



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

Appeal Number: PA/08770/2018

THE IMMIGRATION ACTS

**Heard at Cardiff CJC
On 22 August 2019**

**Decision & Reasons
Promulgated
On 4 September 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**AA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Alban, Legal representative, Fountain Solicitors
For the Respondent: Miss S Rushforth, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Iraq, has permission to challenge the decision of Judge Solly of the First-tier Tribunal (FtT) sent on 8 April 2019 dismissing his appeal against the decision made by the respondent on 29 June 2018 refusing his protection claim.
2. The basis of the appellant's asylum claim was that he would be at risk on return to the IKR because he had been threatened by members of the Party Democrat Kurdistan Iraq (PDKI) after attending a demonstration in

Chwor Qorna in September 2015. The respondent found the appellant's claim not credible, as did Judge Solly.

3. The appellant's grounds of appeal are grouped under two headings, the first alleging that the judge failed to apply the correct standard of proof (with particular reference to para 77); the second contending that the judge "made a series of factual errors which have ultimately misdirected her assessment of the appellant's credibility". These errors were said to relate to the identity of the organisation he feared; whether he had been inconsistent in the evidence he gave about helping organise a protest in 2015; the failure of the appellant to provide evidence from the 'spy', Sharwin,; and whether the photograph of the ID for Shalaw could not be genuine because it was photographed on "very similar background" to another ID; and whether there was an inconsistency and implausibility in the appellant's account of Shalaw receiving the arrest warrant issued against the appellant.
4. At the hearing Miss Rushforth said that the respondent was prepared to concede that the judge's decision was vitiated by legal error.
5. Having studied the decision of the judge, I am in agreement with the representatives that her decision is legally flawed. Whilst the first ground may not be correct to allege a failure to apply the correct standard of proof, the impugned paragraph – para 77 – is clearly erroneous in failing to consider the evidence as a whole. Para 77 states:

"77. Given my findings on his credibility I do not accept that the photographs he produces identifying himself with banners is evidence of his attendance at demonstrations as he alleges."

Contrary to the principles as set out in cases such as **Mibanga** [2005] EWCA Civ 367, the judge here compartmentalises her treatment of the photographs from her overall assessment of credibility. She wrongly approached the issue on the basis that the photograph should be rejected *because* she had found the appellant not credible; whereas it was her duty to consider the photos when assessing credibility and before she decided upon credibility.

6. Given this error I need not deal with ground (2) in any detail save to say that I discern more than one significant error in the judge's treatment of the facts identified in this ground. For example, at para 60 the judge effectively appears to count against the appellant his failure to produce evidence from Sharwin, who on the appellant's account was acting as a spy for his alleged persecutors. That is a plain error. At para 51 the judge states:

"51. The appellant does not say in his account that he took any part in arranging the demonstrations, he says at Q35 that he helped organise this protest. There is inconsistency in this respect between the evidence of Salman Lochary and the appellant."

7. In casting matters this way, the judge appears to have overlooked that at Q35 AIR the appellant had not said that he was the organiser but that “It was reported to this organisation that I was one of the organisers of this protest and they were looking for me.” Nor does the appellant in his statement of 4 February 2019 mention being an ‘organiser’.
8. I also consider that the judge failed to consider the issue of the alleged contradiction in the appellant’s account of “whom he fears” (he having referred in the AIR to the PDKI and in his witness statement to the KDP (Democratic Party of Iranian Kurdistan). At paras 45 to 46 the judge stated:

“45. In the AIR the appellant said he feared the party Democrat Kurdistan Iraq, KDPI, answer to Q33. He said that he had been one of the organisers of a demonstration against the regional government in Kurdistan which took place in September 2015 (answers to Q35 and 38).

46. In his witness statement and in evidence before me he indicated that the demonstration was against the KDP and in October 2015 (paragraphs 10, 11, 13, 14 and 15 of his witness statement (at B 2 A of the main bundle). He says that the Home Office has incorrectly recorded the name of whom he fears in his witness statement before me. I note that he did not, on the evidence before me, raise these errors in the AIR record earlier than this witness statement which is dated 4 February 2019. My assessment of this depends on my assessment of his credibility.”

The appellant had said that the failure of his representatives to correct errors in his AIR was the fault of the representatives. To simply state that the appellant had not raised these errors in his AIR earlier than his witness statement, does not address the appellant’s proffered explanation.

9. For the above reasons I conclude that the decision of the judge must be set aside for material error of law.
10. I see no alternative to the case being remitted to the FtT (not before Judge Solly).

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: 23 August 2019

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a distinct loop at the end of the word "Storey".

Dr H H Storey
Judge of the Upper Tribunal