



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12264/2019 ('V')

THE IMMIGRATION ACTS

Heard at Field House
And via Skype for Business
On 16th March 2021

Decision & Reasons Promulgated
On 29th March 2021

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'STA'
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: Ms S Khan, Counsel, instructed by WTB Solicitors

For the respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 16th March 2021.
2. Both representatives and I attended the hearing via Skype, while the hearing was also open to attend at Field House. The parties did not object to attending via Skype and I was satisfied that the representatives were able to participate in the hearing.
3. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Garratt (the 'FtT'), promulgated on 12th November 2020, by which he dismissed the appellant's appeal against the respondent's refusal on 29th November 2019 of his protection and human rights claims.
4. In essence, the appellant's claims involved the following issues: whether the appellant, an Iraqi citizen of Kurdish ethnic origin, had converted to Christianity as claimed in 2009, and, according to the appellant's account, because of hostilities from his family, he internally relocated to a majority Christian town which was then captured by ISIS; and whether the appellant also feared the Kurdish authorities because his wife's brothers were members of the peshmerga and security services. In rejecting the appellant's asylum claim, the respondent considered the appellant's immigration history. He had first come to the UK on 11st August 2004 illegally, claimed asylum; his asylum claim was dismissed in 2005 and he then returned voluntarily to Iraq in May 2006 using the respondent's voluntary departure programme. He was later encountered in August 2017 in the UK, and it transpired that the appellant had left Iraq once again in 2014, claimed asylum in Bulgaria and Belgium, but the respondent had decided not to return the appellant under the Dublin III Regulation. The appellant had a wife and three children, born in Iraq who were dependent on his claim, as well as a fourth child born in the UK in 2018.
5. The respondent did not accept the circumstances of the appellant's claimed conversion to be credible, nor his claim that his family were strict Muslims. The appellant had no personal encounters with ISIS. Having considered her own Country Policy and Information Note or 'CPIN' of February 2019, the respondent regarded the appellant's return to Iraq, because of the availability of international flights to Erbil and Sulamaniyah, as possible. The respondent had considered the need for the appellant to have an identity document or CSID and assumed that the appellant had family members in Iraq who would will assist him in obtaining a new CSID. The respondent concluded that the appellant would not be at risk of indiscriminate violence so as to be entitled to humanitarian protection or that his return would breach his rights under articles 2 and 3 ECHR. In respect of article 8, the appellant and his family could return together to Iraq and there were no very significant obstacles to integration there, because Christians living in the 'IKR' (the autonomous Kurdish region of Iraq) were not persecuted.

The FtT's decision

6. The FtT first considered the appellant's credibility. At §16, the FtT noted apparent inconsistencies in the appellant's account about his contact with people in Iraq; the lack of adverse interest from ISIS; and his family's knowledge of his conversion. At §18, the FtT considered whether there were inconsistencies in the appellant's account of taking his children to church. At §19, the FtT considered the reason why he had not awaited the outcome of his asylum claim in Bulgaria and the refusal of his claim in Belgium. The FtT also considered the evidence of churchgoers in Lichfield at §§22 to 26. These witnesses testified as to the genuineness in their view of the appellant's faith.
7. Having considered the evidence as a whole, the FtT did not accept the appellant's claimed Christian conversion. His claim to be uneducated and illiterate, was inconsistent with his setting up a commercial business in Iraq after returning to there (§38). His claim not to have any contact with anyone in Iraq or the IKR was also not believable (§39) and the FtT did not accept that the appellant would face adverse interest from his family in Erbil. If he feared they would kill or harm him, as he claimed, he would not have moved only 45 minutes away and lived so close by for many years.
8. At §40, the FtT did not accept as credible the appellant's account of conversion on Christmas Day in 2009, in the context of little or no knowledge of Christianity and immediate conversion on the same day. The FtT also rejected at §41 the appellant's claim to have moved to a neighbouring Christian town. At §42, the FtT rejected the appellant's account of leaving Iraq because of a fear of ISIS. Instead, despite claiming asylum in other countries, his real determination was to travel to the UK. At §43, the FtT noted the appellant's claim that his wife and also converted to Christianity, but there was no detailed evidence about her conversion, nor had she given evidence.
9. At §44, the FtT analysed the evidence of fellow churchgoers and notwithstanding the genuineness of their belief, did not accept the appellant had converted, noting the clear language difficulties between the witnesses and the appellant and the little evidence faith. The appellant's account of being unable to openly practice his faith in the IKR was inconsistent with the appellant's own expert evidence.
10. At §45, the FtT concluded that the appellant was living in the IKR prior to leaving Iraq and had not lost touch with his family, or that they had threatened him because of his claimed conversion to Christianity.
11. The FtT concluded at §47 that the appellant could return to Iraq via Baghdad noting the country guidance cases of AA(Iraq) [2017] EWCA Civ 944 and SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) . The appellant could obtain his CSID from his relatives living in Erbil; or a new INID by proxy or his CSID could be sent to him by his wife on her return to Iraq (§49).
12. At §51, in a brief analysis, the respondent rejected any claim for humanitarian protection and also by reference to article 8 ECHR.

The grounds of appeal and grant of permission

13. The appellant lodged grounds of appeal which are essentially as follows:
- 13.1. Ground (1) - the FtT had erred in law in rejecting the appellant's account that his family had turned against him because he had converted to Christianity. The appellant had relied upon an expert report of Alison Pargeter in support of that and the plausibility of the appellant moving to a Christian town and later, leaving Iraq because of ISIS control of that town. The FtT had failed to engage with that expert report. In particular, whilst there were no problems for Christians in general living in the IKR, the FtT had failed to recognise the difference in treatment of those who were born into the Christian faith, as opposed to those who had converted.
- 13.2. Ground (2) - the FtT had erred in finding that the appellant was intelligent and therefore could not be uneducated or illiterate and that this somehow damaged his credibility.
- 13.3. Ground (3) - the FtT had erred in concluding that the appellant had left his CSID in Erbil, because the FtT had misapplied the standard of proof in assessing whether it was "reasonably likely" (see the authority of Demirkaya v SSHD [1999] EWCA Civ 1654).
- 13.4. Ground (4) - the FtT erred in concluding that the appellant could obtain his INID by proxy as this was contrary to the authority of SMO.
14. Permission to appeal to this Tribunal was initially refused by the First-tier Tribunal on 29th December 2020 but granted by Upper Tribunal Judge O'Callaghan on 21st January 2021 in relation to grounds (1), (3) and (4) only (he refused permission in respect of ground (2)). He noted that the materiality of Ms Pargeter's report would need to be identified.

The hearing before me

The appellant's submissions

15. Ms Khan emphasised that the FtT's bare reference to the expert report was not sufficient. The expert report crucially had distinguished between those of born into the Christian faith and those who had converted to Christianity. The FtT had stated at §39:

"There is no evidence to assist me to conclude that the appellant's family turned against him because of his change of faith, to the extent that they would kill him."

16. That reference was incorrect, as there was evidence before the FtT, specifically evidence from Ms Pargeter directly on the likelihood or plausibility of the account that the appellant's family had indeed turned against him. The reference therefore there to there being "*no evidence*" was strongly indicative of the FtT having not considered adequately the expert report of Ms Pargeter, whose expertise was not challenged.
17. Similarly at §41 the FtT had stated:
- "Background material including that in the appellant's own expert report suggests that there are no significant difficulties for Christians living in the IKR. Bearing in mind that I am not satisfied that the appellant was at real risk of serious harm at the hands of his own family and that his almost instant conversion to Christianity is unbelievable, the move to [the Christian majority town] is not likely to be reasonably likely."*
18. The flaw was the reference to background material suggesting no difficulties for Christians living in IKR. Put simply, in section 3 of her report, Ms Pargeter had suggested an absence of persecution for Christians generally, but at section 4, had identified particular risks to converts, including from family members whom she described might plausibly be outraged at the conversion of family members.
19. Continuing at §45, whilst the FtT noted that the appellant had claimed that he would be unable to openly practise his faith in the IKR, but said this was inconsistent with Ms Pargeter's report, once again the FtT had ignored the part of her report which assessed the appellant's claim as consistent with the background evidence that converts would, out of fear, hide their conversion and the practice of their faith.
20. In summary, the FtT had failed to engage with the expert report and explain what weight he had attached to it. Ms Khan, who appeared before the FtT, had specifically referred to the report in her written skeleton argument to the FtT. The report was also consistent with other background material before the FtT, at pages [22], [23], [91] to [93] of the FtT's bundle, all of which dealt with particular risks to Christian converts and the final section dealing with particular risks to women, in the context of the appellant's wife's claim also to have converted. Ground (1) was sufficiently material on its own, as the assessment of appellant's credibility was a nuanced one and a failure to engage with that aspect of the credibility meant that the entirety of the assessment was flawed. That being said, grounds (3) and (4) were additional, compounding errors.
21. In relation to ground (3), the FtT had mistakenly inferred from the appellant's acceptance, in the skeleton argument before the FtT, that the appellant was likely to have left his CSID card in the Christian majority town, that he had left it with family members who lived elsewhere in Erbil. In doing so, the FtT had applied an impermissibly low standard to reach his finding.
22. Regarding ground (4), the error in finding that the appellant could obtain an INID by proxy, which was clearly inconsistent with SMO, would be immaterial if the appellant were still in contact, and did not have adverse relations, with family

members, who could obtain a CSID, but if the appellant in fact had an estranged relationship and feared them, then that was where the error became material.

The Respondent's submissions

23. Ms Isherwood urged me to consider that what the appellant had not challenged was the central assessment by the FtT of his credibility and in that regard, she took me to §40 of the FtT's decision and what the FtT assessed as a wholly implausible account of the appellant's conversion on Christmas Day in 2009. When I asked Ms Isherwood whether, to take that in isolation from the expert report, a Tribunal might fall in to the error identified in Mibanga v SSHD [2005] EWCA Civ 367, she submitted that the FtT's analysis of credibility had been in the context of background evidence, see: §§41 and 45. The FtT had properly considered all of the evidence in the round and was entitled to conclude as he did at §§48 to 49 that appellant had not fallen out with family members and could obtain his CSID card and correspondingly return to Iraq. She, like Ms Khan accepted that grounds (3) and (4) effectively compounded any error, if there were one, on the basis of ground (1) and to the extent that ground (1) was made out, the FtT's decision would be unsafe.

The appellant's response

24. On a final point, Ms Khan pointed out that at §4 of ground (1), she had made clear that all of the FtT's assessment of the appellant's credibility, including §§39 to 42 of the FtT's decision, had been challenged.

Discussion and conclusions

25. On the one hand I am very conscious that I do not have the opportunity to assess all of the evidence before me as the FtT has had the opportunity to do so and I am confined to considering whether the FtT erred in law. I am equally conscious that the assessment of credibility is a sensitive and nuanced one and that it is not appropriate to take particular elements of reasoning out of context, when considering whether there is an error of law. Nevertheless both representatives have accepted that at the core of this appeal is the appellant's credibility. I am satisfied that the FtT's analysis of the appellant's credibility was fundamentally flawed. The FtT acknowledged the expert report in specific ways, in parts of his decision: for example at §13, to emphasise that Christians living in the IKR were not persecuted (see §3.11 of the report of Ms Pargeter).
26. What is also clear on the face of Ms Pargeter's report is her clear distinction between the risk to Christians generally (section 3); specifically to converts (section 4); and her specific consideration of the appellant's account, and its consistency with her

knowledge of the background evidence, including his account of the outrage of his family at his conversion (§5.2); the outrage of his wife's family (§5.3); his move to a nearby Christian majority town (§5.4); and the subsequent destruction of that town at §5.5. It may well be that a Tribunal reconsidering the appeal decides nevertheless that the appellant's account remains implausible and not credible, taking all of the evidence as a whole, but I accept the force of Ms Khan's submission that the FtT, while referring to the report by reference to Christians in the IKR, makes no analysis of the other elements, set out above, of Ms Pargeter's detailed report. Instead, there is statement at §39 that there was no evidence that the appellant's family had turned against him, when Ms Pargeter had specifically addressed that issue; and a reference at §41 to background reports suggesting no significant difficulties for Christians living in IKR, which, while consistent with §3.11 of the report, does not deal in any sense with sections 4 and section 5. The FtT's conclusion at §45 that the appellant's claimed fear of worshipping freely in the IKR appeared to be out of step with Ms Pargeter's evidenced does not explain why it is out of step, and indeed appears at odds with the report.

27. I am satisfied that given the extent of the lack of engagement and analysis of the report, which must be considered in the round and not in isolation from the remainder of the evidence, that the FtT's analysis of the appellant's credibility was fundamentally flawed. The appellant's appeal succeeds on the basis of ground (1) alone.
28. I accept that the error in ground (1) was compounded by the errors in grounds (3) and (4). Ground (3) relates to the finding of whether the appellant would have left his CSID in Iraq, which could be sent to him by relatives. It does appear that the appellant's concession that his account of leaving his CSID in Iraq (noting that he left from the Christian majority town) conflates that statement with a conclusion that he has left it where it could be accessed and returned to him by family members, ignoring the claimed destruction of the town he left.
29. Ground (4) relates to the erroneous finding that INID cards can be obtained by proxy, which Ms Isherwood did not seek to contend was consistent with SMO – rather, the issue was around materiality, if the appellant's CSID could be obtained. Given the errors in grounds (1) and (3), I am satisfied that the error in ground (4) was also material.
30. In conclusion, grounds (1), (3) and (4) disclose material errors in the FtT's findings on the appellant's credibility. Those findings and the FtT's decision are unsafe and cannot stand.

Decision on error of law

31. In my view there are material errors here and I must set the FtT's decision aside, without any preserved findings of fact.

Disposal

32. With reference to paragraph 7.2 of the Senior President's Practice Statement and the necessary fact-finding, this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing.
33. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside, without preserved findings of fact.

I remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal, Manchester Piccadilly, for a complete rehearing with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Garratt.

The anonymity directions continue to apply.

Signed *J Keith*

Date: 22nd March 2021

Upper Tribunal Judge Keith