Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13534/2017

THE IMMIGRATION ACTS

Heard Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 20 September 2018	**On 28 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

M Y
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr McGarvey, McGarvey Immigration and Asylum Practitioners
For the Respondent: Mr Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq. The Respondent refused his application for asylum and humanitarian protection in a decision letter dated 1 December 2017. The Respondent also decided that he failed to meet the requirements of the Immigration Rules for leave to remain on the basis of his family life or private life in the United Kingdom.

2. The Appellant appealed the Respondent's decision and his appeal came before First-tier Tribunal Judge C J Woolley, who in a Decision and Reasons promulgated on 26 April 2018 dismissed his appeal on all grounds.

3. The Appellant sought permission to appeal against the decision of Judge Woolley and permission was granted by First-tier Tribunal Judge SPJ Buchanan who concluded that it was arguable that the Judge misapprehended the fact that the Appellant was taken to task about a comment that he had made on more than one occasion; the conclusions of the expert were not adequately taken into account and it was arguable that the Judge failed to take account of the fact that a list published on Facebook naming the Appellant was incorporated within an entry which was critical of the government.

The Grounds

4. The grounds allege that the First-tier Tribunal failed adequately to consider expert evidence. The Appellant relied on the expert report of Professor Joffe who concluded that the Appellant was likely to be seen as a potential security threat inside Iraq. It is submitted that the First-tier Tribunal made a mistake of fact in relation to the number of times that the Appellant was taken to task by a senior official in relation to a comment that he had made at a meeting. It is also asserted that the First-tier Tribunal failed to take adequate account of the expert's report in relation to the Appellant's claim that he would be at risk due to being a Facebook friend with an individual who was a known dissident supportive of Israel (Ground 1).

5. It is asserted that the First-tier Tribunal gave inadequate reasons for concluding that the Appellant would not be at risk when a website in the public domain showed that he had claimed asylum. It is further submitted that the Judge misapprehended the risk to the Appellant on the basis of his accepted conduct at a meeting with a high-ranking official in the light of the political situation in Iraq and the nature of the regime there. It is also submitted that the Judge gave insufficient reasons for his belief that the Appellant would not face persecutory treatment on return (Ground 2).

6. It is further submitted that the Judge failed to consider relevant case law (**BA (Returns to Baghdad) Iraq CG [**2017] UKUT 00018. It is submitted that the Judge failed to take account of the cumulative effect of the Appellant's individual characteristics on return to Baghdad.

The Hearing

7. The appeal therefore came before the Upper Tribunal in order to determine whether there was an error of law in the decision of Judge Woolley and if so whether to set that decision aside.

8. I heard submissions from both representatives. Mr McGarvey amplified on the grounds seeking permission to appeal. He submitted that the Judge accepted that Professor Joffe was an expert. Professor Joffe had stated that

the Appellant had made a cardinal mistake in referring to a movement in Iraq in derogatory terms in the presence of a high-ranking official. The Judge had said at paragraph 39 that the Appellant had been outspoken but had not described being taken to task for using the wrong terminology at another meeting. However, this was not correct as there had been two occasions. At paragraph 111 of his report Professor Joffe said he was likely to be in danger of arrest and faced the danger of severe ill-treatment. The Judge's finding that being a Facebook friend would not cause him trouble did not sufficiently take account of expert evidence.

9. The second Ground related to the documents which were published on a website and Ground 3 related to the individual characteristics described at paragraph 20 of the Grounds.

10. Mr Howells said that although there was no Rule 24 response the Respondent resisted the appeal. The First-tier Tribunal wrote a long, detailed and comprehensive determination in which he properly addressed himself on the evidence before him and reached findings that were open to him. A major part of the evidence was the expert's report and the First-tier Tribunal dealt with that report at length at paragraphs 44 to 49 with his conclusion that he accepted much of what the expert said but that he did not find that he provided grounds for believing that he would be at risk. The Judge addressed all of the issues.

11. The contention in the grounds was that the Judge erred in paragraph 39 but when one looked at paragraph 40 there was no error let alone a material error. Paragraph 40 dealt with the meeting. The Judge noted that the Appellant was allowed to carry on working. The key point was whilst the Appellant may have been censured there were no immediate steps to suspend him. The Judge stated that he did not accept that being friends with someone on Facebook was enough to show that he would be at risk. It was open to the Judge to depart from Dr Joffe's comments provided that he gave adequate reasons and the Respondent submitted that he did.

12. Ground 2 related to the Facebook page and the list. The Judge dealt with this at paragraph 33 and what he found was the list was a neutral document in that it did not indicate that the Appellant was of adverse interest. The website was non-official and did not represent the views of the authorities who were the claimed persecutors. There was no error of law in the way the Judge approached that piece of evidence. At paragraph 48 the Judge was entitled to say that the Appellant could not be regarded as a defector so much as an absconder. The list on which reliance was placed suggested that he was regarded as an absconder rather than a defector.

13. In relation to Ground 3 it was clear from paragraph 51 that the Judge was aware of the authority of **BA** and at paragraph 54 he assessed the Appellant's characteristics. He dealt in detail with the claimed

characteristics at paragraph 54 and he was fully compliant with (vi) of **BA** which referred to an assessment on a cumulative basis.

14. Mr McGarvey replied that in paragraphs 39 and 40 it was clear that the Judge was referring to the same event as far as the PMU militia was concerned. It was clear that the expert considered that being a Facebook friend would put him in danger and the Judge did not give sufficient reason for holding his opinion rather than accepting the expert's. The Facebook document was not neutral because of the context in which it had been published. The Appellant was an absconder but also a defector and having worked for the Iraqi government he was at risk on return. Not all the characteristics had been assessed.

Discussion

15. I have firstly considered whether the First-tier Tribunal made a mistake of fact at paragraphs 39 and 40 of the decision. It is the Appellant's case that he made a remark for which he was censured by a high-ranking official in February 2017 and then he was interviewed by the same official in March 2017. In the Appellant's witness statement dated April 2018 in the Respondent's bundle he sets out the details of each incident in considerable detail. It is the Appellant's account, at paragraph 70, that he was challenged in his use of terminology by the official in February but was able to return to work as normal until March 2014 when he was interviewed by the same official in relation to his use of terminology. At that interview he was challenged about his use of terminology and when he used the word again was challenged for doing it a second time (paragraphs 92 to 96).

16. The Judge did not find the Appellant's factual account to lack credibility. At paragraph 39 the Judge finds in respect of the terminology used by the Appellant:

> "While he may have been outspoken at this meeting he has not described any other occasion when he may have used the wrong terminology or been taken to task because of it".

17. At paragraph 40 the Judge then considered the interview in March 2017. It is clear from this paragraph that the Judge was fully aware that the Appellant was questioned in relation to his use of terminology at this meeting. He describes the content of the interview as recounted by the Appellant in his witness statement and concludes:

> "While he may have been censured by the (*alleged persecutor*) for this remark, it is significant that the (*alleged persecutor*) took no immediate steps to suspend him as he could have done."

18. I do not consider that there can be any doubt when the two paragraphs are read together that the Judge fully apprehended the Appellant's account in relation to the number of occasions and manner in which he was challenged in relation to the remarks. It is clear that he appreciated that the Appellant made a remark at a meeting and was subsequently interviewed in relation to it.

19. Ground 1 also asserts that the Judge failed to adequately consider the expert's evidence in relation to two aspects of the Appellant's account, firstly his use of terminology and secondly the risk arising out his Facebook friendship with a supporter of Israel.

20. In relation to the use of terminology, Professor Joffe refers to the Appellant's 'cardinal mistake' in this regard at paragraph 16. At this point in the report he does not give an opinion or conclusion as to risk. However, at paragraph 111 (ii) he states that assuming the use of this terminology led to the events he described, he would be in grave danger on those grounds alone.

21. Judge Woolley found that the Appellant's account that the use of terminology had led to his re-assignment in circumstances where he would be exposed to a risk of serious harm was speculation on the part of the Appellant. He gives a number of reasons for this which are based on the evidence and open to him on the facts of the case (paragraph 41 to 42). Professor Joffe did not comment in his report on the plausibility of the terminology used by the Appellant leading to the consequences described by the Appellant and it was therefore open to the Judge to come to the conclusions that he did.

22. Paragraph 11 of Ground 1 and Ground 2 deal with the Judge's findings in relation to the Appellant's claim that he would be at risk due to a Facebook friendship. Ground 1 asserts that in concluding the Appellant would not be at risk, the Judge did not take adequate account of the expert report and Ground 2 that the Judge misapprehends the fact that the website rather than the list shows that the people on the list have claimed asylum.

23. The Judge considers the Appellant's association with the Facebook friend and records that he is a well-known Iraqi dissident. He concludes at paragraph 38 that if this relationship had been of concern he would have been questioned about this in interview. The Judge concludes that he does not accept that the mere fact of being a Facebook friend would cause the Appellant any trouble. He states:

> "I have read the expert report of Dr Joffe who comments that there are very acute anti-Israeli sentiments that permeate the Islamic world. Whilst this may be so I find that it has not been shown that the Appellant himself can be regarded as being sympathetic to a reconciliation with Israel merely because he had been added as a friend on Facebook by someone he had never met or spoken to".

24. After coming to this conclusion, the Judge further addresses Dr Joffe's report at paragraph 46 and states:

> "I have already found above that the mere fact that (Mr ….) was a Facebook friend of the Appellant would not mean that he would be regarded as pro-Israeli. I do not therefore accept the conclusions

reached by the expert at para 21 that the Appellant would be at risk thereby"

25. Professor Joffe's conclusion in relation to the Facebook friendship are at paragraphs 19 to 21 and 111 (i) of the report:

> "19. For reasons that are not clear to me, however, she (*the Secretary of State*) does not accept that (*the Appellant's*) casual contact with (*the Facebook friend*) would endanger him. Such a conclusion completely ignores the very acute anti-Israeli sentiments that permeate large parts of the Islamic world, particularly those states and populations under Iranian influence, as is the case with Iraq today.
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> 20. The Secretary of State then points out that, in reference to the report that mentioned his linkage to (*Facebook friend*), (*the Appellant*) at various times refers to it as an 'official' document and then as an 'unofficial' document. She considers this to be evidence of internal inconsistency in his statements and, therefore, grounds upon which to reject his claim. Since (the Appellant) has agreed that he is unable to produce the actual document and has had to rely on reports of it made to him, such inconsistencies should only be considered to be minor and can hardly qualify as adequate grounds to reject the essential tenor of his claim.
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> 21. She also denies that the evidence he has submitted of his adoption as a 'friend' is more than speculative and that this, in turn, provides grounds for rejection of his claim. This seems to me to ignore the basic issue which is that anybody who is seen to be sympathetic towards reconciliation with Israel yet who occupies an official position within a government for whom rejection of normal relations with Israel is a formal aspect of its policies is highly likely to attract official opprobrium."

26. Further, at paragraph 111 (i) he states that:

> "(*The Facebook friend's*) involvement with Israel will also reflect very badly on (*the Appellant*) and, since the Iraqi authorities – and their backers in Iran – consider Israel to be an active threat to their own security, (*the Appellant*) is very likely to be seen as a potential security threat inside Iraq. He would, therefore, be in considerable danger of arrest. Since the human rights situation in Iraq is poor, he would therefore face the danger of severe ill-treatment, ..."

27. The expert gives clear and cogent reasons why the Appellant would be at risk in the context of his personal history and employment. I find that the reasoning of the Judge in paragraph 38 does not adequately engage with the basis of Dr Joffe's conclusions or give adequate reasons for rejecting them given the contextual basis of the conclusion in the report. I conclude that this is a material error of law such that the conclusions as to risk cannot stand.

28. The grounds also assert that the Judge misapprehended the fact that the list of names given on a website was not neutral because the webpage itself stated that the list contained individuals who had claimed asylum in other countries. The translation of the webpage is at page 49 and states that there is an attached list of individuals who have claimed asylum.

However no list is actually included in the translation which states 'List of names of ( ) as in the other translations.' Whilst the Appellant's name is in another translation, the other translation at page 45 is of an official document.

29. It is clear from paragraph 43 of the First-tier Tribunal's decision that the Judge was fully aware that the webpage at page 48 criticized the Minister of Foreign affairs but found that the list which contained the Appellant's name was a neutral document because it was simply an official list which might be expected when tracing missing personnel. That finding accorded with the evidence and there was no error in the finding that given the list was an official document it would not put the Appellant at risk, notwithstanding its inclusion on the webpage.

30. However, due to the error identified at paragraph 27 the decision cannot stand. In view of the fact finding required and in accordance with part 7.2 of the Practice Statement I remit this matter for a *de novo* hearing before a Judge other than Judge CJ Woolley.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and I set it aside.

I remit this matter for a *de novo* hearing before the First-tier Tribunal.

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 Date 15 October 2018

Deputy Upper Tribunal Judge L J Murray