



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000307

First-tier Tribunal No: PA/50921/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12th October 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SJR
(anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer
For the Respondent: Mr Schwenk, Counsel instructed by Freedom Solicitors

Heard at Manchester Civil Justice Centre on 10 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent (the Appellant before the First-tier Tribunal) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Respondent (the Appellant before the First-tier Tribunal), likely to lead members of the public to identify the Respondent (the Appellant before the First-tier Tribunal). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1998. He appeals with permission against the decision of the First-tier Tribunal (Judge Hollings-Tennant) to dismiss his protection appeal.

Background

2. The Appellant was formerly resident in the IKR. He left Iraq in the late summer of 2017 and made his way to the UK where he claimed asylum on the 29th January 2018. He claimed that he had fled Iraq to avoid harm at the hands of his paternal family, who perceived him to have committed an 'honour' crime by having an extramarital relationship with his cousin.
3. In an extraordinarily long and detailed refusal letter the Respondent rejected the claim for want of credibility. Although it was accepted that the Appellant is Kurdish, that his father had died and that his brother had been killed fighting Daesh, it was not accepted that the Appellant was at risk of honour killing. The Respondent gave multiple reasons for doubting the story of the affair, discovery and threats. Noting the Appellant's claim to be undocumented, the Secretary of State pointed to his youth, his resourcefulness and work experience, and the fact that as the family member of a martyred peshmerga he would receive assistance from the IKR government. He has friends in the area who helped him previously. In those circumstances there was not a real risk that the Appellant could fall into destitution such that might engage the UK's obligations under Article 3 ECHR/Article 15(b) of the Qualification Directive.
4. When the appeal came before Judge Hollings-Tennant all of that remained in issue. The Appellant did however have a further point to advance. He stated that since his arrival in the UK he has been active, particularly online, in protesting about corruption and human rights abuses by politicians in Iraq. He now claimed that these *sur place* activities placed him at risk of harm should he be returned.

The Decision of the First-tier Tribunal

5. Judge Hollings-Tennant rejected many of the adverse credibility points made by the Respondent. He did not find any inconsistency or implausibility in the Appellant's account of falling for his cousin, and appears to accept that there was a relationship. Judge Hollings-Tennant was not however prepared to accept that the Appellant now faced a risk of harm as a result. He noted country background evidence to the effect that it is the norm in Kurdish society for paternal cousins to marry and queried why in those circumstances the Appellant had not simply asked his uncle for his daughter's hand. Counsel for the Appellant had suggested that the Appellant was too poor to have done so, but the Judge rejected this reasoning:

"Whilst his uncle may well have preferred his daughter to marry someone else, I have some doubts that he would choose to kill her and the Appellant rather than allow them to marry in accordance with cultural tradition given the circumstances".

It was not reasonably likely that the uncle would have attempted to kill the Appellant, thus starting a blood feud, where this more reasonable alternative was open to him. Furthermore the Appellant appears to have fled without any regard for his female cousin, who was statistically at a far higher risk of honour based violence than he was.

6. As to the Appellant's *sur place* activity the First-tier Tribunal noted that he did appear to be "covering all bases" by posting online material critical of not only the IKR government, but the government of Iraq and various Shi'a militias. That said, having regard to the content on the Appellant's Facebook page Judge Hollings-Tennant was prepared to accept that the posts did reflect genuinely held political views, particularly in respect of the PUK and KDP. That did not however give rise to any risk of harm since there was no evidence that any of the posts would have come to the attention of these Kurdish parties. The Tribunal was not satisfied that the Appellant would have any problems arising from his lack of CSID as he could just retrieve it from his previous residence.
7. The appeal was thereby dismissed.

Error of Law: Discussion and Findings

8. This matter first came before me on the 2nd of September 2022. The Appellant was on that occasion represented by Mr Holt of counsel, and the Secretary of State by Mr Tan. In my written decision of the same date I found that the decision of the First-tier Tribunal was flawed for error of law to the extent identified below.
9. Mr Holt very sensibly condensed the grounds, not drafted by him, to focus on two central issues. Before I considered these I had to briefly address two remaining written grounds. The first was a general complaint that the Judge has made no findings on the Appellant's medical condition: he has been diagnosed with complex PTSD. The second was that it was unreasonable for the Tribunal to have found that the Appellant could simply get his CSID back from his house. As Mr Holt agreed, both of these points in fact stand and fall with the remaining grounds. If the Appellant is not at risk from his family or the government in the IKR, then neither his current lack of documentation nor his PTSD take the case any further.
10. Turning to the risk of 'honour' based violence, Mr Holt identified what he says are three errors in the Tribunal's approach.
11. The first is a failure to take material evidence into account. In drawing adverse inference from the Appellant's failure to try and find out what happened to his cousin, Mr Holt submitted that the Tribunal overlooked the evidence he gave at Q119 of his asylum interview, when he says that he "was asking" a friend to make enquiries about her. I cannot be satisfied that any such error arises - this evidence is expressly addressed at paragraph 29 of the decision.
12. Beyond that was this point. The Tribunal's central thesis about this element of the claim was that it would be entirely normal for the Appellant to have married his cousin. That being the case, there was no reason for his uncle to have reacted by wanting to kill his daughter and nephew. Mr Holt submitted that in making that finding the Tribunal failed to weigh in the balance the fact that the Appellant was only 19 at the time, and in a difficult position: he had lost his father and

brother in quick succession, had become estranged from other members of his family and would have been fairly isolated and poor. He was not really in a position to be asking for anyone's hand in marriage. Furthermore any finding on how the uncle did or should have reacted was entirely speculative, for which see the passage I have cited above.

13. I gave careful consideration to these submissions but having read the decision of the First-tier Tribunal as a whole, I was not satisfied that they were made out. It is evident that the Tribunal was well aware of the Appellant's young age at the time (paragraph 24), his isolation (22), his recent personal history (7, 21) and his lack of money (26). I do not accept that it did not weigh those matters in the balance when reaching its decision. As to what Mr Holt says was the impermissibly speculative conclusion about uncle's behaviour, I am quite satisfied that the Tribunal's decision was properly reasoned and logical. Much of what we do in this jurisdiction is by its nature speculative, but it only becomes impermissibly so if not founded on the evidence. Here the Tribunal heard evidence that this was a man who had taken in his brother's son, cared for him and helped him obtain employment. The country background material indicated that this was a culture in which the *expectation* was that this boy would marry his daughter. It was not irrational for the Judge to deduce from these facts that a marriage would be a more likely outcome than murder.
14. That leaves the Tribunal's approach to the Appellant's political activity. It is important to note that the Tribunal accepted that the Appellant's online postings were reflective of his genuinely held political views about the PUK and KDP, the two powerful political parties in Iraqi Kurdistan. It is also important to note that it appears to be accepted that the items in question are on the Appellant's Facebook page, that they are posted to an 'open' profile and that they are directly hostile to the parties and institutions of the IKR. The Judge was not however satisfied that any risk arose:

40.....However, his online campaigning does not necessarily give rise to a real risk of serious harm on return and there is no evidence to suggest he has been involved in organising protests or that his posts have come to the attention of the Kurdish parties.

...

42. The Home Office Country Policy and Information Note (CPIN) on political opinion in the IKR dated June 2021, indicates that the evidence does not demonstrate that a person is at risk of serious harm simply by opposing the KDP or PUK. Whilst there are some reports that political opponents have been arrested and ill-treated there is no evidence that such ill-treatment is systemic, though it goes on to say that those of a higher profile with a previous history of organising protests and demonstrations as well as journalists are more likely to be at risk of ill-treatment (see section 2.4.8). Mr Schwenk drew my attention to some evidence, in the form of an article from Reporters without Borders, dated 17th April 2020, that journalists have been arrested for Facebook posts critical of the authorities (appeal bundle, page 496). There are also some more recent articles which refer to activists and journalists having been arrested and imprisoned, though this does not demonstrate that such treatment is systemic nor is there

sufficient evidence before me to indicate that the Kurdish parties have the capacity nor the inclination to trawl through Facebook in order to identify all those individuals who may post critical or insulting comments. Having considered the evidence presented in the round, I do not consider that the Appellant has made out his case that he faces a real risk of serious harm due to his activities in posting on Facebook, notwithstanding the nature of his posts.

15. Whilst this decision by the First-tier Tribunal is as a whole thorough and well-reasoned, I am persuaded that the Tribunal's approach to this element of the case is flawed for error of law. First there was no requirement, as a matter of law, for the Appellant to demonstrate that the persecution of political opponents in the IKR is "systemic". The only question was whether it was reasonably likely that *this* claimant would be at risk. It seems to me that in answering that question the Tribunal's risk assessment was incomplete. Having found that the Appellant's postings resulted from his genuinely held political views, there is no forward looking assessment of how those views might impact upon the Appellant's safety once he returned to Iraq. Further the Tribunal's reading of the country background evidence and the nature of the Appellant's posts appears to be partial. There is for instance no analysis of the Appellant's post calling for protests against the IKR authorities in light of the passages in the CPIN [2.4.3] which refer to "dozens of young men" being arrested for "calling for protests through their social media accounts". It is implicit in this that those posts somehow came to the attention of the IKR authorities. I note in this regard that the decision nowhere considers the extent of the Appellant's connections or 'social graph' or whether these might have already led the IKR authorities to his Facebook page. For that reason I was satisfied that this part of the decision below must be set aside and the decision, insofar as it relates to the Appellant's *sur place* claim, must be re-made.

The Re-Made Decision

16. The hearing resumed on the 10th October 2023. The Appellant was represented by Mr Schwenk, and Mr Tan retained conduct of the case for the Secretary of State. I heard oral evidence from the Appellant and submissions from the parties, after which I reserved my decision which I now give.
17. It is not an issue that the Appellant has been undertaking extensive political activities in the United Kingdom. I was supplied with a bundle containing hundreds of pages evidencing this activity. This material covers the period from early 2018 to present. It includes numerous photographs of the Appellant attending demonstrations and meetings, Facebook posts on his own page and on those of others, and a letter from the chair of an organisation called Dakok, with whom the Appellant has become involved. In his oral evidence the Appellant described this organisation as a UK based group of activists who support freedom and human rights in Iraq, in particular in the IKR. They seek to publicise human rights abuses, and to keep the community in this country connected and supported. They are particularly concerned with protecting the youth. He said that they are an independent organisation not affiliated to any particular political party in Iraq. The letter from Dakok describes the Appellant as "an incredibly dedicated member" of the organisation, having acted as a security guard and assistant, and having helped to organise and make speeches at events. In respect of the latter, the bundle contains a transcript and photographs of a short

interview that the Appellant gave to NRT television on the 18th October 2022. The item was covering a vigil in Manchester City Centre to commemorate what they describe as the “great betrayal” of the IKR authorities failing to act upon the results of the 2017 referendum, and instead ceding territory to Arab Iraq.

18. None of that is disputed. Nor is it disputed that the Appellant’s activities are motivated by genuinely held political belief, that being the undisturbed finding of the First-tier Tribunal. I therefore accept and find as fact that the Appellant is a political activist who has widely posted on social media his critique of the current IKR government, and of the political establishment in the region more generally.
19. The question is whether any of that gives rise to a real risk of persecution should the Appellant be returned to the IKR.
20. For the Secretary of State Mr Tan accepted that there have been arrests of political opponents in the Kurdish region. He submitted however that the evidence falls short of establishing a risk to any political opponent. It is the Secretary of State's position that low level activists are not generally speaking at risk. He pointed out that the evidence of human rights abuses appears to be very specific: certain journalists and human rights defenders have been arrested, and the activity of famous social media influencers has been curtailed. Mr Tan asked me to find that the Appellant falls into none of these categories. He is at best a low level activist with no political affiliations in the IKR itself. There is no independent information about Dakok in the public domain. Mr Tan submits that there is no reason to believe that the authorities in the IKR would know or care about the Appellant's social media, or indeed real life, activity in this country.
21. Although the Appellant’s representatives have produced a good deal of country background information, in his submissions Mr Schwenk concentrated almost exclusively on the material in the new Country Policy and Information Unit report (‘the CPIN’) *Iraq: Opposition to the government in the Kurdistan Region of Iraq (KRI)* published in July 2023. He began by drawing my attention to the policy statement contained in section 3:

3.1.2 The evidence is not such that a person will be at real risk of serious harm or persecution simply by being an opponent of, or having played a low level part in protests against the KRG. Despite evidence that opponents of the KRG have been arrested, detained, assaulted and even killed by the Kurdistan authorities, there is no evidence to suggest that such mistreatment is systematic. The instances of mistreatment are small in relation to the vast numbers who attended the protests. Additionally, there is no evidence to suggest that the KRG have the capability, nor the inclination, to target individuals who were involved in the protests at a low level. As such, in general, a person will not be at risk of serious harm or persecution on the basis of political activity within the KRI. The onus is on the person to demonstrate otherwise. Decision makers must consider each case on its merits.

3.1.3 However, available evidence does indicate that the following groups of people may be at higher risk of arrest, detention, assault, excessive use of force and extrajudicial killing by the KRG authorities:

- Individuals with higher profiles: Those who have a prominent public presence, who are actively involved in or have previous history of organising or participating in protests and demonstrations.
- Journalists: Those who are seen to be criticising government officials or engage in critical reporting on controversial political or other sensitive issues, for example protests and demonstrations, corruption, abuse of authority etc.

22. I was taken to several passages relating to the arrest and detention of individuals involved with protests against the government in the IKR which accord with the Secretary of State's policy position as set out above. As to the likelihood that the government in the IKR would be willing and able to identify political opponents online, Mr Schwenk pointed to the numerous incidents outlined at CPIN section 14.1.9 whereby Asayish officers conducted pre-emptive arrests of journalists and teachers to "prevent them from demanding their legitimate rights" in planned peaceful demonstrations. Mr Schwenk asked me to infer from these many instances of arrest prior to demonstrations actually taking place that the government are likely to be monitoring the social media accounts of the people involved. More directly the evidence set out in the CPIN reads:

14.2.12 The same source additionally stated:

'KRI was considered a safer place for journalists for many years, however that was no longer the case due to crackdowns on journalists and media in September 2020. Between August 2020 and September 2021, the KRI security forces raided and, in some cases, closed media offices and headquarters in Dohuk, Erbil and Sulaymaniyah allegedly for covering the protests and violating Article 2 of Law 12 of 2010, which bars encouraging a public disturbance or harming social harmony in accordance with KRI law.

'Several cases of criminal proceedings were initiated in the KRI from March 2020 to 30 April 2021 against journalists and social media activists, who either covered the protests or wrote critical opinions about the KRI authorities. Basic rights and procedural safeguards were reportedly either disrespected or limitedly respected during respective court trials. Journalists were detained "on charges of spying or endangering state security" after their confession was "extracted under torture or by means of threats".

14.1.15 In March 2021 Freedom House stated that 'Political speech in the Kurdistan region can...prompt arbitrary detentions or other reprisals from government or partisan forces. Kurdish authorities arrested protesters and organizers, as well as bloggers, for criticizing COVID-19 lockdown measures, corruption, and the non-payment of state salaries. In December 2020, Kurdish authorities also arrested dozens of young men for calling for protests in their social media posts.'

14.1.18 The EUAA report published in June 2022 stated:

'KRI was considered a safer place for online activists for many years, however that was no longer the case due to crackdowns on journalists and media in September 2020.

'Online activists were being harassed and intimidated online. There were also cases where they were physically hurt, even killed, by state and nonstate actors because of content they would post online. Courts in the KRI ruled in some cases against attempts to penalize activists for the content they posted online, however those who targeted them were very rarely punished. It has also been reported that, in December 2020, the KRI authorities arrested many young men because they were calling for protests in posts on social media.

'Most of the incidents targeting activists were related to the attempts by the authorities to prevent media coverage of the protests and were recorded between March and August 2020. In the KRI, the targeting of civil society activists has been reported to intensify since August 2020. As reported in October 2021, 55 out of 81 activists arrested by the KRI authorities in the period between August and October 2020 remained in detention, with only five activists being brought to trial. Most activists were arrested under the charges of "undermining the security and stability of the region" which is punishable by life imprisonment under Article 1 of Law No. 21 of 2003.

'Human rights activists were reported to have faced arrests by the KRI authorities. Activists criticizing [the] social and economic situation were arrested and tried on defamation charges.'

23. Also relevant was an Amnesty International report dated May 2020 which detailed how teachers protesting about their salaries were arrested *en masse* at a demonstration, with five of them eventually being prosecuted under Article 2 of KRI Law No. 6 of 2008 for the "the misuse of electronic devices" for their role in organizing the protest [at 14.1.1].
24. Mr Schwenk also relied on those passages of the CPIN concerned with the television station NRT that the Appellant had appeared on, giving an interview critical of the IKR government:

14.2.2 In October 2020 HRW published an article entitled 'Kurdistan Region of Iraq: Media Offices Shut Down' which stated:

'Kurdish authorities have unlawfully closed two offices of a private media outlet, NRT, for over a month, apparently for covering protests and for broadcasts critical of the ruling party, Human Rights Watch said today.

'The Kurdish authorities had no court order and only imposed the shutdown in Erbil and Dohuk, the areas controlled by the Kurdistan Democratic Party, raising concerns that the closure is politically motivated. "If NRT broke the law, surely the authorities would have taken the appropriate measures to take the outlet to court," said Belkis Wille, senior crisis and conflict researcher at

Human Rights Watch. “But party officials have instead chosen to take actions outside of the scope of the law.” ‘...On August 11, 2020, Shaswar Abdulwahid Qadir, the leader of the opposition New Generation Movement political party in the Kurdish Region, issued a call on NRT, a private media outlet with TV and radio stations and a website that he owns, for public protests to demand better education, employment opportunities, and anti-corruption measures. On August 12, his call triggered protests across the region that lasted for about a week. NRT, which has both Kurdish and Arabic language channels, was the only outlet to cover the protests in any detail.

‘On August 19, NRT’s news director, Rebwar Abd al-Rahman, and another employee who was there told Human Rights Watch that the Asayish – the regional government’s security forces – raided their office in Dohuk and held the staff there for several hours, then ordered them to go home, seemingly in response to the protest coverage.

‘Al-Rahman said the security forces did not present a court order but said that they had instructions from a Kurdistan Democratic Party official to close down the offices. Al-Rahman said the Asayish also closed their Erbil offices on the same day, again without presenting any court documents. The offices have remained shut, though the channel has remained on the air as authorities did not close its headquarters in Sulaymaniyah down. This has meant that reporting teams in Dohuk and Erbil have been unable to report from the field and appear on TV spots.’

14.2.3 The same source further stated:

‘The authorities have taken other measures to intimidate NRT’s staff. On August 19, the Asayish arrested an NRT reporter in Zakho under the KRI’s Law for the Organization of Demonstrations (11/2010), which prohibits people from participating in protests for which the organizers have not sought advanced permission from authorities.

‘They held him for 11 days, then released him on bail and later dropped the charges, acknowledging he had been covering the protests as a journalist, al-Rahman, the news director, said. He said they also confiscated video equipment of two other reporting teams in Akre, one as a team passed through a checkpoint to report on a Turkish airstrike and the other at a checkpoint outside of Amadiya.’

25. My task is to evaluate the risk to the Appellant, on the facts as found, and in light of that uncontested country background material. In this appeal the burden lies on the Appellant to show a real risk of persecution should he be returned to the IKR.
26. I am satisfied that that risk must be made out to the lower standard. Three particular elements of the evidence lead me to this conclusion. The first is the extent of the Appellant's political activity in the United Kingdom. He has been

incredibly prolific in posting political material on his own Facebook page, and in following and contributing to the social media accounts of others, both individuals and organisations critical of the government in the IKR. He addresses not only current political grievances such as the salary disputes which led to the protests in 2020, but more fundamental historical critiques of the political establishment in the IKR, targeting both the Talabani and Barzani families as corrupt and traitorous. The second is the accepted fact that all of this activity is driven by a genuinely held political belief. In his oral evidence the Appellant stated that he would continue to hold these beliefs, and express these opinions, should he be returned home. That testimony was unchallenged, and on the evidence before me, it is difficult to see how it could have been. The third factor is of perhaps less importance, but it is nevertheless a factor that I have attached some weight to. That is the Appellant's named appearance on the news segment broadcast by NRT. It is clear from the CPIN that NRT is a media outlet which faces particular difficulty in the IKR, not only because of its insistence on broadcasting content criticising the government, but because it is owned by the leader of an opposition party.

27. Having had regard to the country background material set out in the submissions before me I find myself satisfied on the lower standard of proof that it is reasonably likely that the Appellant falls – or would fall if returned – into the category identified at section 3.1.3 CPIN: “individuals with higher profiles: Those who have a prominent public presence, who are actively involved in or have previous history of organising or participating in protests and demonstrations”. It follows that the appeal must be allowed.

Decision

28. The decision of the First-tier Tribunal is set aside to the extent identified above.
29. The decision in the appeal is as follows: the appeal is allowed on protection and human rights grounds.
30. There is an order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
11th October 2023