



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03565/2018

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On January 7, 2019**

**Decision & Reasons
Promulgated
On January 30, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR D J M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Azmi, Counsel instructed by Braitch R B Solicitors

For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is an Iraqi national and he clandestinely entered the United Kingdom on January 19, 2016 and claimed asylum the following day. The respondent rejected his application on February 26, 2018 and the appellant lodged grounds of appeal on March 14, 2018 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.

2. His appeal came before Judge of the First-tier Tribunal Thomas on April 17, 2018 and in a decision promulgated on May 24, 2018 the Judge dismissed the appellant's appeal on all grounds.
3. Permission to appeal was initially sought on May 29, 2018 by the appellant but this was refused by Designated Judge of the First-tier Tribunal Shaerf on June 18, 2018. Permission to appeal was renewed to the Upper Tribunal on June 29, 2018 and Upper Tribunal Judge Chalkley granted permission to appeal on September 21, 2018 finding it arguable the First-tier Judge may have erred in his assessment of the evidence and that all grounds were arguable.
4. The respondent filed a Rule 24 response on November 7, 2018 and submitted that any error in the arrest warrant was not material because the First-tier Tribunal had clearly found that any prosecution for absconding would not lead to ill-treatment and the fact that the appellant's alleged colleagues had been granted asylum by other European countries attracted limited weight as no details of those claims had been placed before the Judge.
5. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure of publication of specified documents or information relating to the proceedings or any other matter likely to lead members of the public to identify any person who the Upper Tribunal considers should not be identified. The effect of such an anonymity order may therefore be to prohibit anyone not merely the parties in the case from disclosing relevant information. Breach of the order may be punishable and a contempt of court.

SUBMISSIONS

6. Mr Azmi invited the Tribunal to find there had been an error in law. The Tribunal had accepted the appellant had a subjective fear, but the Tribunal did not accept the authorities would be unwilling to protect him. This finding failed to consider the fact that the appellant did have a genuine fear of persecution as there was evidence that he had previously suffered threats and two colleagues had been granted protection in other European countries and more weight should have been given to these issues.
7. Finally, Mr Azmi argued the Judge's approach to the arrest warrant was flawed because there was objective evidence, at pages 110 to 113 of the bundle, which demonstrated that the authorities did carry out human rights abuses on people in detention and as there was an arrest warrant out for this appellant for absconding he too would face a similar risk.
8. Mrs Aboni relied on the Rule 14 response dated November 7, 2018 and submitted that the findings made by the Judge were open to him. Dealing with the individual grounds she submitted that the Judge was fully aware of the appellant's previous problems and noted that the authorities had offered to look into those issues and complaints. The fact nothing came of

those threats does not mean there was no State protection available. Secondly, with regard to his colleagues having been granted asylum by other European countries she submitted that there was insufficient evidence why they had been granted status. Merely providing copies of documents with their names did not explain why they have been given those documents. Finally, there was no evidence that the appellant would be ill-treated even if he was arrested for absconding.

FINDINGS

9. This is an appeal brought by the appellant against the decision by the Judge to refuse the protection claim and the claim under Article 3 ECHR.
10. The Judge when considering this appeal set out in some detail the appellant's case and then went on to summarise the respondent's case and in particular the case in respect of the protection/Article 3/Article 15(c) case.
11. The Judge noted that the respondent accepted that the appellant had worked for the Kurdistan Regional Security in the government service known as Asaish Security in Sulaymaniyah. The Judge considered the documents that had been adduced and accepted that he was so employed. The appellant's fear was from persons connected to ISIL and other persons who threatened him if he did not cease his employment. Evidence produced of complaints being made to the police station and arrest warrants have been issued by the Supreme Court in October 2015 were adduced in the appellant's bundle. The Judge accepted this side of the appellant's case. The Judge also noted that the appellant did flee Iraq, taking his family to Turkey where they claimed asylum but after his wife suffered a heart condition the appellant returned to Iraq and having returned to Iraq the appellant claimed he continued to experience similar threats.
12. The first ground of appeal centred around that that the Judge failed to consider the future risk to the appellant. The Judge clearly recognised that the appellant had suffered problems but such threats whether verbal or in writing and concluded that there was State protection available as he had reported matters to the authorities. I am satisfied that the findings contained in paragraph 24 of the decision address the first ground of appeal and there is no error of law on this issue.
13. The appellant identified that colleagues had been granted refugee status in Italy and Germany and contained within his bundle were documents relating to these two people. Absent from the bundle was any information as to why they had been granted refugee status. Each case must be considered on its merits and it may well be that their cases were more serious than the appellant's or alternatively the State did not provide protection to them or investigate their claims. There was no information provided about those claims and the Judge was entitled to make the findings he did and I am satisfied there is no error on this issue.

