



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00437/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 26 June 2018

Decision & Reasons Promulgated
On 19 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR S M R

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representation
For the Respondent: Ms Aboni, Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq, born on 1.1.93. He arrived in the United Kingdom and claimed asylum on 14 July 2016. The basis of his claim is that he lived in Rania Sulaymania in the Kurdish region of Iraq and worked as an undercover police officer specializing in investigating government corruption. His application was refused in a decision dated 18 December 2016 and he appealed against that decision.

2. His appeal came before First tier Tribunal Judge Thorne for hearing on 20 June 2017, when the Appellant was also unrepresented. In a decision and reasons promulgated on 17 July 2017 he dismissed the appeal.

3. The Appellant appealed out of time to the Upper Tribunal on the basis that he had not received the decision from the First tier Tribunal refusing permission to appeal as Serco had moved him to new accommodation and had notified the Home Office but not the Tribunal. The grounds in support of the application essentially challenged the Judge's credibility findings as to the Appellant's work as an asayish.

4. In a decision extending time so as to admit the application out of time and granting permission to appeal, Upper Tribunal Judge Plimmer held that it was arguable that the adverse credibility findings are based almost entirely upon a view that the claim is inherently implausible without considering any other credibility indicators, and that this is in the context of a protection claim wherein the lower standard of proof applies constitutes an arguable error of law.

Hearing

5. At the hearing before me, I informed the Appellant that he could obtain legal representation but he said he had approached solicitors and they said there was not enough time before the hearing as he had only received the hearing notice on 29 May 2018. He said that he wanted to apply for an adjournment of the hearing. Ms Oboni opposed the adjournment request on the basis that the Appellant had failed to give any credible explanation as to why his previous solicitors withdrew from representation and although he may only have received the hearing notice recently, permission was granted by Upper Tribunal Judge Plimmer in January 2018 and the Appellant would have been in a position to seek legal representation at that stage. The Appellant then responded, providing details of the efforts he had made to obtain legal representation and his inability to pay for a private solicitor. I refused the adjournment on the basis that the Appellant may again be unable to access legal representation in time and I could hear from him myself and take into account the grounds of appeal and it was thus not in accordance with the overriding objective for the appeal to be adjourned. I put his case back in the list and asked the Court interpreter to read back in Sorani the decision and grounds of appeal, in respect of which the Appellant had been assisted by a man known as Ali.

6. When the hearing resumed, the Appellant stated that, through the Sorani interpreter, that regarding the refusal letter and points made by the Judge he did not have the chance to reply. He stated that, in respect of the United States State Department report regarding Iraq and asaysh that they are completely unaware of the powerful individual men in our country and that although intelligence security are powerful, there are also individuals who are more powerful than intelligence security and it is very usual and clear that this person had other men working for them and it is not hard to find out who made the report against them. In respect of the inability to provide

protection for him, the Appellant submitted that in his country it is completely different from here and he was just a simple guy with no-one behind him to protect him. He said that he was utilized by the intelligence organization and the two officials he reported were more powerful than him and had people behind him and that this was a dilemma for the intelligence agency and in this situation they decided to support these two officials not him. He said that the two officials are powerful individuals with power and money and to redeem their honour that they are good men because their reputations had been tarnished, they needed to show all other people around them they decided to take revenge on him to prove their innocence and this is why the security agency did not support him.

7. The Appellant stated that it was so clear that he did not know why the Judge is not mentioning what is going on in Iraq and that people are being killed eg journalists because they reported on corruption and no-one was there to support them. He said that he was told to guard information about these officials – he does not now why- but no-one supported him. He denied that he said his boss ordered him to gather information about them and completely rejected the point made by the Judge at [49]. He said that he did not know how they found out.

8. Ms Oboni sought to rely on a rule 24 response (which was not on file) dated 22 February 2018, which provides that the judge gave cogent explanations for making adverse credibility findings and it is inconceivable that the judge could have reached a different conclusion based upon the findings which he was entitled to make and it was open to him to reject the appellant's account as he did. She submitted that the grounds of appeal simply express disagreement with the judge's findings and offer explanation of points addressed at the hearing. Ms Oboni further submitted that the Judge directed himself appropriately and made findings open to him on the basis of the evidence and the background evidence and gave adequate reasons for finding the Appellant's case was not credible and for doubting the documents the Appellant sought to rely on. She submitted that there was no material error in his decision, which should stand.

10. Before giving the Appellant the opportunity to reply, I summarized the contents of the rule 24 response which were explained to him through the interpreter. The Appellant stated that he still believed that the Judge had not considered his case in full detail and just decided what he believed and did not believe what he was saying. He stated that logically there is an error of law because the Judge overlooked his case and decided what is in his mind and he did not have a representative at that time. Maybe he would have changed his mind if he had one. The Appellant stated that he thought there are lots of errors and the Judge decided quickly without considering the whole situation and he completely disagreed with his decision.

11. I reserved my decision and informed the parties that it would be given in writing.

Findings

12. I have concluded that the First tier Tribunal Judge's decision and reasons contains errors of law, which renders it unsafe and unsustainable.

13. At [48] of his decision and reasons the Judge accepted that the Appellant is an Iraqi Kurd who lived in the KRG and that he used to work for the police (asayish) from 2010. He made this finding in light of documents in the form of an identity card and photos of him in military style uniform, but he did not accept that the Appellant worked as an intelligence officer and that his investigations resulted in him being at risk of persecution now.

14. I find that the Judge erred in so finding for the following reasons:

14.1. his finding at [49] as to how the two men found out about the investigation was not credible as the informant would risk his own position and at [51] that it was not credible that the two men would have had access to information within asayish about the Appellant's operations and background and so would have checked he would not have been on duty and at home when they sent men to raid the house are speculative and lack any proper evidential basis.

14.2. the Judge sought at [49] and [50] to rely on the United States State Department report 2016 in support of his finding that the Appellant's superiors would use their power to provide the Appellant with a sufficiency of protection but in so doing he failed to give proper consideration to the fact that the report provides that there is corruption within the KRG, finding rather that the government is making strenuous efforts to crack down on such behaviour, which may be true but simply confirms that corruption remains a major problem.

14.3. the Appellant produced photographs of one of the intelligence reports he was compiling about the two men and of a letter supposedly from SQM informing the two men that it was the Appellant who was responsible for reporting their corruption which led to their arrests. The Judge at [52] and [53] rejected this evidence on the basis of the Tanveer Ahmed [2002] UKIAT 00439 principle on the basis that it was "simply not credible" that such sensitive documents would have been left at home/ in an office. I find that the Judge erred in failing to consider this evidence in the round along with the evidence of the Appellant's identity and failed to give proper and adequate reasons for rejecting the potentially corroborative effect of this evidence simply on the basis of inherent incredibility.

15. The Appellant's evidence was that he left Iraq without his passport, however, there was no consideration of his ability to return undocumented,

based on the decision in AA CG [2015] UKUT 544 (IAC). However, this issue will also need to be considered in light of the more recent country guidance decision in AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 00212 (IAC) which held that there are currently no international flights to the IKR and all returns from the United Kingdom are to Baghdad.

Decision

16. I find material errors of law in the decision of First tier Tribunal Thorne. I set that decision aside and remit the appeal for a hearing *de novo* before the First tier Tribunal. If the Appellant wishes to be legally represented at that hearing then he should instruct a solicitor on receipt of this decision.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

17 July 2018