



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003900
First-tier Tribunal Nos: PA/53623/2021
IA/09900/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 21 May 2023

Before

THE HON. MR JUSTICE DOVE, PRESIDENT
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)

Between

H S S
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Tan

For the Respondent: Mr Greer, Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 24 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal Judge dated 15 July 2020. The appellant is a national of Iraq who was born on 1 January 1991. He arrived in the UK on 25 February 2015, claimed asylum on the same date and that application was refused on 10 July 2015. He then appealed against that decision and his appeal was dismissed on 17 December 2015.
2. The nature of his case, as recorded by the First-tier Judge on that occasion within paragraph 4 of her decision, was that he said that he came from Sinjar and was of Kurdish ethnicity and that his family, and in particular his father, have been in a feud with members of another tribe over some farmland leading to one of his uncles, who was involved in the feud being killed. Another of his uncles had killed two of the opposing tribe, who are now looking for him. On 3 August 2014 Daesh attacked Sinjar and his mother and sister have been killed in that attack and as a result, he had fled.
3. He was cross-examined at the hearing before the First-tier Judge and it appears at paragraph 6 of the determination, when being questioned about the Secretary of State's case that he was not from Sinjar, he produced some documentation, which he asserted were proof of his origins and citizenship and which had been sent to him by his uncle. He was cross-examined in relation to that documentation and ultimately the findings, which were reached by the judge, both in relation to where he was from and this documentation, were set out in paragraph 15 of the determination in the following terms.:

"15. At questions 18-28 of his substantive interview, the Appellant was asked to describe Sinjar. Specifically, at question 20, he was asked if there were any landmarks or points of interest which he could describe. His response was recorded as 'there is water, there is trees and mountains, very nice area'. When compared to his answers to questions about Iraq generally, and his Kurdish ethnicity, his description of his home area was extremely vague. On his account, he had lived there for over 20 years, and had spent his formative years there. When Mr Craggs suggested to him that he should have been able to provide more specific information, he said that he had answered all of the questions put to him, but it is the content of his replies which gave me cause for concern. Whilst he mentioned a Mosque and figs in cross-examination, his evidence was still so vague that I could not be satisfied from it that the Appellant had been a resident of Sinjar as he claimed. I have considered the documents produced by the Appellant which, he said, were proof of his citizenship. However, in response to question four of his substantive interview, he said that he did not intend to submit any further documents, because everything had been destroyed 'over there'. Documents such as these have to be considered in the round. The Appellant was unable to provide any satisfactory explanation as to how his uncle had obtained the document in question. I find it lacking in credibility that he would not have asked his uncle about it, especially if he believed that everything had been destroyed. I am not satisfied that the documentation is reliable, and that any real weight can be attached to it. On the totality of the evidence, the Appellant has failed to satisfy me that he lived in Sinjar. On that basis, I reject his claimed fear of Daesh."

4. The First-tier Tribunal Judge in 2015, went on to reach the conclusion based on her examination of the evidence that she was not satisfied that there was a tribal feud in which the appellant's family was involved and as a result of these conclusions, his claim to asylum, humanitarian protection and human rights were rejected.
5. Subsequent to this, further representations were made on behalf of the appellant on 8 June 2021. That led to the decision of 15 July 2022, which is the subject of these proceedings. In that determination, the First-tier Tribunal Judge set out the nature of the claim which had been made, and also the substance of the previous determination which I have already referred to. The judge went on to set out the evidence which was provided at the hearing by the appellant. The appellant produced documentation in the form of an Iraqi passport, Iraqi national ID card and Iraqi nationality certificate, all of which were issued in Duhok. The appellant explained that after the 1991 Revolution against the central government in the north and the collapse of that government, Kurdish authorities have been allowed to issue documents in certain districts in Kurdistan, such as Duhok. Therefore, the appellant asserted he had had to obtain his documents from Duhok. Documentation could have been issued from Mosul but at that time racism against Kurds militated against his family obtaining the documentation from that city. The documents indicated his place of birth as Amadiya but he wished to confirm in his evidence that he was in fact born in Sinjar.
6. The appellant went on to describe his support for the PKK and his participation with two friends in demonstrations in London, which had been filmed and photographed. He expressed his concern that those who were seen to be protesting against the KDP, would be the subject of persecution and that there would be difficulties for them on return to Iraq. He went on to explain that his uncle had been arrested and detained and he considered that this had occurred on the basis of his sur place activities in the UK. Another witness gave evidence in support of that sur place activity.
7. The appellant's case was assisted by the provision of a country expert report from Mr Christopher Bluth who addressed the question of honour crimes and tribal disputes. He also dealt with the potential risks to the appellant were he to be returned and the issues confronting him in relation to documentation. In particular, the First-tier Tribunal Judge quotes the expert as saying "as a very (sic) Sunni Kurd without a national ID card, special skills or connections or access to a family network, he would be an internally displaced person and at risk due to the insecurity in the region and sectarian violence". In addition to this an expert psychiatric report was produced by Dr Longe identifying that the appellant had a diagnosis of severe depressive disorder and symptoms of PTSD arising from circumstances associated with him seeking asylum in the UK. These mental health issues had led to a risk of developing suicidal ideation with the consequential impact on his wellbeing.
8. The judge, having quoted extensively from country information and relevant country guidance authority went on to express his conclusions in the following terms, in particular relating to the documentation, which had been provided in the context of the appeal. He started though by noting the findings that had been made in 2015. The relevant passage from the determination is as follows:

"38. In considering this matter, I have followed the case of **Devaseelan [2002] UKIAT 00702** and consider that the starting point for my determination of the issue of A's asylum claim is the determination of

the Immigration Judge in relation to the previous asylum claim. The determination establishes the following:

- a. The Appellant had not proved that he originated from Sinjar in the Nineva Governorate.
- b. The Appellant had not proved that he and his family were involved in a tribal dispute or that he was at risk if there had been such a dispute.

39. In relation to the issue of whether A came from Sinjar, I have considered the new evidence before me, including A's testimony. I have given only limited weight to the 'Housing Certification' because following the case of Tanveer AHMED IAT 2002 UKIAT 00439, I am not satisfied this document is genuine and reliable. This is because I agree with the previous determination that A is not a reliable and honest witness and because the general country information indicates how easy it is to forge such documents. Moreover, the document merely records information provided on behalf of A and there is inadequate evidence that the author has independently verified the information. In addition, the document is contradicted by the Appellant's CSID card stating that he was born in Amadiya in the Duhok governorate. I do not accept his explanation that he had to obtain his documents from Duhok and that was why they recorded his being born there.

40. In relation to the issue of whether A is at risk of persecution because of a tribal dispute I have considered the new evidence before me including A's testimony. I have given only limited weight to the Country Expert Report of Christopher Bluth because it only provides general details about honour crimes and tribal disputes and merely opines that A's account if credible is 'compatible' with such general country information. Moreover, the credibility of the expert and the quality of the information he was given by A is undermined by the author's comments that A is 'a very [sic] Sunni Kurd without a national ID card....' This directly contradicts A's evidence that he has a CSID card and it is with the Home Office and it is genuine."

9. Having taken account of this material, the First-tier Tribunal Judge was not satisfied that he should depart from the appraisal of the appellant's evidence by the original First-tier Tribunal Judge in 2015. The judge then went on to consider the claim raised in relation to sur place activity. He reached his conclusions in the following terms:

"44. Applying the principles in the case of BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC) I conclude that A has failed to establish that his sur place activities have brought him to the adverse attention of the authorities in the IKR or elsewhere in Iraq. He has failed to establish that the demonstration or demonstrations he attended were associated with the PKK or that his involvement would have come to the attention of the authorities. Moreover, the objective information does not establish that the authorities have the ability to conduct surveillance on an individual attending such demonstrations in the UK. In addition, A does not claim that he had a political profile in Iraq, and I do not accept that A has ever come to the adverse attention of the authorities in Iraq in the past or would do so now.

45. Bearing in mind my previous findings I do not accept that A's uncle was arrested or detained for any reason connected with A's sur place activities. In addition, I do not accept that A has lost contact with his uncle or his wider family. I therefore conclude that A has failed to establish to the requisite low standard that he is at risk of persecution in Iraq for the reasons claimed or for any other reason."

On the basis of these factual appraisals the First-tier Tribunal Judge concluded, akin to his colleague in 2015, that the appellant's claims to asylum, humanitarian protection and breaches of Articles 2 and 3 of the ECHR were not established. The appeal was dismissed.

10. The appellant raises five grounds of appeal, in connection with this case. I note in passing that the grant of permission is ambiguous. Whilst permission to appeal "is granted" by that document, in paragraph 3 it is noted that "the judge notes he dealt with the appellant as a vulnerable witness. The remaining grounds are arguable errors of law". That comment appears to relate to ground 1, which is the failure of the judge to apply Presidential Guidance in relation to dealing with vulnerable witness. It is a paragraph inconsistent with permission to appeal being granted, which implies it has been granted on all grounds. Notwithstanding that ambiguity, it has been helpfully conceded by Mr Tan on behalf of the Secretary of State that this matter should be considered on the basis of all five grounds. This is an unsatisfactory state of affairs, and it is not something for which either the appellant or the respondent are responsible. I agree that the only sensible way to proceed, notwithstanding that ambiguity, is for all five grounds to be the subject of consideration.
11. Ground 1 is, as I have already observed, the contention that the judge failed to apply the Presidential Guidance Note number 2 of 2010 in relation to child, vulnerable adult and sensitive appellants. It is submitted that whilst the judge mentions the appellant being vulnerable, there is nothing further in the decision which demonstrates the application of these principles and further citation of the guidance was required, as was a reflection of that guidance in the substance of the decision. For my part, I am unable to accept that there was more that needed to be done in this case than the judge did. Firstly, it is clear that he was more than aware that the appellant was a vulnerable person and therefore a vulnerable witness. Not only did he record that in paragraph 13 of the determination but also, as set out above, he made specific reference to the psychiatric evidence which have been lodged in support of the appellant's appeal. Thus, there was nothing further by way of reasoning or citation that was necessary.
12. Turning to the substance of the issue, plainly for the Presential Guidance to be relevant and of application, it was necessary for there to be evidence to which it could be referable. As noted above, findings were made in 2015 in respect of the appellant's credibility. It appears from the psychiatric report that the mental health problems that he has developed have been developed as a result of his unfortunate experiences as a person seeking asylum, and the conditions that he has found himself in from time to time, as well as the experiences that he has been subject to during that time. Critically, at paragraph 16.7 of the psychiatric report, it makes plain that whilst there has been an impact on the appellant's memory, that has been an effect which he has experienced for three to four years. Thus, it was not a problem from which he was suffering at the time of the earlier determination in 2015. Turning to the issues which were before the First-

tier Tribunal Judge in 2022, those did relate to issues concerning where he came from and the evidence in support of that, but were in essence decisions which turned upon the earlier determination which had been reached in 2015 and against that background, the judge's appraisal of credibility of the appellant's explanation as to where he was in truth from and the new documentation produced in 2020, in particular the documentation in the form of the housing certificate.

13. Those issues did not require any further citation beyond that which had already been made and I am unable to accept that there was an error of law in relation to either the procedure before the Tribunal, about which no complaint is made, or the substance of the decision on the basis that the vulnerability of the appellant was not properly taken into account.
14. Ground 2 of the appeal relates to the CSID card evidence. It will be recalled that in the First-tier Tribunal in 2022 documentation issued in Duhok in the form of a passport, national ID card and nationality certificate were produced. This was against the background of the earlier decision in 2015 in which documentation had been produced but had been discarded. The complaint which is made is that the judge, in reaching the conclusions which he did in paragraph 39 of the determination, failed to properly afford the documentation appropriate weight and understand the issues associated with the CSID card or provide an adequate explanation for the conclusion that the appellant did not come from Sinjar, as had been claimed. In my judgment, what was necessary in this case was the exercise which the judge carried out. He was obliged by authority to start from the earlier conclusions of the Immigration Judge in 2015. The new material was the housing certificate to which I shall turn, when I come to ground 3. The other material, in relation to documentation, was either material that had been considered in the earlier appeal in 2015 and discounted or was new material, which had to be considered in the context of the earlier objection of documentation produced by the appellant.
15. The conclusion which the judge reached against this very unsatisfactory background of a variety of documentation being adduced and an explanation which did not accord with that documentation, namely that the appellant was, notwithstanding all that was recorded in that documentation, from Sinjar, was one which was entirely open to him and does not disclose any error of law. It in fact flowed from the earlier conclusions of the 2015 determination. Thus, I am not satisfied that there is any substance in ground 2 of this appeal.
16. I turn then to ground 3. Ground 3 is the complaint that the judge's rejection of the housing certificate, which was a genuinely new document produced and dated 2020, was not a decision which was open to him and which is not properly and adequately explained in the determination. In particular, it is not explained what the background material, which the judge relies upon, was and, secondly, how this finally related to the earlier conclusions of the 2015 decision. Further, it is complained under ground 3 that it was inappropriate to reach a general conclusion about credibility and then, thereafter, reject this discrete piece of evidence. This, it is submitted, was the wrong approach. On analysis, I am not satisfied that there is anything in any of these points. Firstly, as pointed out by Mr Tan, in his submissions in response to the appeal, there is plenty of both country guidance authority and also material in country material information which shows the prevalence of false documents and other official material in the context of Iraq. It is not necessary for the judge against the background of the

citation he had already provided to produce further material beyond the observation which he made in paragraph 39.

17. Secondly, it was obvious that the conclusion as to the validity of the housing certificate and what it added to the appellant's case had to be undertaken against the background of the earlier conclusions of the 2015 determination which had been recorded by the judge and which I have set out above. That earlier determination related to the production of documentation which was inconsistent with the appellant's account. In accordance with **Tanveer Ahmed** it was necessary for the judge to approach those issues in the round, that is to say, assessing this evidence, along with and alongside all of the other material which he had present in the appeal before him, and the conclusion that little if any weight could be attached to this document on the basis that it was not genuine and reliable was one which was clearly open to him. That was not, to deal with the third point raised, a conclusion reached on a piece of discrete evidence after he had reached earlier conclusions. It is a conclusion which is reached in the context of assessing all of the evidence, both individually and collectively in reaching his overall finding, that he was not satisfied that the appellant had come from Sinjar or that there were reasons to depart from the earlier determination that that was the case.
18. Ground 4 is a complaint in relation to what is recorded in paragraph 40 of the determination about the expert's credibility in concluding that the appellant was "without a national ID card". It is submitted by Mr Greer that in fact it was the judge who was in error in this case because the appellant was recorded as having a CSID card, but the judge had become muddled as between a CSID card and the more recent form of biometric identification in the form of an IM ID card. This, it is submitted, was not a basis for discounting the expert's evidence.
19. In my view, there are a number of responses to this ground, which demonstrate its frailty. Firstly, this was not the basis of the judge's finding. It was expressly an observation made by way of additional concern about the expert's report. The principle finding, giving rise to affording limited weight to the country expert is set out in the first two sentences of paragraph 40. Secondly, as pointed out by Mr Tan in his submissions, the expert in his report observes in a passage not quoted by the judge, that the appellant does not have a CSID card saying that he is from the IKR. That, in fact, is incorrect. In my judgment, there is no substance in ground 4. The judge reached conclusions on the expert evidence that were open to him and without misdirection; his reasons are clear and set out fully in paragraph 40 of the decision.
20. The final ground, ground 5, relates to paragraph 45 of the decision, and is a contention that in paragraph 45 the judge's reasoning is unclear or elliptical. It is submitted that it is not possible for the judge to have found what he did in paragraph 45 in relation to the uncle's arrest on the basis of what is set out in paragraph 44 as to his assessment of the sur place activities of the appellant. That is a submissions which I am unable to accept. When the paragraphs are read together, as they must be, it is clear that paragraph 44 is addressing both the nature of the sur place activity engaged in by the appellant and the judge's conclusion that the objective information does not establish that the authorities are undertaking surveillance of individuals attending such demonstrations. That finding underpins his further finding in paragraph 45 that having concluded that the appellant would not have a political profile in Iraq which would bring him to the adverse of the authorities, there was no basis to conclude that his uncle had

been arrested or detained as a result of those sur place activities. The two paragraphs, in my judgment, hang together correctly and provide clear and coherent reasons for the judge's findings.

21. For all of these reasons and notwithstanding the skill with which Mr Greer has advanced the appellant's case this morning, I am unpersuaded that there is any substance in any of the grounds which have been advanced and the appeal must be dismissed.

Ian Dove

President of the Upper Tribunal
Immigration and Asylum Chamber

16th May 2023