



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001876

First-tier Tribunal No: PA/11054/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:

8th November 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

IAH
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Lee, Counsel instructed by Turpin and Miller LLP
For the Respondent: Ms Cunha, Senior Home Office presenting Officer at

Heard at Field House on 29 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By my decision promulgated on 24 April 2023, I set aside the decision of the First-tier Tribunal. I now remake the decision.

Introduction

2. The appellant is a Kurdish citizen of Iraq who claims to face a risk of persecution in Iraq for two reasons. The first reason is that his family are involved in a family/blood feud. The First-tier Tribunal did not accept that there is an ongoing risk to the appellant from the feud. I preserved this finding and accordingly the issue of the blood feud was not before me. The second reason the appellant claims to be at risk in Iraq is that he filmed a KDP building burning down. This claim is considered in this decision.
3. The appellant also claims that removing him to Iraq would breach article 8 ECHR. He submits that he would face very significant obstacles integrating in Iraq because of his physical disabilities and mental health condition.
4. At the start of the hearing the parties agreed that the two issues in contention are:
 - a. whether the appellant is at risk of persecution (and therefore is entitled to protection under the Refugee Convention) because of witnessing and filming a KDP building burning down; and
 - b. whether the appellant, as a consequence of his physical disability and mental health problems, would face very significant obstacles to integration in Iraq such that he meets the conditions of the Immigration Rules (as set out in Appendix Private Life of the Rules, but at the time of the decision in paragraph 276ADE(vi)). It was not disputed that if the appellant establishes that there are very significant obstacles to his integration in Iraq his appeal would succeed on human rights grounds under article 8 ECHR. The appellant did not argue that he falls within the scope of article 3 or any other article of the ECHR.

The Protection Claim

5. In order to succeed in his protection claim the appellant must establish that there is a reasonable degree of likelihood that he will face persecution on account of having witnessed and filmed a KDP building burning down approximately eight years ago.
6. The appellant's account is set out in his witness statements. I also had the benefit of hearing him give oral evidence, where he was cross-examined by Ms Cunha. I have considered the witness evidence alongside all of the other evidence adduced on behalf of the appellant, including the country expert reports of Dr Fatah and Ms Laizer.
7. The appellant claims that a KDP member filmed him whilst he was filming a KDP building burning down. He states that a neighbour, Ali, who is a KDP member, was told that he was seen in a video filming the incident. The appellant states that Ali visited him at his home and told him not to go to any area controlled by the KDP. During cross examination, the appellant stated that Ali only visited him once and did not take or erase the film he had taken on his phone. The appellant stated that he does not recall why Ali did not erase the film and does not know why he did not take his phone. The appellant did not identify any other difficulties or issues arising as a result of filming the burning building.

8. Mr Lee submitted that the 'high point' of the appellant's protection claim is the evidence of Dr Fatah, who stated that it is plausible that a passerby filming the burning building would face some risk. Mr Lee also referred to Ms Laizer's report, where it is stated in respect of filming the building burning that "there are collateral risks present in potential [sic]". Mr Lee argued that the appellant's account considered together with the expert evidence demonstrates that the lower standard for a protection claim is established.
9. Ms Cunha argued that although the appellant may genuinely believe he faces a risk because of filming the fire, there is no objective basis to this, as the only consequence for the appellant (taking his case at its highest) was that a neighbour visited him and told him to avoid KDP areas. However, he was not arrested, did not receive an official visit, and the neighbour did not even delete the film from the appellant's phone. She noted also that the appellant did not state that there were any repercussions for his family. A further point made by Ms Cunha was that the incident occurred in 2015. She submitted that there is nothing to suggest that the appellant, who by his own account had no political involvement and lived a relatively isolated life due to his disability - and who has not distributed the video (or posted it online) - would be of current interest to the KDP, even if he might have been in the immediate aftermath of the fire.
10. I agree entirely with Ms Cunha. The appellant did no more than film a burning KDP building approximately 8 years ago. By his own account, in the period that followed, whilst he was still in Iraq, he was not arrested, did not receive an official visit from the KDP but rather a visit from a neighbour who is a KDP member, was able to keep his phone, and was not required to delete the film. Moreover, he has no political profile or involvement, and has not distributed or posted the film online which would potentially bring him to the attention of the authorities. The expert evidence does no more than suggest that it is plausible or possible that the authorities would have an interest in someone who filmed the incident. I consider the possibility that the appellant faces a risk on account of filming the building to be vanishingly small given how long ago it was, the lack of repercussions at the time, and the appellant having no political profile and not having distributed the film. The risk to the appellant, to the extent there conceivably is any, falls a long way short of "reasonable degree of risk". Accordingly, I do not accept that the appellant has a viable protection claim.

Article 8 ECHR and "very significant obstacles to integration"

11. A GP letter dated 26 May 2023 summarises the appellant's health difficulties as follows: he has polio and walks with a stick; suffers with his back and has chronic pain requiring strong analgesia; and has a diagnosis of PTSD. A recent assessment by consultant psychiatrist Dr Latifi dated 24 December 2022 describes the appellant as suffering from PTSD and major depressive disorder. This evidence was not disputed by Ms Cunha.
12. The appellant does not claim that he would be unable to receive treatment for his conditions in Iraq and he has not advanced a claim that removal would breach article 3 ECHR. Rather, he contends that the combination of physical and mental health difficulties from which he suffers mean that he is unable to meaningfully integrate into Iraq, given the way that disabled people are treated in Iraqi society.

13. In order to evaluate this claim it is necessary to consider the appellant's evidence as well as what the expert (and objective) evidence says about the treatment of those with disabilities and mental health conditions in Iraq and the IKR.
14. In his most recent statement, dated 22 August 2023, the appellant states that he was extremely isolated in Iraq, where he would rarely leave the house and "was basically kept inside one room." He states that he did not go out as people mocked and threatened him because of his disability; and months would go by at a time when he did not go outside at all. He also describes being treated badly by his brothers, who were embarrassed by and would verbally assault him. He states that if returned to Iraq he will be bullied, excluded and punished for his disability, and at risk of random violence and destitution. He states that he will never be able to work in Iraq and no one will help him. He also states that he has no contact with his family, and has not done for many years, and his whole life is based in the UK.
15. In his witness statement dated 24 September 2019, the appellant describes being unable to leave the house during the day, as people would insult and make fun of him. He describes several incidents of being attacked. These are:
 - a. In 2006 he states that he was attacked and beaten badly on his knee. He states that he was told that the attack was linked to the family with whom his family had a blood feud.
 - b. In 2014, whilst buying groceries, and out with a friend (Hassan), he was attacked by 2 or 3 people who hit him on the back of the neck. His friend Hassan was not attacked.
 - c. In 2015, whilst outside a barbershop and waiting for a friend, a car pulled up and someone threw a bottle at his head. He describes people coming out into the street and stopping the people in the car, but that they managed to get away.
 - d. The appellant states that after these attacks he did not want to leave the house at all and felt imprisoned.
16. At the hearing, in response to questions posed by Ms Cunha, the appellant stated that he has not been in contact with his mother for two years and is not in contact, at all, with his siblings. He described previously living with his mother and brother, and believes that his mother and brother continue to live in the same house, which is owned by the family. He stated that he would not have a bedroom on return because he has been away for so long, but he had a bedroom before he left, which is where he spent most of his time.
17. Ms Cunha asked the appellant about the incident in 2015 where he filmed a burning building. He explained that he was driving with a friend; and stated that the friend would frequently ask him to go out for a walk. He stated that he did not stop in a coffee shop or go to a shop with his friend, but just went for a drive. He also stated that he had never been to a tea-shop, as people would laugh at him. He stated that his mother (with money received from his brother) paid for his medical treatment. He also stated that, whilst in the IKR, he received a sum of money (equivalent of £35) every 3 months on account of his disability from the government. The appellant stated that in the KDP people

with disabilities are not looked at as human beings, and that he had a bad life. He stated that he has never worked.

18. Ms Cunha submitted that the evidence of the appellant (who stated that he received the equivalent of approximately £35 from the government) indicates that the government recognises the vulnerability of the disabled and provides some degree of support. She submitted that this support would be available on return, as the appellant only ceased receiving it because he left the country. She submitted that the threshold of “very significant obstacles to integration” was not met because the appellant has support from his mother, who in the past has financially supported him, and has accommodation (he would be able to live in the family home as he had done previously). She argued that the appellant’s English-language skills would assist him in obtaining employment and that the appellant would be able to resume relationships with friends. She noted that he has referred in his evidence to friends who had taken him on outings (including the drive where he saw the building on fire).
19. Mr Lee submitted that that the obstacles faced by those with physical and mental disabilities in Iraq is so severe that the appellant, as a result of his disabilities, would face very significant obstacles to integration. He submitted that the appellant has been consistent in his account of living an isolated life where he did not work, only rarely left the house and was shunned by his brothers; and that the appellant’s evidence is consistent with the expert evidence about the treatment of the disabled and those with mental health problems in Iraq. He argued that the problems the appellant will face due to his visible disability will be made even worse because of his mental health problems. He relied on the reports of Ms Laizer and Dr Fatah, where extensive consideration was given to the problems faced by those with disabilities in the IKR and Iraq.
20. I will now consider the evidence of Ms Laizer and Dr Fatah concerning the treatment of the disabled in the IKR and Iraq and how this impacts the appellant.
21. Ms Laizer, in her report, expresses firm views about the treatment of the disabled in Iraq (and in the Muslim world in general). She states (in section 3 of the report) that “many Muslims believe any form of disability to be punishment from Allah”; that there is a “widely held sentiment that the disabled should not be helped but instead shunned or driven out of the community”; and that the disabled face “stigma, derision, contempt, mockery and exclusion depending on the degree of disability that is apparent”.
22. Ms Laizer goes on to state that, based on the descriptions and diagnosis she has seen of the appellant, he would be highly likely to face discrimination and stigma in Kurdistan, as well as acts of random violence. She also states that people are expected to rely on family support and social services are limited. She also discusses (in section 4 of the report) the stigma faced by those with mental health problems, and refers to a religious perception that people who have mental health problems are being punished by Allah. She states that there is a general risk of being attacked for any conspicuous display of mental illness. Ms Laizer’s conclusion is that the appellant “suffers from permanent physical disabilities that would be highly likely to put him at some real risk of random harm from attack [and] he would also continue to face long-term discrimination in Kurdish and Muslim Iraqi society”.

23. I do not attach significant weight to Ms Laizer's conclusion for two reasons.
24. The first reason is that although she acknowledges that the stigma and difficulties faced by the disabled and mentally ill depend on the extent to which their disability is conspicuous or apparent, she does not consider how this applies to the appellant. The evidence about the appellant's health indicates that the only conspicuous and apparent aspect of his disability (or mental health problems) is that he requires a stick to walk. He does not have any facial or other disfigurement, a movement disorder, require a wheelchair, or have any visible manifestation of his disability other than requiring the use of a stick. Ms Laizer has not addressed why this would be sufficient to trigger the high level of hostility and contempt that she describes.
25. The second reason I do not attach significant weight to Ms Laizer's opinion is that she has made generalised assertions about Islam/Muslims that are not supported by references to any sources. I pause to make an observation (but note that this is not part of my reasoning as there was no evidence before me on this and it was not raised at the hearing) that, at least to me, it is difficult to reconcile the generalised and unsourced comments about the attitude and behaviour of Muslims to those with disabilities with the existence of numerous Muslim charities and organisations that are concerned with helping the disabled or with materials I have read in other contexts about the culture in many parts of the Muslim world of helping disadvantaged (including disabled) family and community members. I reiterate that this is no more than an observation and that the only relevant point for the purposes of my evaluation of Ms Laizer's report is that the assertions about the attitude and behaviour of Muslims are made without citing sources to support them.
26. Dr Fatah also considers the treatment of disabled in the IKR. In his report dated 19 March 2020, Dr Fatah cites (at paragraph 99) a 2020 WHO report stating:
- Social and physical barriers including stigma and discrimination, lack of adequate healthcare and rehabilitation services, and accessible transport, as well as barriers rising from designs of buildings and information communication technologies. Due to these obstacles, people with disabilities have generally poor health, lower educational achievements, few economic opportunities and higher rates of poverty. This also causes them to be marginalised and excluded from being active members in their community.
27. Dr Fatah expresses the view that care for individuals with "psycho-social disabilities" in Iraq is very limited, with a lack of government support. He states that there is no infrastructure to aid people with disabilities and people with disabilities face marginalisation and discrimination, with a greater risk of exposure to violence, abandonment and neglect. Dr Fatah states that the appellant's disability would impact his ability to gain employment and cause him to face obstacles participating in society. Examples of marginalisation that he gives in the section of his report on treatment by society (section 7.2) include a child with cerebral palsy and children requiring wheelchairs. Dr Fatah also cites a 2014 USAID report where it is stated that the majority of Iraqis with disabilities are excluded socially and economically and often the object of fear, mockery or negative stereotypes.
28. I attach weight to Dr Fatah's well-sourced description of how people with disabilities in the IKR are, in general, treated. I accept, in the light of his

evidence, that an individual with a conspicuous or visible disabilities is likely to face mockery, stigmatisation, and harassment. I also accept that the disabled (even where the ability is not conspicuous) will face difficulties in the workplace.

29. A difficulty with Dr Fatah's report is that, like Ms Laizer, he has not addressed whether the difficulties he describes would extend to a person where the only visible indicator of a disability is the reliance on a stick. I am not satisfied that Dr Fatah's evidence establishes that a person presenting in the way that the appellant does (i.e. without a movement disorder, disfigurement, or any sign of disability other than a difficulty walking such that he needs a stick) would face the societal discrimination and hostility described in the report. However, I accept that a person like the appellant is likely to face difficulties finding employment, given the physical limitations and the general negative attitude towards disability.
30. At the hearing, Mr Lee made submissions about the expert reports (as well as the WHO report referred to by Mr Fatah). He did not take me to, or make submissions, on any of the other objective evidence in the bundle. I have, nonetheless, reviewed the background evidence that was in the bundle. I have not identified anything amongst this evidence that takes the matter further than the expert reports.
31. In my view, the appellant has exaggerated the extent of his isolation when he last lived in the IKR. It is difficult to reconcile his claim to almost never have left his room with his account of leaving the home with friends on several occasions (to shop, to visit a barber, and to just take a drive). The only examples given by the appellant of leaving the home are the times when he was attacked. I do not consider it plausible that the appellant faced a violent attack on every occasion he left the home, which indicates that he left the home far more frequently than he has sought to portray in his evidence.
32. Drawing together my analysis of the evidence I make the following findings of fact:
 - a. The appellant has polio and requires a stick to walk, suffers from severe back pain, and has PTSD and major depressive disorder. These findings are based on evidence that was not disputed.
 - b. The appellant will be able to access adequate medical treatment in the IKR. This was accepted by the appellant.
 - c. The appellant has not worked in the IKR and would face difficulties accessing employment in the light of his physical disability, mental health problems, and the high unemployment rate in the IKR.
 - d. The appellant will have a national identity document on return. It was not argued that he would not have such a document.
 - e. The appellant will face some stigma and discrimination when outside the home as a result of his reliance on a stick to walk, but this is unlikely to be significant as his disability is not conspicuous (other than the need for a stick).

- f. The appellant will be able to live in his family home and will have the support of his mother, as he did before leaving the IKR. The appellant stated in evidence that he is not in contact with his mother for 2 years. I do not accept this. He did not provide any explanation for ceasing contact with her and it is implausible that he would stop communicating with his mother when his evidence was that he and his mother had a close and supportive relationship. My finding that he will be able to return to the family home is consistent *SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC)*, where in paragraph 32 of the headnote it is stated that "If P has family members living in the IKR cultural norms would require that family to accommodate P".
- g. The appellant speaks Kurdish, and is familiar with Kurdish society and culture.
- h. The appellant will be able to obtain the financial support (£35 every 3 months) that he previously received, although it may take some time before this resumes, as he will need to apply for it.

33. In order for the appellant to succeed under the Immigration Rules, he must establish (to the balance of probabilities standard) that he would face very significant obstacles integrating in the IKR. As explained in *Secretary of State for the Home Department v. Kamara [2016] EWCA Civ 813*:

The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family.

34. In *Parveen v Secretary of State for the Home Department [2018] EWCA Civ 932*, the Court of Appeal stated:

The task of the Tribunal is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as 'very significant'

35. I am satisfied that the appellant would not face very significant obstacles integrating in the IKR. He would face difficulties due to his mental health and physical health problems but would be able to obtain adequate treatment. He will face some societal difficulties as a result of his physical disability (which necessitates the use of the stick) but this will not be particularly significant as he does not have a physical disability that is conspicuous. His mental health problems will make life challenging, and impact his ability to establish new friendships, but the extent of his mental health problems is not such that this would be a very significant barrier, particularly as he will be able to access treatment. He is unlikely to be able to work and will receive very little in the way of state support (the equivalent of £35 every three months) but, as he will be able to return to his family home, he will not be destitute. He will not face the difficulties associated with not having a national identity document. Moreover, the appellant will be able to resume friendships with neighbours and friends who were friendly towards him before he left the IKR (such as the friend who took him for a drive when he filmed the IKR building on fire). In addition, he

speaks the language, is familiar with the culture and follows a mainstream religion. Having balanced all of the relevant factors, I conclude that the appellant has not established that there would be very significant obstacles to integration.

36. I have considered article 8 “outside the Rules”, by undertaking a balance sheet assessment having regard to the factors in section 5A of the Nationality Immigration and Asylum Act 2002.

37. Weighing against the appellant is the public interest in effective immigration controls. Consideration of this factor is required by section 117B(1) of the 2002 Act. I attach significant weight to this consideration because the appellant does not meet the requirements of the Immigration Rules.

38. I have not heard evidence on the appellant’s financial circumstances or English-language ability. For the purposes of this proportionality assessment, I will assume that the appellant is financially independent and speaks English, such that the considerations in section 117B(2) and (3) of the 2002 Act fall to be treated as neutral.

39. I now turn to the considerations weighing in the appellant’s favour. He has developed a private life in the UK. However, as his immigration status has never been more than precarious, in accordance with section 117B(5) of the 2002 Act, I attach little weight to this consideration. I recognise that where a private life has particularly strong features more than little weight can be attached to it, as explained in *Rhuppiah v. Secretary of State for the Home Department* [2018] UKSC 58. However, no features of the appellant’s private life in the UK have been identified that would warrant giving more than little weight to this consideration. Also weighing in the appellant’s favour is that he will face significant challenges, albeit not challenges that meet the threshold of “very significant obstacles to integration”, in the IKR. I attach weight to this in the proportionality assessment.

40. In my view, the article 8 balance falls firmly in favour of the respondent. The appellant does not meet the requirements of the Immigration Rules and, therefore, there is a clear public interest in his removal. There are considerations weighing in his favour in the Article 8 proportionality assessment, as set out in the paragraph above, but these fall considerably short of outweighing the public interest.

Notice of Decision

41. The appeal is dismissed.

D. Sheridan
Upper Tribunal Judge Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 November 2023

