chooses, with the support of his family.”
34. The Judge's conclusion regarding Article 3 risk based on the general level of violence is unimpeachable having regard to [A1] of the headnote in

SMO. Paragraph [36] of the grounds (ground six) is entirely misconceived.

35. Ground four raises the issue of safety of IKR. The reference to a Home Office Country of Origin Information Service (“COIS”) report in relation to Iraq does not say to which report the ground refers. However, in any event, what is said at [32] of the grounds is again misconceived. The Appellant comes from Sulaymaniyah which is within IKR. There is no question of a restriction on freedom of movement or inability to relocate to that area. Nor can I find any country guidance case entitled “MK (Iraq)” save for one which was promulgated and reported in 2012 and does not assist the Appellant in any event. The Judge was entitled to reach the conclusion she did that the Appellant could return to IKR.
36. The remaining issues concern the likely destination of return. It appears to be assumed in the list of issues said to have been ignored by the Judge at [39] of the grounds that the Appellant would not be able to travel to IKR, having been returned to Baghdad. It is said that the Judge failed to take into account the principles established in SMO. There is an assertion that the Appellant would “face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID [which is in the process of replacing the CSID]”.
37. The first point to make is that the Appellant does have a CSID. Mr Khan made the point that the document produced by the Respondent to the Tribunal with her bundle contains only a copy of that document. It is not said where is the original. In any event, though, the copy shows the relevant information needed to get a replacement.
38. Mr Khan submitted however (and I understood Mr Walker to accept) that the relevant document now is an INID. It was, as I understood the submission, now accepted that a replacement identity document in the form of the INID could not be obtained outside the home area in Iraq as it is a biometric document. The submission is said to be supported by a COIS report in relation to Iraq dated June 2020 (“the June COIS”). That of course post-dates both the hearing and the Decision. Mr Khan accepted that the Decision could not be impugned based on what is there said.
39. Mr Khan suggested however that there was an error made by the Judge in failing to explain how the Appellant could return to IKR absent his CSID and/or how he could obtain a replacement. There are two reasons why I reject that submission.
40. First, the Appellant has never appealed on this basis. There is no reference to any challenge to the Respondent’s decision in relation to ability to return in the original grounds of appeal. Issue was not taken with this part of the Respondent’s decision in the Skeleton Argument. The first mention of any challenge on this basis appears in the grounds challenging the Decision. Indeed, there is still no mention of the point in

the Witness Statement prepared for the Upper Tribunal hearing. The Judge cannot be faulted for not considering an issue which was not raised.

41. Second, and more importantly, based on what is said at [22] of the guidance in SMO, the Appellant would be able to return to IKR as he is in possession of a valid passport. The guidance is that “[i]f [an appellant] has one of those documents [which includes a valid passport], the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of [an appellant] suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh” (see also [347] and [380] of SMO in relation to the evidential source of that guidance). The Respondent confirms in her Rule 24 Reply that she “holds the documents that are required to arrange [the Appellant’s] return”.
42. For those reasons, there is no error of law disclosed by the Judge’s consideration of the guidance in SMO and/or in relation to the ability of the Appellant to return to IKR.
43. It is not clear to me whether the position in relation to return to IKR using a valid passport remains the same following the June COIS report. However, if the Appellant wishes to raise any points now about his ability to return based on that report or otherwise or to put forward any further evidence such as is contained in the Witness Statement, it is of course open to him to make further submissions to the Respondent.

CONCLUSION

44. For the foregoing reasons, I conclude that the grounds disclose no error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant’s appeal is dismissed.

DECISION

I am satisfied that the Decision does not involve the making of a material error on a point of law. I therefore uphold the Decision of First-tier Tribunal Judge Young-Harry promulgated on 20 March 2020 with the consequence that the Appellant’s appeal remains dismissed.

Signed L K Smith
Upper Tribunal Judge Smith

Dated: 5 August 2021