



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

Appeal Numbers: IA/00820/2020
PA/51372/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2021**

**Decision & Reasons
Promulgated
On 17 November 2021**

Before

**THE HONOURABLE MR JUSTICE PUSHPINDER SAINI
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE ALLEN**

Between

**MASTER A A L
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, instructed by Batley Law

For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Mr Luqman against the Secretary of State's decision of 25 August 2020 refusing a protection claim that he made on the basis of risk that he claims to fear from Al-Hashd al-Shabi and his uncle's wish to force him to join that organisation on the basis that they had tried to

recruit him and he had resisted their attempts and left Iraq as a consequence.

2. The First-tier Judge who heard the appeal found the claim to lack credibility. The evidence was accepted as had been accepted by the Secretary of State as to the home area of the appellant, the fact of his age, that he is by now 19 and was around 16 when he left Iraq and that he is Kurdish but the judge had doubts about particular elements of the claim which led him to conclude that the appeal could not succeed and it is in respect of particular elements of that decision that the challenge to the decision is made by Mr Greer, who also appeared below, in his written and oral submissions.
3. The first point raised against the appellant is at paragraph 19 of the judge's decision and that concerned the doubts expressed by the Secretary of State and endorsed by the judge that the appellant's father would be able to live in his home area for so long and then subsequently be killed on account of his Ba'athist activities in part by the significant period of time having elapsed between the cessation of his Ba'athist activities and his killing, some twelve years, as the judge says at paragraph 19. The judge saw force to this as a legitimate plausibility point and he said he was not taken to any material to show that individuals associated with the Ba'ath Party were still targeted, for the first time or otherwise, in 2015 in the IKR or by Kurds and referred to a specific instance which was in the background evidence before him but distinguished it on the facts.
4. The next point considered by the judge was that the appellant did not know what his father did for the Baath Party and it was accepted that this was reasonable, given that he was very young when his father was carrying out such activities although he expressed some surprise that the appellant would not have enquired what his father did in order to lead to such extreme revenge being carried out against him. He found it surprising that the appellant had provided very little detail about his father's death. There was an inconsistency in what he had been told as to whether he had died because of cigarette-smoking or because he had been killed but the judge was, as I say, surprised that there was little detail provided by him about the circumstances of his father's death.
5. He then went on to consider the case in relation to risk from the PMU. First, he found it surprising that the appellant did not know the name of the particular group that his uncle had joined and which had sought to recruit him. Secondly, there was the issue as to why a Kurd, his uncle, his late father's brother, would join the PMU who were against Kurds, saying that he had not been taken to any evidence indicating that Sunni Kurds had joined the PMU and this was relevant both to the plausibility of the uncle as a Kurd wanting to join a Shia militia and secondly, whether a Shia militia would let a Sunni Kurd join them. He agreed with the Secretary of State that the appellant's evidence was vague and that one would expect

the appellant to know rather more about his uncle's activities with the PMU and expressed the same concerns as to the proposed recruitment of the appellant by the PMU as he had expressed in relation to the uncle's recruitment, again, a Sunni Kurd joining a Shia militia and he also commented that it seemed very ineffective to carry out a forced recruitment by in effect giving the person a period of ten days' notice that they would come back and take him away since that, as was the case, gave him the opportunity to leave the country.

6. The judge also considered the appellant's account as to how he had lost contact with his family. He had the family's phone number on a piece of paper and he said that that was taken from him together with the CSID and the judge could not understand why anybody would wish to take the mother's telephone number when that was his only means of contacting her nor why they would take the CSID, and considered that a passage in AA (Afghanistan) [2012] UKUT 16 at paragraph 115 did not suggest that smugglers routinely prevented children from remaining in contact with their family and confiscated identity documents.
7. He did not accept that the respondent had failed in her tracing duty. We need say nothing more about that since it was not a point with which issue was taken in the grounds, and he then summarised his findings at paragraph 31, essentially not accepting the core issues in the claim and as a consequence not accepting that the appellant faced any risk on return.
8. The grounds of appeal are largely concentrated on the issue of procedural unfairness though we need to say a little bit about the other matters as well and we have had the opportunity now of considering the amplification of those grounds in the skeleton argument provided by Mr Greer. The point of contention first set out is the taking matters against the appellant by the judge which had not been taken against him by the respondent. The judge states for example, "I have not been taken to any evidence showing that forced recruitment is practised by PMUs. There are other issues with the evidence", and the appellant "has not shown it plausible that a Kurd would want to and be permitted to join a Shia militia or that Shia militia carry out forced recruitment", and evidence has been provided with the grounds and we now have it provided in full form together with the skeleton, documentary evidence concerning forced recruitment of young men by Shia militias and also in respect of Kurdish involvement with the PMU. The point is made at paragraph 6 of the grounds that at no point prior to the hearing did the respondent dispute the appellant's account that he had lost contact with his family in Iraq during the journey to the United Kingdom nor had she disputed that his Iraqi identity documents had been taken from him en route to the United Kingdom, nor were the points in respect of the implausibility of the forced recruitment issue taken against him by the Secretary of State either.
9. The summary of what is said by Mr Greer in the grounds is therefore that it is entirely plausible that Kurds join the PMU and that the PMU forcibly

recruits children and also, referring to a document, a UNHCR Report quoted in AA (Afghanistan), that there is evidence to support the contention that those engaged in people smuggling prevent children from contacting their parents. So, the argument is essentially that on material points the judge expressed concerns that had not been raised by the Secretary of State and that these were regarded as being of some weight in the overall assessment of the credibility of the claim.

10. Mr Deller, with characteristic fairness, has accepted that there are some difficulties, perhaps if we can put it like that, with the judge's decision in this regard and there are pieces of evidence here that go some way towards reflecting on the materiality or otherwise of any mistake by the judge in this regard. He made the point, and it is a matter that we referred to earlier, that there are elements to the credibility findings with which there could be more sympathy with the judge's conclusion, for example with regard to the failure of the appellant to enquire what his father had done to be killed for his Ba'athist activities, but overall, even as a whole we agree with the main thrust of Mr Greer's submissions, which we accept on this point, that there is procedural error in this case by the judge, not impropriety, as Mr Deller rightly said, there is no suggestion of bias here but that the judge took points against the appellant which could not reasonably have been anticipated which is of course part of the relevant test here and which were treated as adverse to him in a material way in the credibility findings.
11. The other main matter in respect of which we see force in Mr Greer's submissions and in the challenge to the decision is the point about the judge's conclusion that it was improbable that people trafficking children would prevent them from having contact with their parents and would separate them from their identity documents to prevent them from being returned to their country of origin when there is, as we say, the relevant evidence in this regard from the UNHCR that mobile phones for example taken away from boys in the Afghanistan case then but, we think, equally transfers to Iraqi children in this case, mobile phones were taken away from them, apparently to ensure that children in the asylum procedure do not run the risk of having their records traced by the national authorities and, as Mr Deller fairly accepted, one can entirely see why from the point of view of the trafficker he would want to preclude the possibility of links being made between the person being trafficked and their family so as to avoid a sabotaging in effect of the system by enabling them to be returned. If it simply is not known where the parents are, how they can be contacted, what their identity is, then the trafficker has a much greater chance of success in their operation, and it seems to us that the judge again here took a point against the appellant which could not reasonably have been anticipated and which, as can be seen from the evidence quoted in the grounds, could be said to be a point on which he was in essence wrong and that is a point that does go to the core of the reasoning by the judge as summed up at paragraph 31 in his decision.

12. So, if one goes back to the reasoning there, he “has not shown it plausible that no action would be taken against his father for his Ba’athist activities for eleven years”, there, we think, is some strength to the judge’s finding in that point. He “has not shown it plausible that a Kurd would want to and be permitted to join a Shia militia or that Shia militia carry out forced recruitment”, as we say, there are significant difficulties with what the judge said about that in the absence of the point being taken previously and no notice of that being given and not accepting that he had lost contact with his mother or that he had lost his CSID, again, the reasoning in that regard we see as being defective.
13. So, in conclusion therefore we agree with the overall thrust of the submissions made in this case that there is procedural error by the judge. As a consequence of that it must follow, that the matter has to be reheard in its entirety in the First-tier Tribunal. Where there has been procedural error effectively the appellant has been denied of the opportunity of the hearing which he should have had and therefore it is not a matter that can be properly considered for rehearing in the Upper Tribunal. It must go back for a full rehearing in the First-tier Tribunal at Bradford before a different judge.

Notice of Decision

The appeal is allowed to the extent set out above.

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 29 October 2021

Upper Tribunal Judge Allen