



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-004163

First-Tier Tribunal No:
PA/54642/2021; IA/13979/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26th March 2024

Before
UPPER TRIBUNAL JUDGE RIMINGTON

Between
DNAAA
(Anonymity Direction Made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr C Yeo, instructed by the Migrant Legal Project

For the Respondent: Ms S Rushforth, Home Office Presenting Officer

Heard at Field House on 17 January 2024

DECISION AND REASONS

1. The appellant appeals, with permission against the decision of First-tier Tribunal Judge Woolley who on 13th May 2022 dismissed the appellant's protection and human rights appeal against the decision of the Secretary of State dated 10th September 2021.
2. The appellant feared return to Iraq on the basis he would be targeted by Shia militias because of his role in the Iraqi navy during the Ba'ath party era.
3. The grounds of challenge to the FtT decision were fourfold and as follows:
 - (i) the judge erred in treating the militia as one single unified entity contrary to objective background evidence
 - (ii) the judge erred in concluding the militia would not know of the appellant's military background from his ID documents, contrary to objective background evidence
 - (iii) the judge misconstrued evidence (including the visa application) and failed to treat the appellant as a vulnerable witness
 - (iv) the judge misconstrued the expert evidence in relation to past persecution.

Conclusions

4. I respond to each ground in turn.
5. The grounds of appeal at ground (i) identified that the judge made findings contrary to the country background material. The Shia militia in Iraq were not a single unified entity and there were many different groups operating independently but the judge viewed the Shia militia and being a single entity, for example by finding it inconsistent that the militia should have gone from wanting to kill the appellant to asking him to join them. Some of the groups hunted former Ba'athists while others sought to co-opt them. Sheri Lazier's (the country expert) report dated 14th March 2022 confirmed that many serving personnel particularly of Shia origin were able to switch sides to the new regime.
6. I find, however, and as Ms Rushforth submitted, it is not evident from the determination that the judge has concluded that the militias were one unified force. For example at [7] when recording the evidence the judge specifically recorded 'he [the appellant] described the Iranian influence on the militias... There were thousands of officers belonging to the Al Mahdi army.' At [8] the judge recorded the appellant's statement that he was stopped at a checkpoint in June

2015 by yet different militants named As'ibAlhaq'. At [9] the judge refers to the militias as 'the group' and at [11] the judge refers to the appellant's return to Baghdad where he claimed he was chased by many militia groups. The judge identified that the 'main thing the appellant feared were the militia groups' - in the plural - and that the militia groups were being run by Iran. The judge was clearly aware that there were various groups operating.

7. It was also clear that the respondent's refusal letter referenced militias as opposed to one group [12]. The judge specifically under the section entitled 'The Country Information' referred at [47] to the CPIN November 2021 on Iraq which in turn referred to various militias (popular mobilisation forces/units) and states 'they should not be regarded as non -state actors - they are hybrid actors who sometimes operate in concert with the State and at other times competed with it. They have latitude to make their own policy and decision'.
8. This shows the judge was well aware that the militias were not a single entity and at [68] specifically identifies the fear as that of the PMF militias in Iraq and names two of them.
9. It is the case that the judge stated that it was inconsistent that the militia should have gone from wanting to kill the appellant to asking him to join them but in that instance, at [68] the judge is making reference to the inconsistencies in relation to one particular group, the As'ib al Haq who threatened to kill the appellant in 2007/8 and then in 2014 tried to recruit him.
10. Ground (ii) asserted the judge made a finding contrary to the objective background evidence that the Shia militia would not have known of the appellant's navy/intelligence background from his ID documents. The judge stated at [69] it was unclear how the militia would have known about the appellant's past. At [70] the judge noted that the appellant had destroyed his service papers 'so any interest in him could only have been sparked by word of mouth rather than by incriminating documentation' and at [71] stated [the appellant] 'has not explained how Asa'ib Al Haq would know of his background from his ID documents produced at a checkpoint.'
11. However in her report Ms Sheri Lazier, confirms that the US government handed back the original Ba'ath era archives which gave Nouri al Maliki (one of the original Badr organisation members exiled during Ba'athist/Sadam regime) which would enable the identification of the appellant.

12. It was open to the judge to criticise the approach of the expert as being an informed advocate but her expert opinion on the return to Iraq of the records and the development of the organisation of the militias groups was well within her expertise and not specifically challenged. Thus although the judge states at [69] he was not clear how the militias might know about his identity, the judge had already noted at [53] that Ms Lazier confirmed in her report that papers had been returned to Iraq and the use made of these against former Ba'athists. Thus, the expert had given that information which was seemingly later ignored by the judge. Moreover, Ms Lazier's report cited from an academic source (*The Kurdish Files of Saddam Hussein's Ba'ath Regime 2020* by Montgomery and Hennerbichler). Although Ms Rushforth's submitted that the documents were only returned to and used by the Nouri al Maliki, it is not clear that the papers were simply used by one militia as it states they were returned during the premiership of Nouri al Maliki. The report cites this at 6(iii)

Iraq's security and intelligence services, largely under the sway of the pro-Iranian Shiite militias, have had no interest in making the files available to scholars and researchers instead of exploiting the trove of intelligence against the Sunni elites

And further

The return of Saddam's Ba'athist files presented Maliki and his security services, as well as his successors, with a trove of intelligence listing the names of thousands of former Ba'athist members, officials, and security and intelligence personnel—criminal and innocent alike—as well as informers, collaborators, and others... '

and

The militia leaders had taken over the Iraqi Interior Ministry and infiltrated the new police force, as well as running death squads like the Wolf Brigade. They had full access to the Ba'ath era databases, party membership records, intelligence and security files and Personal Status registers

13. The judge did not appear to acknowledge at [70] his recording at [53] that the USA had relocated documents which may identify former Ba'athists. Bearing in mind the seemingly large scale dissemination of the documentation it is arguable that there was a risk and it was not simply the militia under the Nouri al Maliki which had access to the intelligence.

14. The judge stated at [53] that Ms Lazier did not answer the question as to whether the appellant could return but it is clear from the answer, she gave in her report at section 9 that she considered the militias had become more able and organised since 2017 which is since the appellant left Iraq for good.
15. As Ms Lazier opined, Iraqis could go to ground for short periods (9.a,i), as the appellant described in his witness statement with repeated relocations inside the country. This she described was a 'high risk enterprise' but, additionally, she added the militias had become more powerful and organized since 2017, obtaining seats in Parliament, and establishing themselves in Sunni areas(9b,i). That was her answer.
16. Additionally although the judge criticised Ms Lazier's approach to the photographs confirming that these showed the appellant was in the navy because she was not an expert, I note that the judge, nonetheless, found the appellant may have served in Saddam's forces in some capacity but found that he had produced 'exiguous evidence as to his claimed service in the navy' [62]. The rejection of the photographs and the criticism of the report for advocacy on the part of the appellant does not undermine the factual information found in the report. Even so, the judge appeared to accept that the appellant had had some military role under Saddam's forces even if the report of Ms Lazier was not accepted.
17. The judge formerly at [59] accepted that the appellant's explanation of the rank structure as being 'consistent with the rank structure of the Iraqi navy' and at [62] specifically states that 'given the appellant's age I can accept that he may have served in Saddam's forces in some capacity' but that he had produced exiguous evidence as to his claim service. The finding at [75] appeared to contradict the rejection of the photographic evidence from Ms Lazier).
18. The judge criticised the appellant's evidence on the basis that the appellant never said that he had to bribe anyone for documents they were all obtained for him by the agent. That, however, did not appear to factor in that at [36] of his witness statement, the appellant was clear that he had passed money to his friend as a bribe for organising the documents from the Ministry of Commerce. That appeared to be a misreading of the evidence.
19. Although the judge states that in the appellant's claim it was his father who was a member of the Ba'ath party, it was recorded at [22] that the appellant himself was a member of the Ba'ath party because 99% of Iraqis needed to be members of the party in order to work in

jobs such as the Navy. That may in turn increase his risk of being identified by a militia.

20. Ground (iii) asserts that the judge misconstrued the evidence by failing in practice to treat the appellant as a vulnerable witness. This ground centred on the contents of the visa application which represented the appellant as a wealthy businessman whereas the appellant maintains that he misrepresented the situation to obtain a visa.

21. At [22] the judge reasoned:

The Appellant has provided documentary evidence that the information in his visa application was false while his travel history in his asylum account was genuine: the Respondent independently verified UNHCR papers confirming that the Appellant was a refugee in Syria, not on a business visa. Secondly, the Appellant would not have been granted a visit visa if he had disclosed his genuine circumstances and history and would not therefore have been able to get to a safe country with an effective asylum system. His behaviour was therefore consistent with that of a genuine refugee.

22. It was argued that the checks instituted were not financial but merely of biographic and biometric detail. Much emphasis by the judge was placed on the checking on the bank details to undermine the appellant's account but, as Mr Yeo submitted, there was no firm evidential basis for concluding that the ECO would have verified the bank statements of the applicant when applying for his visa.

23. I agree that the Visa application was independently shown to have contained false information not least that the appellant had been to Syria on business when in fact he had been declared a refugee in Syria after he and his family claimed asylum there. Contrary to the judge's reasoning, this was not a Devaseelan claim and the evidence should be considered in the round rather than the VAF being a 'starting point' as the judge advanced.

24. As to the details on the visa the judge at [64] recorded

'I found the explanation on this issue not to be credible. He was asked how the agent would have known about his foreign trips and he replied that this would have been obvious from his passport, and that his wife's details would have been known from the CSID. He had no convincing reply to the questions of how the agent would have known of his children's details or how he would have known about his claimed navy serve'.

25. At this point the judge did not consider the evidence in the light of the appellant being a vulnerable witness but looked for a 'convincing' reply (which is not the standard of proof) and as indicated above, the judge proceeded on the basis that the Home Office would have checked the claimed bank account. That was not the Secretary of State's case.
26. Additionally, as advanced in the grounds the appellant spent one month in a coma in the UK and was said to have been treated as a vulnerable witness but when finding it damaging to the appellant's credibility that the appellant could not remember what details he gave to his agent in a visa application the judge did not apply the vulnerable witness guidance in practice.
27. Nor did the judge at [65] consider the vulnerable guidelines when holding against the appellant the inconsistencies in his account of the reasons he travelled to Germany, Oman and the United Arab Emirates. Although it is held against the appellant that he had not mentioned borrowing a very large amount of money before the actual hearing, in fact the appellant had mentioned it in his appeal statement prior to the hearing at [44] and [48].
28. Ground (iv) asserted that the judge had not taken into account the background evidence not least that the militias became more powerful after 2017 which explained the appellant's ability to live in Iraq between 2013 and 2017 without being killed by Shia militias. It was submitted that the expert evidence was that not until the militias had finished fighting ISIS in 2017 that they asserted more dominance over the Iraqi state and the judge did not address this evidence. At [53] the judge states that her answer was long and rambling but in fact the question was answered. Further, the judge failed to engage with the appellant's explanation that he relocated many times in Iraq in an attempt to stay safe.
29. Much criticism was made of the failure of the brother to give evidence from Sweden but the fact that the representatives did not seek to call the witness (owing apparently to their experience of a lack of engagement on the part of the authorities involved) should arguably not be held against the appellant. Mr Yeo submitted that responsibility lay with the poorly funded solicitors for not seeking to adduce evidence from abroad and that it should not be blamed on the appellant.

30. Owing to the cumulative effect of the errors indicated and which included a failure to apply the Vulnerable Witness guidelines I find an error of law in the decision such that it should be set aside.

Notice of Decision

31. The Judge erred in law for the reasons identified, and, in a manner which could have a material effect on the outcome. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). No findings are preserved.
32. Bearing in mind the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing owing to the failure to apply the Vulnerable Witness Guidelines and assessment of the expert report, the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and 7.2 (a) of the Presidential Practice Statement.

Directions

- (i) Any further evidence should be filed and served at least 14 days prior to any hearing.**
- (ii) Skeleton arguments should be filed and served at least 7 days prior to any hearing.**

Helen Rimington
Judge of the Upper Tribunal Rimington
Immigration and Asylum Chamber

Signed 20th March 2024