



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03417/2016

THE IMMIGRATION ACTS

Heard at Field House
On 27th July 2017

Decision & Reasons Promulgated
On 3rd August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

H.A.H.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Adeboya, Solicitor
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

Anonymity

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

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Appellant a citizen of Iraq, born [] 1996 appeals with permission against the decision of a First-tier Tribunal (Judge Devlin) dismissing his appeal against the Respondent's refusal to grant his protection/human rights claim.

Background

2. The Appellant entered the UK illegally on 19th October 2015, having travelled via Turkey, Greece, Germany, Belgium and France. He claimed asylum on 20th October 2015.
3. His claim to asylum amounts to saying the following
 - He is a Sunni Muslim coming from Fallujah in Iraq. He is an Arabic speaker.
 - Neither he nor his family are involved in politics, but the Appellant describes himself as a well-known sportsman (kick boxer).
 - In July 2015 he attempted to enter Kurdistan but was turned away.
 - In August/September 2015 ISIS approached him to join them and fight against the Iraqi Government.
 - He did not refuse ISIS, being afraid, but instead left Fallujah two or three days after the approach and before ISIS returned.
 - His mother and sister went to Baghdad. He followed a couple of days later but claimed he could not enter the city because he is a Sunni from Fallujah. In any event his mother had arranged an air flight to Turkey for him. He boarded the flight to Turkey using his own passport and from there travelled by sea to Greece. Once in Greece he travelled across various EU countries staying with a friend in Germany and travelling across Belgium by train to France. He made no claim to asylum in any of the EU countries.

FtT Hearing/Decision

4. The FtT Judge gave several reasons for disbelieving the Appellant's narrative. In essence the judge found that he could not be satisfied to the lower standard of proof, that any part of the Appellant's account of the events that led to his departure from Iraq were worthy of credence [192]. This led the FtTJ to the conclusion that he could not be satisfied that there would be a risk on return to Iraq. The appeal was therefore dismissed.

5. The grounds seeking permission criticised the judge's approach, saying
- the judge reached findings contrary to the weight of evidence and attached undue weight to peripheral matters.

In substantiating the above generalised claim it was asserted

- the judge misdirected himself when he made an adverse finding that the Appellant has not produced any independent evidence to show he is from Fallujah; and
 - the most serious criticism of the decision stated in essence that the Respondent "did not doubt" that the Appellant is from Fallujah, nor did she make an issue about this in the reasons for refusal letter. Therefore there was not a live issue on this point. The judge of his own accord made it an issue and found against the Appellant. This, it is said, was a material error and one which required that the decision should be set aside. This was especially pertinent in view of the judge's comment at [205], when discussing the question of internal relocation to Baghdad. At [205] the judge had said that if "truly the Appellant is from Fallujah and a Sunni, he will be more likely to be targeted as a suspected insurgent."
6. Permission to appeal was granted by a FtT Judge in the following terms

"Whilst I do not accept that the Respondent formally accepted the Appellant was from Fallujah no issue was raised about this. However, the judge raised this as an issue in his decision at paragraphs 148 to 151 accepting at paragraph 150 that a finding that the Appellant is from Fallujah has important consequences. I am satisfied the Appellant did not have the opportunity to properly answer this issue and that, as a result, there is an arguable error of law in the decision which may well have infected the remainder of it."

Thus the matter comes before me to determine whether the FtT's decision contains such error of law that it must be set aside and remade.

UT Hearing

7. Mr Adeboya appeared for the Appellant. His submissions relied upon the grounds seeking permission, and he followed the lines of those grounds. He emphasised that the judge's material error was his finding that the Appellant is not from Fallujah. This in turn affected a proper assessment of risk on return, more especially to Baghdad. He submitted that the judge had ignored evidence when assessing the Appellant's claim because the judge had wrongly concluded that the only evidence of the Appellant's identity was the word of the appellant himself. The judge seemingly had failed to factor in the "sport's certificate" produced which named him

as coming from “Falooja”. The decision should therefore be set aside for material error and remade.

8. Mr Avery filed a Rule 24 response defending the decision. He pointed out, further, that apart from giving cogent and evidenced reasons as to why he had made his findings of adverse credibility, the judge had gone on in his decision to set out alternative scenarios concerning risk on return. The judge had in essence covered himself by showing that he had looked at all aspects of the appellant’s claim. The judge was entitled to make a finding that the appellant was not from Fallujah because this was a significant aspect of the appeal. Mr Avery pointed to [208], [214] and [218]. The criticisms of the judge amounted to no more than a disagreement with what is a carefully thought out decision. The decision is therefore sustainable and the Appellant’s appeal should be dismissed.

Consideration

9. I begin by considering the FtTJ’s decision. The judge carefully noted the Appellant’s claim and fully set out the oral evidence which the Appellant gave. The judge’s findings and reasons are set out in great detail over several paragraphs, noting point by point the reasons for the Respondent finding the Appellant’s narrative not credible. The judge adopted the same format but it is of note that the judge has not simply accepted the Respondent’s case. On the contrary he gives detailed reasons point by point of why he either agrees or disagrees with the points set out in the Respondent’s assessment. This shows that the judge has approached the evidence with an open mind.
10. From those points the judge made the following findings, all of which in my judgment are properly reasoned ones:
 - The Appellant’s explanation that he had been approached by ISIS with a view to recruitment was not credible. In coming to this decision the judge noted in particular that the Appellant gave inconsistent evidence on when he, his mother and sister left the family home. The judge drew on the background documents concerning ISIS recruitment methods.
 - The Appellant’s account of his cousin being targeted, tortured and killed on account of his Sunni ethnicity by Shia militia was also found to be not credible. The reason for this was that the Appellant failed to mention this important fact at his interview and only brought it up at a later stage. The documentation produced in respect of his cousin’s death was, the judge found, not reliable evidence.
 - So far as establishing his identity is concerned, the judge took into account the Appellant’s narrative that he had used his own passport to exit Iraq but lost it “overboard” on the journey from Turkey to Greece. He had then lost his nationality certificate in Belgium on a train, and his national ID card which he

said was being sent to him by his mother, never arrived. This led the FtTJ to the conclusion that the Appellant was being untruthful about his identity. The judge acknowledged the documentation which was produced, which included photographs and sports certificates one of which contained the word “Falooja” but found they did not outweigh the lack of credibility shown in the Appellant’s narrative of losing or being unable to access his official identity documents.

11. The judge was very careful to set out his reasons for the findings made above and there was much evidence to support those findings. In drawing this evidence together the judge said at [174] it follows that the “only evidence that the Appellant is a Sunni Muslim from Fallujah, is the evidence of the Appellant himself.”
12. The judge then directed himself at paragraphs [175] to [188] as to why the Appellant’s account of being a famous sportsman was not credible and further undermined the Appellant’s claim.
13. Drawing all these points together, the judge made a finding that he could not be satisfied that the Appellant is a Sunni Muslim from Fallujah. I find that there is nothing to show that this was an improper finding against the weight of evidence.
14. Mr. Adeboya in his submissions made much of saying that the Respondent “did not doubt that the appellant is from Fallujah.” I gave him the opportunity to point out where in the RFRL this was said. So far as I can see the Respondent merely accepted that the appellant is from Iraq but made no express finding as to any specific area or city. The criticism levelled at the judge is that he misdirected himself when he made his adverse finding as to where the Appellant came from. I do not agree. I find that the judge has made well-founded adverse findings regarding the Appellant’s credibility and, in this context, was quite entitled to consider this aspect of the claim and then draw such a conclusion.
15. The judge then properly directed himself that he had to turn his mind as to whether there is risk on return to this Appellant. He took into account the CG cases of AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) and BA (Returns to Baghdad Iraq CG) [2017] UKUT 18 (IAC) and then at [195] he further directed himself that he should do so on an alternative basis that the Appellant is a Sunni Muslim from Fallujah “lest he is wrong in his original assessment.”
16. I accept that it is hard to see why the judge took the approach he did by setting out alternative scenarios after he had made clear findings that the Appellant’s account was not credible. On a full reading of the decision, it appears to amount to an anxiety on the part of the judge to show that he had considered all aspects of the claim by giving the matter the “most anxious scrutiny” and after evaluating the evidence as a whole. This is not something to be held against the judge nor does it detract from the decision as a whole.
17. For the foregoing reasons therefore I find that the decision of the FtT contains no material error of law requiring it to be set aside and remade.

Decision

18. The decision of the FtT stands. This appeal is dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

C E Roberts

Date

02 August 2017

Deputy Upper Tribunal Judge Roberts