



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12096/2016

THE IMMIGRATION ACTS

Heard at Glasgow
On 16 August 2018

Decision & Reasons Promulgated
On 24 August 2018

Before

Mr C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN

Between

KIRWAN JIHAN SHAWKAT

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr S Martin, of Jain, Neil & Ruddy, Solicitors
For the respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Kurdish citizen of Iraq, born on 25 September 1968 in Baghdad. He came to the UK with his two daughters and his wife in 2009. He and his daughters were dependants on his wife's student visa. The family visited Baghdad in 2010 and in 2012. The appellant's wife (who is Arab) returned to Iraq on 30 October 2014. Her visa expired on 15 November 2014.
2. On 6 August 2014 the appellant sought asylum, claiming that as a Sunni Kurd he was at risk from Shia militias and from Islamic state. The respondent refused that claim by letter dated 13 November 2014.
3. In a decision promulgated on 22 January 2015, FtT Judge Watters found that there was no general risk to Sunni Kurds in Baghdad, and dismissed the appeal in respect also of article 8 of the ECHR and the best interests of the children.

4. The appellant exhausted his appeal rights on 21 May 2015. He made further submissions on 20 September 2016, which the respondent refused for reasons given in her letter dated 28 September 2016, in summary as follows: the FtT had found his fears to be exaggerated [30]; no past persecution, or risk on account of religion, ethnicity or profession (dentistry) [31, 32]; the appellant said that the authorities suspected him to be a terrorist, but he had no problems on visits in 2010 or 2012; return to Baghdad was not sufficient in terms of country guidance to present a general risk [41 - 55]; and it was reasonable to expect the appellant and the children, taking account of their best interests, to carry on family life with the wife and mother of the family in Baghdad [62, 65, 66, 84, 99 - 107, 114].
5. The appellant appealed again to the FtT, stating his protection and article 8 claims in grounds of 29 pages.
6. FtT Judge David C Clapham SSC heard the appellant's appeal on 11 August 2017 and dismissed it by a decision promulgated on 3 October 2017.
7. The decision records at paragraph 45 that the evidence had been heard, representatives were "allowed time for written submissions".
8. On 8 January 2018 UT Judge Plimmer granted permission to appeal to the UT, for these reasons:

... it is arguable that the decision fails to explain why the parties were required to make a written submissions and not oral submissions, and more importantly arguably fails to engage with the appellants' detailed written submissions running to 17 pages.
9. We ascertained that the respondent's submissions dated 22 August 2017 were received by the FtT on 24 August, and were copied at the same time to the appellant's representatives; and that the appellant's submissions dated 1 September 2017 were received by the FtT that day.
10. Mr Martin acknowledged that the FtT was entitled to regulate its procedure, which might include an order for written submissions, and that the timescale laid down had been fair. The substantial point was whether the submissions were considered. He observed that the respondent's submissions are mentioned three times, at paragraphs 46, 47, and 48, and upheld at each point, but there is no reference at all to the appellant's submissions. An unsuccessful party is entitled to know why arguments have been rejected.
11. The submissions for the appellant ran to 17 pages. They might have been more focused. Reference would have been facilitated by numbering the paragraphs, breaking up the lengthier ones, and eliminating unnecessary recitals of general and uncontentious matters. Most of what they contain was otherwise before the judge - in the respondent's decision, the grounds of appeal to the FtT, and the narration of the evidence. However, we saw a few points which the judge might have been expected to mention but which are not to be found in the decision. These are dealt with below in its remaking.

12. We indicated that the decision of the FtT fell to be set aside, because it erred on a point of law, by leaving the unsuccessful party in doubt whether all material submissions on his behalf had been considered.
13. The decision of Judge Watters is a starting point. Although the appellant was thought to have exaggerated his fears, the decision turned not on credibility, but on whether the fears expressed were objectively well founded. The further decision of the case does not turn on the credibility of what was said by the appellant and his daughters in the FtT, but on whether anything in the evidence realistically, in terms of country guidance, discloses a need for protection. There was no reason for us, or for another judge, to hear the oral evidence over again.
14. The appellant had not sought in terms of rule 15 (2A) of the TP (UP) Rules 2008 and of the UT's directions, issued with the grant of permission, for the UT to permit any new or further evidence to be admitted. The presumption applied in terms of paragraph 4 of those directions that the UT would proceed to remake the decision on the evidence before the FtT and the parties' arguments. We therefore base our further decision on what the FtT said up to paragraph 45, taking account of the written submissions by Mr Martin, as supplemented at the hearing before us.
15. The appellant summarises his claim at page 2 of his submissions as being based on "real risk of persecution ... owing to (i) his Sunni religion, (ii) his Kurdish ethnicity and (iii) membership of a particular social group ... as a highly educated individual and qualified dentist" (our numbering); and secondly on his and his daughters' "established private and family lives", either in or out of the immigration rules. The submissions go on to cite country guidance and to found repeatedly upon the foregoing factors and on (iv) the extended period the appellant has spent in the UK. They also emphasise that absence of past persecution does not mean there is no prospective risk.
16. All of factors (i) - (iv) may contribute to risk in Baghdad (which is around 80% Shia and 20% Sunni); but it is sufficient to say that the submission does not show that the guidance shows entitlement to protection simply on those factors, even in combination. The appellant has to show risk on the facts of his own case.
17. Additionally, the appellant relies on information derived from his wife since her return to Baghdad. We identify these matters in the submissions (continuing with our numbering): (v) surveillance cameras set up and directed at the family home "to intimidate his wife" (page 4); (vi) vials of medication, a dead mouse and a jacket covered with blood thrown into the garden (also at page 4); and (vii) advice from the appellant's wife that he would be considered a terrorist due to his absence from the country "unless he could produce evidence of qualifications obtained while he had been a student in the UK for 8 years" (page 5).
18. The evidence of the appellant's wife was conveyed by hearsay through the appellant and the children, by brief emails and photographs, and not in a statement. There is no reason why a statement has not been supplied, even up to this late stage. That tends to lessen the weight which might be given to those allegations; but in any

event, we find nothing in factors (v), (vi) or (vii) of such strength as to show that the appellant needs international protection.

19. The appellants' wife interprets cameras set up nearby not as protection of the security of her neighbours but as surveillance of her home. There is no evidence to justify the distinction. We have no doubt that the use of security cameras is common in Baghdad. Even if she finds them intimidatory, the setting up of cameras by neighbours does not show the appellant's wife, or the appellant, to be at risk of persecution from the authorities, militias, or anyone else.
20. The finding of the items in the garden of the house is not shown to be any more than another unpleasant feature of life in Baghdad.
21. The one matter which might have led the case to take another turn is if the appellant might credibly have been noted down by the authorities as a terrorist suspect.
22. Are the Iraqi authorities likely to conceive, rationally or otherwise, that potential terrorists are identifiable by whether they studied while abroad? Even if they do so conceive, they would hardly be likely to tip the appellant off through his wife, or to advise her that he could eliminate their suspicion by producing evidence that he had studied in the UK. She was in the UK at the very considerable expense of the Iraqi government, which was advanced as part of the reason for her election to return. It would not be a surprise to them that while she was here as a student, her husband and children were with her; nor that many Iraqi nationals seek to establish themselves in other countries, without any motivation as terrorists. The appellant gave a very vague account of whether he studied and gained qualifications while in the UK, which Mr Martin was unable to clarify for us in course of his submissions, but as we understood it he claimed to have gained an accountancy qualification (ACCA, at some level) and then to have studied at home with a view to qualifying in the UK as a dentist. In the unlikely event that he might be asked to prove his studies, that should be straightforward. His ACCA studies might not cover his full period in the UK, but there is nothing in the evidence to suggest that he would not be able to give a sensible account of himself.
23. We find that the evidence fails to establish a risk, even to the lower standard, that the authorities might consider the appellant to be a potential terrorist.
24. We conclude, taking account of all factors relied upon, which we have identified as (i) - (vii), that the fears expressed by the appellant are exaggerated, not justified objectively, or on application of country guidance. On the evidence in his own case, he has not established a real risk.
25. Although we remake the decision in its entirety, the article 8 case was not affected by the FtT's error of law, as nothing was overlooked, and that part of the case was weak.
26. The older child, we note, is now over 18. The younger is aged 16. They are both doing well in the UK, but they would be living in Iraq with both parents, not just with one. They can be expected to thrive at least as well as any other child or young

adult in Iraq, having the care of parents who are both highly educated and employable.

27. We remake the decision thus: the appellant's appeal, as brought to the FtT, is dismissed on all grounds.
28. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

17 August 2018
Upper Tribunal Judge Macleman