



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/06798/2015

AA/06799/2015

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AA/06802/2015

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 27 June 2016**

**Decision and Reasons Promulgated
On 4 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SB

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(ANONYMITY DIRECTION MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: not represented

For the Respondent: Mr G Harrison Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. The anonymity direction that was previously made shall continue.

2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
3. This is an appeal by the Appellants, a husband and wife and their three children, against the decision of First-tier Tribunal Judge Siddiqi promulgated on 21 August 2015 which dismissed the Appellants appeals against the decision of the Respondent to remove the Appellants from the UK following the decision to refuse the Appellant's claim for asylum and the decision to vary the second, third, fourth and fifth Appellants applications to vary their leave such that there was none remaining.
4. The Appellants were not represented. Accordingly, I explained to them that the hearing was to determine whether the Judge had made an error of law in her decision to refuse their appeals as they suggested in their grounds. I ensured that they had received a copy of and understood the permission granted by Upper Tribunal Judge Plimmer on 30 November 2015 and told them I would take into account the grounds that they had presented in their first application and the renewed grounds together with the skeleton argument that was before the First-tier Tribunal in so far as it was relevant. I indicated to Mr Harrison that I required that he address each of the arguable errors as summarised by Upper Tribunal Judge Plimmer in her grant of permission.

Background

5. The first Appellant is a female citizen of Iraq born on 21 November 1973; the second Appellant is a male citizen of Iraq born on 4 January 1968; the third Appellant is a male citizen of Iraq born on 4 January 2009; the fourth Appellant is a female citizen of Iraq born on 26 August 2005 and the fifth Appellant is a female citizen of Iraq born on 26 August 2005.
6. On 13 January 2014 the Appellants entered the UK: the second Appellant had a Tier 4 visa valid from 13 December 2013 until 8 October 2014 to study for a PhD at Anglia Ruskin University following an English Language course in Manchester at EF International School and his wife and children entered the UK as his dependents. The PhD was due to commence in September 2014 but it transpired that the offer letter provided by the language school was a fake. He

received an offer from Swansea University dated 8 May 2015 to begin a PhD in July 2015.

7. On 6 October 2014 the first Appellant applied for asylum. The basis of the claim was that in September 2014 the Appellant and her husband found out that her brother and uncle had been killed and their niece kidnapped after a phone call from the second Appellants brother. They were told not to return to Iraq because the militia would also target them as they would be perceived to be collaborators with the American forces in Iraq because the first Appellants cousins had worked for the Americans as a translator in 2004 and the second Appellant had on occasions assisted him at the American base. The militias it was claimed could not find the cousins who left Iraq in 2014 so were targeting other family members.
8. On 30 March 2015 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) The Appellants account was not credible because although it was claimed that the second Appellant had assisted the Americans in 2004 he had remained in Iraq for another 10 years and confirmed that no incidents had occurred that suggested the militias had an interest in him even though he held a post in a University that made him easily locatable.
 - (b) The claim was speculative and based on a phone call from the first Appellants brother in law and there was no detail to indicate how and in what circumstances the brother and uncle died.
 - (c) The Appellants were at no greater risk than the general population of Iraq from the militias.
 - (d) Even taken at its highest the first Appellant was a Kurd and the family could relocate to Kurdistan.

The Judge's Decision

9. The Appellant appealed to the First-tier Tribunal and at that time they were legally represented. First-tier Tribunal Judge Siddiqi ("the Judge") dismissed the appeal against the Respondent's decision. The Judge :
 - (a) Found that the issue was one of credibility.

- (b) She accepted that the background material and caselaw suggested that there was a risk on return to collaborators and perceived collaborators.
 - (c) She accepted that the first Appellants cousins worked for the Americans as interpreters in 2004.
 - (d) She found that the suggestion the deaths of the uncle and brother were at the hands of the militia as a result of the cousin's work with the Americans was purely speculative.
 - (e) She found that the email from the Appellants brother did not say who killed the brother and uncle or link their deaths to their work with the Americans. The date of the email was unclear.
 - (f) She did not find it credible that assisting the cousins on 3 occasions 7-8 years ago for a total of 90 minutes would put the second Appellant at risk noting that in the years that followed the Appellants had no problems in Iraq,
 - (g) She noted that the Appellants now claimed that two incidents occurred in 2012 when the second Appellant was nearly run over by a car and when the Second Appellant and his friend were chased by a car on the way to work were threats by the militia but these incidents were not mentioned in the asylum interview nor were any threats issued at the time to link them to militias.
 - (h) She gave reasons why he did not find the documentation produced was unreliable. Reasons were given why she gave no weight to the threatening letter.
 - (i) She found that the timing of the asylum claim undermined the Appellants general credibility in that the second Appellant had apparently had an offer to study for a PhD at University which turned out to be false and rather than returning to Iraq and making a fresh application (because he did not receive a fresh offer until May 2015 from Swansea University) an asylum application had been made.
10. Grounds of appeal were lodged and permission was initially refused but on 30 November 2015 Upper Tribunal Judge Plimmer gave permission to appeal.

11. At the hearing I heard submissions from the Appellants that :

(a) They were content to rely on their grounds and the permission of UTJ Judge Plimmer

(b) The Judge failed to take into account that the family had relocated after the incidents in 2012 and that is why they had no further problems.

12. On behalf of the Respondent Mr Harrison :

(a) Relied on the Rule 24 Response 22 December 2015 which he went through in detail.

The Law

13. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration. In Mibanga v SSHD [2005] EWCA Civ 367 Buxton LJ said this in relation to challenging such findings:

"Where, as in this case, complaint is made of the reasoning of an adjudicator in respect of a question of fact (that is to say credibility), particular care is necessary to ensure that the criticism is as to the fundamental approach of the adjudicator, and does not merely reflect a feeling on the part of the appellate tribunal that it might itself have

taken a different view of the matter from that that appealed to the adjudicator.”

15. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

Finding on Material Error

16. Having heard those submissions, I reached the conclusion that the Tribunal made no material errors of law.

17. I note the suggestion that the Judge may have set an impermissibly high standard of proof in this case but I am satisfied that the Judge that the Judge directed herself appropriately as to the law and the standard of proof in paragraphs 3-8. I can find nothing in her decision to suggest that this was not the standard she applied in her decision.

18. I am satisfied that while the Judge accepted that the first Appellants cousins had worked for the Americans in 2004 there was no basis for concluding that militias had any interest in the Appellant or her family and she gave sound reasons for that conclusion. She took into account even on the Appellants account the involvement of the second Appellant with the cousins work was both extremely limited in duration but took place 7-8 years before the claim with nothing happening to the Appellants since (paragraph 30) It was open to her to find that the Appellants claim that two incidents occurred in 2012 which amounted to attacks on her husband by the militia would have been referred to in the asylum interview had they taken place (paragraph 26) nor was there any indication even taken at its highest that these incidents were linked to militia rather than to simple lawlessness. I also note that the Appellants suggest in their grounds of appeal

and the grant of permission that the Judge failed to take into account that they relocated after these incidents which was why they had no other problems in Iraq: I am satisfied that in fact this assertion is inconsistent with the Appellants claim not to have mentioned these incidents in 2012 in the asylum interview because she did not at that time believe they were caused by the militia.

19. It was suggested in the grounds that the Judge failed to take into account that there was a direct threat made to the Appellants but I am satisfied that the Judge addressed and gave clear reasons in paragraph 33 why she placed little weight on the threatening letter noting that it was not credible that a threat would be addressed to the first Appellant and no other female member of the extended family. The Judge also gave clear reasons for placing little weight on the email from the second Appellants brother in that the date of the email was unclear and while asserting that family members had been killed did not identify their killers or link their deaths to the work they had done with the US Army.
20. It was also open to the Judge to remark on the timing of the claim in that the warning phone call from the second Appellants brother came just when they found out that his offer from Anglia Ruskin was not genuine and the family's leave was due to expire.
21. The Judge also set out in some detail at paragraph 32 those inconsistencies which undermined the Appellants claim that other family members were in hiding: that although they received a threatening letter in January 2014 they did not go into hiding until October 2014.
22. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : *"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*

23. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

24. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

25. The appeal is dismissed.

26. Under Rule 14(1) the Tribunal Procedure (Upper Tribunal) rules 2008 9as amended) the Appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order for anonymity was made in the First-tier and shall continue.

Signed

Date 3.7.2016

Deputy Upper Tribunal Judge Birrell