Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06636/2019

Heard at Bradford **Decision promulgated**
On 18 December 2019 **On 13 January 2020**

THE IMMIGRATION ACTS

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HUSSAIN AHMED SULIMAN
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Frantzis instructed by Bankfield Heath Solicitors.
For the Respondent: Mr A McVeety Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Hillis promulgated on 13 September 2019 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.

Background

2. The appellant is a citizen of Iraq born on 1 July 1968. He arrived in the United Kingdom clandestinely on 14 October 2018 and claimed international protection on the same date.

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3. The Judge had the benefit of considering documentary evidence but also seeing and hearing oral evidence being given by both the appellant and his witness.
4. The Judge considers relevant questions from [32] in relation to which the core findings can be summarised in the following terms:

   i. In relation to the question "Was the appellant a performing musician and teacher 2018?" it is found at [36] '*Following my very careful and anxious scrutiny of the evidence as a whole I conclude that the Appellant has failed to show, to the lower standard required, that he was actively teaching music to students performing in clubs and parties where women were present and alcohol was being served".*
   ii. In relation to the question "Did Islamic extremists threaten the appellant?" it is found at [38] *"I conclude on the evidence taken as a whole, including the objective material and the Appellant's bundle set out below, that he has failed to show, to the lower standard required, he or his family were threatened by Islamic extremists with death, kidnap or ill-treatment for any reason whatsoever",* at [40] following a finding that there was no reliable evidence before the Judge that the Appellant taught or performed "Western music" and additionally that although executions took place in Iraq they were not said to have been within the IKR, as at least one of those relied upon by the Appellant occurred in Mosul, "*It is, in my judgement, significant that the Appellant's solicitors in their correspondence and Ms Hashmi in her closing submissions were at the appeal were unable to draw my attention to any objective material to show that traditional musicians or even those playing Western music have been targeted by Islamic extremists by any militant group in the IKR."*
   iii. The Judge finds there was a significant indication in the documents relied upon by the Appellant that the IKR authorities are able, willing and competent in dealing with extremist groups in the IKR [41]. The Judge noted the appellant's claim is that he always lived in Erbil in the IKR which has never been under the control of ISIS, which was found to be relevant to the location of incidents the appellant sought to rely upon to support his claim in his evidence.
   iv. At [52] *"I conclude on the evidence taken as a whole that there is a sufficiency of State protection available to the Appellant and his family on return to Erbil and that the Appellant has failed to show, to the low standard required, that he faces a risk of death, persecution or ill-treatment on removal to Iraq for a reason recognised by the Refugee Convention and, in particular, an imputed religion due to being a music teacher in contravention of Islam."*
   v. In relation to the question "Can the appellant relocate to Baghdad City?" The Judge finds at [54] *"I accept that the*

Appellant is a Sunni Muslim who has no family or connections in Baghdad and who does not speak Arabic. I, therefore, conclude that he cannot remain safely in Baghdad City (BA headnote at paragraph vii) and that he and his family would face destitution there."

vi. In relation to the question "Will the appellant to be able to travel safely from Baghdad airport to the IKR?" The Judge having considered relevant country guidance case law in force at the date of the promulgation of the decision writes at [58 – 60]:

> *58. The Appellant, on his own account, has four brothers and two sisters living in Erbil. I conclude for the reasons set out above that he is not credible in his claim that they are too scared to send him his CSID card which he claims he left with them. There is no explanation from him as to how any Islamic extremist group would discover they had sent him his CSID card or its number and a number of his family page enabling him to obtain a replacement card from the Iraqi Embassy in London prior to his leaving the UK.*
>
> *59. The background evidence states that it is part of Kurdish culture to assist relatives and, on the Appellant's own account, he is still on good terms with his family in Erbil. I, therefore, conclude that he and his family can turn to the Appellant's brothers and sisters for support on return. The Appellant and his family have always lived in Erbil and he has not shown that he does not have any contacts who will assist him to gain employment on return and, in particular, as a traditional Kurdish musician as he has in the past.*
>
> *60. I, therefore, conclude in the absence of evidence to the contrary, for the reasons set out above, that the Appellant can safely travel to and relocate in the IKR and Erbil in particular without undue hardship.*

vii. The Judge therefore dismissed the claim on protection grounds, found the appellant could not satisfy the requirements of the Immigration Rules on the basis of private or family life, and that the appellant accepted his claim did not engage article 8 ECHR and that the appellant's daughters' best interests are served by returning to the IKR with their parents, for the reasons given by the Judge, resulting in the dismissal of the claim on all grounds.

5. The appellant sought permission to appeal asserting a procedural unfairness and misconstruction of country evidence and mistake of fact. Permission was granted by a Designated Judge of the First Tier Tribunal, the operative part of which is in the following terms:

> "The grounds assert correctly that the respondent in his reasons for refusal letter accepted the appellant was a music teacher in Iraq. There is no indication in the Tribunal file that at the hearing the respondent sought to withdraw this concession. It is therefore arguable the Judge erred in law at paragraphs 32 – 34 and 36 of his decision in making a finding of fact that the appellant was not a music teacher, rejecting without notice or reason the respondent's concession on this point.
>
> The other grounds relating to the Judge's treatment of the UNHCR guidelines on return as to Iraq not extending to returns to the Independent Kurdish Region (IKR) may also be argued.

6. The Secretary of State filed a Rule 24 reply dated 12 November 2019, the relevant parts of which are in the following terms:

> 2. In his first ground the appellant complains that the Judge has erred through procedural unfairness in going behind, without warning, a concession made by the respondent in the decision letter. The respondent does not accept that the concession went as far as contended by the appellant, nor that the Judge has departed from the concession.
>
> 3. At paragraph 30 of the decision letter, dated 27 June 2019, the respondent stated the following: "*take into account all of the above information it is, therefore, accepted that you were a music teacher*".
>
> 4. The concession appears to go no further than this, and the claim to have, garnered the adverse attention of Islamic extremists in 2017/2018 because he had been playing Western music in clubs, is specifically rejected at paragraph 36.
>
> 5. In the Judge's decision, at his [36] he states the following:
>
> > *36. Following my very careful and anxious scrutiny of the evidence as a whole I conclude that the Appellant has failed to show, to the low standard required, he was actively teaching music to students and performing in clubs and parties where women were present and alcohol was being served.*
>
> 6. The respondent contends that this finding was one open to the Judge, for the reasons given and does not contradict the position taken in the respondent's decision letter.
>
> 7. The appellant's second ground amounts to no more than disagreement with the Judge's thorough consideration of the background evidence where, between [40] and [52], he concludes that there is an absence of real risk for the appellant in the IKR, and the sufficiency of protection from Islamic Extremists in any case.

Error of law

7. The grounds assert the Judge, in going behind the respondent's concession, committed a procedural unfairness as the respondent accepted the appellant's claim to be musician. The grounds assert the Judge did not place the parties on notice of his intention to go behind the concession which is procedurally unfair. The grounds assert that

the appellant has been denied a fair hearing as a result. It was also submitted that there was no acknowledgement in the decision of the concession or how the positive aspect of the concession informed the Judge’s conclusions. The grounds argue that it is unclear as to whether the appellant’s claim to have been a music teacher was accepted.

8. It was accepted before the Upper Tribunal that Ground 2 is material if Ground 1 is made out.

9. The Secretary of State in the Reasons for Refusal letter considered the appellant’s claim with the required degree of anxious scrutiny recording, when considering whether the appellant was a music teacher in Iraq, the following:

> 26. You claim that you are a music teacher (AIR Q55). Consideration has been given to this aspect of your claim.
>
> 27. You claim that you began to work as a music teacher in 1991, and “played the Org, the Saz and Oud” (AIR Q15). This is internally consistent with your claim later in the interview when you state that you taught your students how to play these 3 instruments (AIR Q99). You also provide a plausible account of how you came to be interested in music and learning to play instruments by attending courses as a hobby while you were in school (AIR Q20).
>
> 28. In addition to this, you state that you have played music in clubs and hotels, such as Sheridan and Best Inn Erbil (AIR Q99). This is externally consistent with information showing that they are all hotels in Erbil.
>
> 29. It is noted that you have provided your Iraqi Kurdistan Artists Syndicate membership card and letters regarding your work as a musician in Iraq. Consideration has been given to these documents using the principles of Tanveer Ahmed. Looking at them in the round, little weight has been applied to the documents as it has not been possible to verify them using external information, in additionally it is not clear how you came to be in possession of them or where you obtained them from.
>
> 30. Taking into account all the above information it is, therefore, accepted that you were a music teacher.

10. At [36] of the Reasons for Refusal letter the respondent specifically states:

> “*Given the above, it is considered that you have failed to provide a credible and/or consistent account with regard to this aspect of your claim. It is not accepted that you, were threatened by Islamic extremists because you are a music teacher and attended parties. This part of your claim is rejected*”.

11. It is not made out the Judge did not consider the respondent’s position and that of the appellant with the required degree of anxious scrutiny. There is specific reference to the Reasons for Refusal letter at [8 – 9] of the decision under challenge.

12. It is not made out the concession in the refusal letter goes as far as the appellant asserts in the grounds seeking permission to appeal sufficient to give rise to any procedural unfairness.

13. The Judge accepted that the appellant was a music teacher which is in line with the concession. It was not accepted the appellant had taught

music to students and performed in clubs and parties where women and alcohol were present which was a claim rejected in the reasons for refusal letter too.

14. At [33] the Judge noted there was no supporting documents from any source after 7 January 2007 to show the appellant was actively working in the IKR as a teacher or performing as a musician at parties and clubs after that year. At [34] the Judge noted that despite the appellant claiming to be a famous musician throughout the whole of the IKR in the last few years he had not submitted any documents from the Iraqi Kurdistan Artists Syndicate or any clubs or other venues in the IKR to show that he was still performing and/or teaching after 2007. The Judge noted the only people the appellant claimed to be in fear of in the IKR were Islamic Extremists and that he could provide no valid reason for why he could not have contacted people there to obtain more up-to-date confirmation of his claim, if it was true.
15. It is not made out the Judge has erred in law on this ground.
16. There is no arguable legal error in relation to Ground 2. The appellant is from an area that has never been controlled by ISIS and examined the country information and country guidance case law relating to the area from which the appellant originated. The claim in the grounds that the UNHCR guidelines apply to the whole of Iraq still required the Judge to specifically consider the issue of risk relating to the appellant's home area which he did.
17. Whilst the appellant disagrees with the Judge's conclusions and wishes to secure a more favourable outcome to enable him to remain in the United Kingdom, the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant a grant of permission to appeal to the Upper Tribunal.
18. The recently published up-to-date country guidance decision of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC), which was handed down after the Error of law Hearing, does not establish any real risk for the appellant on return or indicate arguable legal error in the Judge's findings.

Decision

19. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

20. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……………………………………………….
Upper Tribunal Judge Hanson

Dated the 6 January 2019