



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

Appeal Number: PA/05721/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 22 November 2019**

**Decision & Reasons Promulgated
On 27 November 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

KH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Madanhi, solicitor, CB Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Bunting, promulgated on 12 August 2019. Permission to appeal was granted by Upper Tribunal Judge Stephen Smith on 11 October 2019.

Anonymity

2. An anonymity direction was made previously and is reiterated below as this is a protection matter.

Background

3. The appellant arrived in the United Kingdom clandestinely on 12 January 2019 with his wife and two children, aged 3 and 4. His asylum claim can be summarised as follows. He is an Iraqi national of Kurdish ethnicity who was born in Sulaymaniyah. In 2016, he began work for the Komala Political Party as a security guard. In 2018, the appellant was asked, along with others, to assassinate a major in the PUK, which he refused to do. The appellant was held captive for two days and agreed to carry out the assassination. He was released owing to the intervention of his relative R, who was subsequently detained. Instead the appellant fled Iraq. He fears that he will be at risk from the Komala party if he returns to Iraq as well as from R's relatives.
4. The Secretary of State refused the appellant's protection claim in a letter dated 6 June 2019. The appellant's nationality and ethnicity were accepted however, the remainder of his claims were rejected because of his lack of knowledge of the Komala party, inconsistencies in his account as to whether he was a member of the said party and several other aspects of his account. The respondent considered it not unreasonable for the appellant to return to Sulaymaniyah via Baghdad airport or to make his own arrangements to travel directly to Sulaymaniyah from the United Kingdom. It was not accepted that the appellant's passport was with an agent, however it was considered that the appellant could obtain another one and retrieve his CSID card from his father, in whose possession it was.

The decision of the First-tier Tribunal

5. The First-tier Tribunal judge rejected the credibility of the appellant's claim to have been asked to carry out an assassination and his reasons for leaving Iraq. The judge rejected many of the respondent's other reasons for refusal and accepted that the appellant worked for Komala and that he was a reluctant or opportunistic member of the party.

The grounds of appeal

6. The grounds of appeal argued that the First-tier Tribunal failed to consider the content of the appellant's witness statement when finding against him regarding the assassination plot and as such there had been an absence of anxious scrutiny. It was further argued that his explanation ought to have been accepted by the judge and that the judge failed to consider the risk on return for the appellant from the Komala party.
7. Permission to appeal was granted on the basis sought.
8. The respondent filed no Rule 24 response.

The hearing

9. Mr Madanhi relied on the grounds as pleaded, stating that he shared the sentiments of the judge granting permission. He had no wish to expand on the grounds.
10. Ms Everett expressed sympathy with the grant of permission, she stated that she could understand the point that the judge was speculating and that he was not entitled to do so. She added that the judge did not set out the appellant's case in sufficient detail including any explanations.
11. In response, Mr Madanhi argued that the judge should have clearly highlighted to what extent the witness statements were considered and rejected.
12. At the end of the hearing, I announced that the First-tier Tribunal made a material error of law and that the decision was set aside.

Decision on error of law

13. The appellant relied upon two statements in his appeal, the first of which was contained in the respondent's bundle and preceded the refusal of his claim and the second of which, dated 2 July 2019, was in the appellant's bundle in which he responded to the reasons for refusal.
14. The First-tier Tribunal rejected the core of the appellant's account of being selected to carry out an assassination. At [58], the judge finds that the appellant was "*unable*" to explain why Komala would have chosen him and at [59] and [63] the judge expressed agreement with the Secretary of State's view that the explanation previously provided by the appellant was unsatisfactory. This is the only part of the appellant's claim which was roundly rejected, with the judge finding that part of his account to be implausible. The judge, in reaching that conclusion, made no reference to either of the appellant's witness statements which addressed this issue in some detail. In the first statement, the appellant explained how he was recommended by a named relative who was a high ranking official in Komala to carry out the assassination with two other Komala members. In addition, the appellant replied to the respondent's criticisms in paragraph 12 of his appeal statement. It is also relevant that the appellant spoke of having received weapons training in connection with his role as a guard, which is not taken into consideration at [65] when the judge states that the appellant had not had any relevant specialist skills or training. While the judge is entitled to prefer the view of the respondent, it is first necessary for there to be some consideration of the appellant's evidence.
15. The judge further erred in finding at [64] that the appellant was not someone who was ideologically committed to the cause or [66] politically interested. These findings take no consideration of the appellant's recent witness statement where he explains that while he was not initially interested in Komala when he began working for them at his relative's suggestion; he had become interested in the party thereafter and consequently became a member.

16. The judge found in the appellant's favour regarding most of the other matters in issue, as seen by paragraphs [50-56],[60] and [69]. Accordingly, it cannot be said that the judge would have inevitably arrived at the same conclusion had he taken into consideration the appellant's written statements which provided an explanation as to why he was chosen to be part of an assassination mission. Therefore, the error identified shows an absence of anxious scrutiny and amounts to a material error of law.
17. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of the core issue in his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Bunting.

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 their 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: 26 November 2019

Upper Tribunal Judge Kamara