



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001960
First-tier Tribunal No:
PA/53178/2021
IA/07942/2021

THE IMMIGRATION ACTS

Heard at Manchester CJC
On the 6th December 2022

Decision & Reasons Promulgated
On the 21 February 2023

Before

UPPER TRIBUNAL JUDGE BRUCE
DEPUTY UPPER TRIBUNAL JUDGE SILLS

Between

MAR (Iraq)
(anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr Brown, Counsel instructed by Broudie Jackson
and Canter Solicitors**

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1982. He appeals with permission against the decision of the First-tier Tribunal (Judge Malik)

to dismiss, on protection and human rights grounds, his appeal against a decision to refuse to grant him leave to remain.

2. It was the Appellant's case that when at home in Iraqi Kurdistan he had faced a constant danger from a powerful and influential family in the area, with whom his own family had fallen into a 'blood feud' arising from the murder of one of their member by the Appellant's elder brother. He alleged that this family had tried to kill him on three occasions, most recently in 2019. The Appellant further submitted that he did not have a 'CSID', the Iraqi identity document which would enable him to travel and reside within Iraq in a reasonable fashion. In this regard he relies on the Secretary of State's standing concession, given most recently in SMO & KSP (civil status documentation, article 15) CG [2022] UKUT 00110 ('SMO II') that non-documented returnees who are unable, within a reasonable time frame of return to get new documents, would face a real risk of falling into destitution such that would engage the United Kingdom's obligations under Article 15(b) of the Qualification Directive and /or Article 3 ECHR.
3. The Respondent, and then Judge Malik, rejected all of that and protection was refused. The case before us is whether, in reaching her decision, Judge Malik erred in law such as her decision is unsafe and should be set aside.

Discussion and Findings

4. Mr Brown's first ground concerns the overall credibility assessment made by Judge Malik. We begin our consideration of this ground by setting out Judge Malik's reasoning in full:

13. Whilst accepting blood feuds occur in Iraq, having considered the appellant's account in the round, to the lower standard, I find it incredible and not reasonably likely, for the following reasons:

a) Taking the appellant's claim at its highest - and if the AM family did confiscate his father's land, and his brother then killed a member of the AM family, I do not find it reasonably likely or credible, if the appellant was of any interest to the AM family, that they would not have carried out their threats to kill him when they had ample opportunity to do so after the appellant claims they returned to the Halabja area in 2005 and before he left the country in 2019. The appellant claims he took precautions, but equally claims, on the three occasions he was attacked, he was outside his home alone. He also claims to have worked as a labourer in Iraq and this would necessitate him being outdoors. I do not find it reasonably likely that if he genuinely believed his life was at risk, he would have remained in the area, let alone go out alone.

b) I also do not find it reasonably likely that if the AM family wanted to kill the appellant that they would not just have attended at his home address as they would have known where he lived, given he claims they are powerful and influential. Further whilst the appellant says on two occasions, when he claims he was attacked, members of the public intervened and saved him – given he claims the AM family are powerful/influential, I also do not find it reasonably likely that these individuals would have taken the risk of becoming involved in this blood feud and thus place themselves at risk of harm. Whilst the appellant claims he sustained injuries from the assaults, there is no medical evidence regarding this.

c) The appellant's lack of knowledge of the confiscation of the land also causes me to find he has fabricated the core of his claim, to form what I find to be a false asylum claim, as I do not find it reasonably likely that he would have not asked his father about the land, which he claims led to a blood feud and caused him to flee. Whilst he said at the hearing that he had asked his father a week earlier as to whether the land had been confiscated, this I find is an attempt to address the concerns highlighted about his lack of knowledge of the land in the RFRL.

5. Mr Brown's first complaint is that the decision is confusing. Having indicated that she intends to take the case at its highest, the Judge then immediately does the opposite, instead subjecting the detail of the account to critical examination. Whilst we share Mr Brown's reservations about the structure of paragraph 13 we are not satisfied that this amounts to a material error. Had the Tribunal in fact taken the case at its highest – thereby acknowledging *inter alia* that the Appellant survived three attempts on his life between 2010 and 2019 – it could have done no more than conclude it was a claim with the potential for success. It would still have then been obliged to go on to consider whether it was reasonably likely to be made out, and its answer to that is clear from the reasons set out at sub-paragraphs (a)-(c).
6. Turning to those reasons, Mr Brown's next ground is that in conducting its evaluation of the Appellant's credibility the Tribunal has failed to take material evidence into account. At the centre of the Tribunal's reasoning is this:

"I do not find it reasonably likely or credible, if the appellant was of any interest to the AM family, that they would not have carried out their threats to kill him when they had ample opportunity to do so after the appellant claims they returned to the Halabja area in 2005 and before he left the country in 2019. The appellant claims he took precautions, but equally claims, on the three occasions he was attacked, he was outside his home alone. He also claims to have worked as a labourer in Iraq and this would necessitate him being outdoors. I do not find it reasonably likely

that if he genuinely believed his life was at risk, he would have remained in the area, let alone go out alone.

7. Mr Brown submits that the ratio here applied by the Tribunal perversely ignores the Appellant's actual evidence. It is his evidence that whilst remaining in Halabja he was constantly on his guard; he was forced to abandon his education and when he left home he "took precautions" such as avoiding suspicious looking people or cars and going the other way. Mr Brown points out that the Appellant was, on his own evidence, brutally assaulted on three occasions during the period in question.
8. We are not satisfied that there is any error in approach here. The crux of the Tribunal's decision is that if the Appellant truly feared for his life it seems unlikely that he would remain in the same house, in the same town for 14 years. It is *possible* that he would do so, whilst taking precautions, but the Tribunal did not believe it to be reasonably likely, given the gravity of the threat he claimed to face. We are unable to say that this was an irrational conclusion for the Tribunal to have reached, and it was a conclusion that went to the core of the Appellant's case. The remaining reasons given by the Tribunal are in these circumstances of minimal importance.
9. The second area of challenge relates to the Tribunal's findings on whether the Appellant is, or could be, documented. Mr Brown rightly submits that there is no reference to SMO II on the face of the decision, and that the Tribunal conducts no evaluation of whether there is in the Appellant's home area a civil registry still issuing CSIDs, or one of the new INID terminals discussed in SMO II. There is however good reason for that. It was the Tribunal's primary finding that the Appellant in fact still has his CSID. His claim to the contrary is rejected on the grounds that his general credibility is so damaged that it cannot be believed. Mr Brown accepted that this was a finding that is difficult to challenge, if the preceding negative credibility findings were open to the Tribunal.
10. We would accept that this was not the only conclusion that would have been open to the Tribunal. Other judges may have disbelieved everything about the account but been prepared to accept that the CSID was lost - or even deliberately disposed of, given its importance in resisting removal. That was not however the conclusion of this judge, and it was one she was entitled to reach. As to the failure to investigate, in the alternative, whether Halabja is now served by an INID terminal, Mr Brown candidly acknowledged that this was not a question addressed by the Appellant in his skeleton argument or evidence before the First-tier Tribunal. Accordingly we do not find the grounds to be made out and the appeal must be dismissed.

Anonymity

11. The Appellant continues to seek protection. Having had regard to the applicable guidance we consider that at least until such time as his claim is finally determined he should have the benefit of the following order for anonymity:

“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, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

12. The decision of the First-tier Tribunal is upheld and this appeal is dismissed.
13. There is an order for anonymity.



Upper Tribunal Judge Bruce
6th December 2022