



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001329
First-tier Tribunal No PA /55016/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15th March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

KS

(anonymity order made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms G Patel Counsel, instructed by Greater Manchester Immigration Aid Unit.

For the Respondent: Ms S McKenzie , Home Office Presenting Officer.

Heard at Field House on 21st August 2023

DECISION AND REASONS

Introduction

1. The appellant is a Kurdish national of Iraq. He was born in June 1988. He is from Jalawla in the Diyala governate. He lived with his parents and 11 siblings and helped in the family garage. He entered the United Kingdom illegally in June 2019 and claimed protection that day. He claimed to have had no contact with his family since leaving in May 2019.
2. He said his cousin held a rank within the Peshmerga. His cousin also was involved with the Iraqi security agency Asayish and was a PUK supporter . The appellant claimed he acted as a bodyguard for his cousin. The Popular Mobilisation Front, a collection of militias supported by the Iraqi state , were having issues with the locals. He says in April 2019 his cousin learnt that to gain favour they were implicating him in an Isis explosion, suggesting he used his skills as a welder. His cousin advised him to flee.

3. He said that he feared the Popular Mobilisation Front if he were returned. The Refugee Convention was engaged on the basis of imputed political opinions, that is, support for Isis and also because of his Kurdish ethnicity and his religion as a follower of the Sunni branch of Islam .
4. His claim for protection was refused on 27 October 2022. The respondent accepted he is Kurdish, from Iraq and Sunni and had been a Peshmerga. It was not accepted he would be seen as involved with Isis. His claim about his cousin was also rejected .In assessing his credibility section 8 was raised as he had not claimed protection in France. The respondent suggested he could safely relocate to Erbil in the Kurdish region.
5. The appellant claimed he did not have documentation to enable his return. The respondent suggested he had the means to obtain a CSID or obtain a replacement with the help of his family.

The First tier

6. His appeal was heard in person at Manchester on 3 March 2023 before First-tier Tribunal Judge Jepson. He was represented by Ms Patel, as he is now. The respondent did not arranged representation.
7. The judge found that the appellant came from one of the disputed territories and that any perceived link to Isis would place him at risk throughout Iraq. A further risk factor for him was his religion. The judge concluded the real risk for him was a suggestion of imputed Isis links. The judge referred to inconsistencies in the appellant's account and concluded aspects were untrue . The judge did not accept he acted as a bodyguard for his cousin and did not accept the claim he was accused of association with Isis.
8. At paragraph 47 of the determination the judge considers the question of documentation. At paragraph 58 the judge accepted that if this claim were true he would be a significant risk. The judge noted the area the appellant is from has moved to the new INID system and for redocumentation he would have to travel there. The judge said he would be returned to Baghdad as he is not from the IKR and that safe travel from there is impossible without identification. As a Sunni Muslim he could not remain in Baghdad.
9. At paragraph 52 the judge said that the issue surrounding documentation turned upon whether the appellant in fact had his CSID. The judge referred to inconsistencies in his evidence and did not accept he had no contact with his family. The judge also did not accept the appellant's claim that the authorities had taken his documents and concluded that most likely they remained with his family who can send them to him . The judge concluded that he could safely be returned to Iraq and his home area. The judge found that relocation was not necessary given the rejection of much of his claim but remained a feasible option, possibly to Erbil. Consequently, his appeal was dismissed.

The Upper Tribunal

10. Permission to appeal was granted by First-tier Tribunal Judge Monaghan. It was arguable that the judge erred on the documentation issue. Arguably, the judge had failed to consider whether the office in Iraq at which he is registered has

transferred to the new system for INID cards. If it had transferred then he could not obtain documentation by proxy.

11. Permission was also granted on the other grounds argued, namely, the assertion there had been a rejection of the background facts accepted by the respondent, such as his work as a bodyguard for his cousin. Furthermore it was argued that the judge should have specifically put areas of concern to the appellant in the absence of a presenting officer. It was also suggested the judge failed to consider the evidence about whether his documentation had been taken by the PMF in Iraq.
12. There was no rule 24 response. At hearing Ms Patel amplified the grounds advanced. She said the proposed point of return was Baghdad. The appellant had claimed his documentations were taken at home. The judge had rejected this. She referred me to paragraph 46 of the determination whether judge rejected the appellant's claim that he was a bodyguard to his cousin. The respondent had accepted he worked as a Peshmerga. The judge referred to him having an unremarkable position within the Peshmerga and sought to turn this into something more in a bid to remain. Ms Patel pointed out there was no presenting officer at the hearing.
13. She then turned to the question of documentation. She submitted that the appellant would require the new form of documentation. The appellant had been consistent in his account about his documents and the judge had failed to consider this. The appellant's difficulty would be in getting from Baghdad to his home area to obtain the documentation.
14. In response Ms McKenzie submitted it was misleading to refer to the respondent making concessions. I was referred to paragraph 25 and 29 of the refusal decision. At paragraph 25 the respondent acknowledged the appellant had been internally consistent in his accounts that he worked as a Peshmerga and at paragraph 29 accepted he worked as a Peshmerga. However, at paragraph 24 the refusal states he had been internally inconsistent in his account of being a bodyguard. In summary, the respondent had accepted he worked as a Peshmerga but did not make any concession about him being a bodyguard.
15. Ms McKenzie submitted it was misleading to refer to paragraphs 25 to 29 about his work as a Peshmerga and to suggest this links with paragraph 24 and the claim that he was a bodyguard. This in fact was rejected. At hearing First-tier Tribunal Judge Jepson at paragraph 9 of the determination clarified what could be taken as agreed. There was no reference there to any concessions.
16. Ms McKenzie then turned to the second ground for which permission had been sought, namely, the argument the judge did not put matters to the appellant and referred to the Surendran guidelines when there was no presenting officer. One of the guidelines is that on credibility issues the judge should ask the appellant's representative to address this rather than the judge. The guidelines were dated 2000 and there are now other ways a judge can consider the evidence. It is not for the judge to take on the role of an advocate. It was also contradictory to criticise the judge in this way when acknowledging at paragraph 17 of the grounds the judge did ask questions in clarification. Ms Patel had provided no witness statement as to what it was the judge failed to take account of.

17. Moving onto the third ground and documentation, Ms McKenzie submitted that the judge had dealt with this adequately and referred to the transition to the new system of documentation at paragraph 47 to 55 of the determination. She submitted that the judge was entitled to find at paragraph 46 that he continues to have a relationship with his family in Iraq and they could assist him in obtaining necessary documents.
18. Should I find a material error of law Ms McKenzie suggested that the matter be retained in the Upper Tribunal with the findings at paragraphs 51 and 54 being preserved, the latter referring to the judge's finding of ongoing contact with his family. Paragraph 51 dealt with whether ethnic Kurds could be returned to the IKR if they did not originate from there. Ms Patel was of the view that if they were an error of law the matter should be returned to the First-tier Tribunal.

Consideration

19. The first challenge is that the judge went behind accepted facts. In particular, the judge rejected the appellant's claim that he acted as a bodyguard to his cousin. I considered the refusal letter. It accepts a number of important facts. It accepts the appellant is from Iraq and that he is Kurdish and of the Sunni branch of Islam. It accepts that he worked as a Peshmerga. However, it rejected other aspects of the claim. In particular, it rejected his claim that he was a bodyguard. It also rejected his claim that he was suspected of being a collaborator or that he had no contact with his family.
20. I see no merit in the suggestion that the judge went behind any concession about the appellant's claim to have been a bodyguard for his cousin. The respondent clearly had not accepted this. It did accept that high-ranking Peshmerga had bodyguards and accepted the appellant's claim that he was in turn a Peshmerga because he could name the rifle used and the payment rate. The acceptance that he was a Peshmerga is quite different from accepting he was also a bodyguard.
21. The second challenge is that the judge did not put material matters to the appellant. There was no presenting officer in attendance. In such a situation the Surendran guidance is relevant. The guidance was supplemented in MNM -v- SSHD [2000]UKAIT 00005 [2000]INLR 576. The guidance is that where matters of credibility are raised in the refusal the judge should ask the representative for the appellant to address these matters either in examination in chief or in submissions. It is then for the judge to reach a view. It is not desirable for the judge to enter into what is essentially an adversarial system. If there are matters not raised in the refusal which concern the judge fairness normally would require they invite comment. However, the guidelines are not rules of law but are aimed at providing for fairness. Fairness is the test rather than the letter of the guideline.
22. It is submitted that the judge did not seek further clarification about his cousin's rank and his own position within the Peshmerga and the details of the allegations said to be made about him. Having read the decision I do not find it established there was any unfairness. The judge evaluated the evidence and it was a matter for the judge to do this on the claim advanced. Consequently, I find no merit in this challenge.

23. The third challenge is that the judge failed to consider material matters relating to documentation. The judge considered whether the appellant could retrieve his CSID card via his family or travel without one to obtain a new INID in his home registration area. The judge did not accept that the appellant had no contact with his family. The judge had referred to his screening interview.
24. The appellant's representative argues that this was not read back to him and when subsequently it was read back amendments were made. In particular he said that his identity card was confiscated. This was repeated in his witness statement and in his substantive interview.
25. He is from a large family and the judge had referred to the assistance from his paternal uncle and paternal cousin. It was open to the judge to make findings upon his documentation and the likelihood of assistance from his family. The judge acknowledged the subsequent changes made and took these into account at paragraph 16 onwards. I see no material error in relation to how the judge arrived at these findings.
26. A further argument advanced is that he could not obtain the new form of identity card by proxy. I find this aspect is the strongest challenge.
27. The issue of documentation has been a source of difficulty in appeals. Case law has developed to assist. The judge refers to the latest decision, SMO 2, at paragraph 29. The appellant is from the formerly contested area of Diyala. At paragraph 47 the appellant's representative submitted that his area had moved to the new system and submitted that he would have to travel there to be re-documented. She submitted that safe travel to there is impossible without identification.
28. The judge refers to the latest country policy and information on returns, dated July 2022. It takes into account the guidance given in both of the SMO decisions. Reference was made to 2.6.5 of SMO 2 that decision-makers must assess whether a person being returned will possess the necessary documentation or if they can obtain replacement documents in a reasonable timeframe. The burden is upon the claimant. 2.7.5 stated that the new INO cannot be obtained from the United Kingdom but the individual must attend the office at which they are registered to provide their biometrics. At paragraph 50 onwards the judge quotes the types of documentation. Having analysed these, at paragraph 50 the judge identified the issue as being whether the appellant could retrieve his original CSID through his family or travel without one to obtain an INA from his home area. SMO refers to enquiries which could be made by the respondent with the Iraqi authorities to determine whether the CSA office in question is transferred to the new system. I do not see confirmation that the appellant's local office has changed to the new system.
29. At paragraph 52 the judge turned to the question of whether the appellant could access his CSID. In assessing this the judge referred to inconsistencies in his account. The judge concluded by rejecting his claim of a lack of contact with his family or that the authorities had taken his documents. The conclusion was that most likely they were with his family.
30. The judge has grappled with the difficult area of documentation and has taken the view that he can obtain his original documents and with these can be returned. The known information indicates the new type of biometric is being

introduced on a phased basis. Individuals who have alternative documentation can then make their way to their local office and obtain the updated identity. It is my conclusion no material error of law has been demonstrated in how the judge dealt with a question of documentation and return. By way of conclusion therefore I do not find a material error of law demonstrated in the various challenges made. Consequently, the decision of First-tier Tribunal Judge Jepson dismissing the appellant's appeal shall stand.

Decision

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Jepson. Consequently, that decision dismissing the appellant's appeal shall stand.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber