



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001643
First-tier Tribunal No:
PA/51301/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 June 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

SA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr L Singh, Hasan Solicitors

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 22 June 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*) 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 any member of his family*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Iraq. He claims to have arrived in the United Kingdom on 3 December 2018. He claimed asylum on 31 January 2019. His claim was refused by the respondent for reasons set out in a decision dated 24 July 2020. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Dixon for reasons set out in a decision dated 2 March 2021.
2. The appellant claims the decision of the First-tier Tribunal is vitiated by material errors of law. The unnecessarily prolix and unfocused grounds of appeal raise what are said to be twenty separate grounds of appeal that consist of sweeping general statements. The author of the grounds of appeal is not identified, but it would serve as a useful reminder to the author that the function of the grounds of appeal is to assist the Tribunal by identifying, in a focused way that engages with the decision, the particular errors of law easily distilled, and relied upon. Here the grounds of appeal are almost as long as the decision challenged. They fail to follow any logical structure and are in large part repetitive, and incoherent.
3. In very broad terms, the appellant claims Judge Dixon failed to have regard to the relevant country guidance and the respondent's published guidance regarding the availability of a CSID from the Iraqi Embassy in London. At paragraph 3(v), the appellant also claims Judge Dixon failed to apply the lower standard of proof. If he had done so, he would have seen that the respondent had accepted the overall credibility of the appellant's account of his problems with his stepmother and the appellant's account that his father was a Peshmerga who had been missing for over a year. It is said that Judge Dixon "*.. Took it upon himself, casting off the mantle of impartiality*" to unfairly question matters when the credibility of the appellant's account was not raised in the respondent's decision. At paragraph 3(vii) the appellant claims, without elaboration, that Judge Dixon acted unfairly and has prejudiced the appellant's appeal. The appellant claims, at paragraph 3(xi) that at no stage was it contended by the Presenting Officer that the appellant's father is still alive in Iraq. The appellant maintains that he has nothing and no one left in Iraq, and that his father is still missing and that he has not embellished his account. He claims the core of his account has remained consistent and he could not be returned to any part of Iraq. At paragraph 3(xiii), the appellant claims Judge Dixon applied a higher standard of proof and failed to follow the relevant country guidance. It is said "*[Judge Dixon] conceded and finds the core of the appellant's account as credible at paragraph 35 of his determination but still, by applying a higher standard of proof, goes on to refuse the same*". The appellant claims Judge Dixon relies upon inferences and speculation in relation to matters that were not in issue between the parties. The appellant claims Judge Dixon failed to grasp the fundamental facts of the appeal, the essential case law, and the evidence before the Tribunal. Instead, he made a "*clear poor assessment of the evidence, written and oral*". The appellant alleges the tone had been set by Judge Dixon to misconstrue the evidence which was before him.

4. The grounds of appeal were helpfully and succinctly identified and summarised by First-tier Tribunal Judge Carolyn Scott when permission to appeal to the Upper Tribunal was granted on 29 March 2022. She said:
 - “1. The in-time grounds of allege that the Judge erred in making a material misdirection of law, both in respect of his failure to have regard to the Country Guidance decision of the Upper Tribunal in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC), and further, in finding that the appellant’s account was not credible.
 2. There is an arguable error of law. It is apparent from the respondent’s decision dated 24 July 2020 that the appellant’s account was largely accepted and unchallenged. For example, at [52], the respondent’s decision states, *‘Taking into account all of the above, it is considered that you have provided a detailed, externally consistent and internally consistent account of PMF presence in Tuz Khurmatu. Therefore, it is accepted that the PMF came to Tuz Khurmatu.’* In his decision, Judge Dixon made adverse findings in respect of the appellant’s credibility, on matters within the appellant’s account which the respondent had conceded and not withdrawn. This amounts to an arguable error of law.”
5. Before me, Mr Singh simply adopted the grounds of appeal and said that he had nothing to add to the matters set out in the grounds.
6. In reply, Mr Lawson submits Judge Dixon did not digress from the summary of the facts that are accepted as set out in paragraph [55] of the respondent’s decision. He submits that although the respondent might have considered the appellant’s account to be internally consistent and/or plausible, the judge was entitled to reach a different conclusion as to the detail of the appellant’s account when the claim was tested before the Tribunal. Mr Lawson submits that at paragraph [19] of his decision, Judge Dixon records the submission made by the Presenting Officer that the appellant’s credibility is challenged and the appellant’s account that he was assisted by Ali is not credible. Mr Lawson submits that at paragraph [35] of his decision Judge Dixon was careful to note that the respondent has found much of the appellant’s account to be credible on the basis that it is consistent with the known country information. He noted however that she left open the question of whether the appellant’s father is still alive. He explained, at [36], that he had approached the question of credibility with a considerable degree of caution for two reasons. First, the respondent has accepted the appellant’s account as being consistent with the background material and second, because the appellant was only a minor at the time of the events he describes.
7. Mr Lawson submits that it is the appellant’s account of what happened to him after the PMF came to Tuz Khurmatu on 16 October 2017 that was of particular concern to the judge. The respondent had accepted the appellant’s father was a peshmerga. As recorded in paragraph [42] of the respondent’s decision, the appellant had claimed his father’s job within the peshmerga was as a bulldozer diver and making soil barriers. At paragraph [71] of her decision, the respondent had noted the appellant’s father *“was a low-level member of the peshmerga and not influential within the peshmerga”* and did not consider the appellant or his father will

be a target for the PMF. Mr Lawson accepts that in her decision the respondent referred to the country guidance set out in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) (“SMO I”), but matter have since moved on particularly as far as CSID’ and redocumentation are concerned. Mr Lawson submits Judge Dixon was entitled to find, as he did at paragraph [44] that the appellant is not at risk from the PMF as his father had a low-level role in Peshmerga. He submits Judge Dixon was also entitled to find as he did at paragraph [46] that he has not found the appellant’s account to be a truthful one, and that his father is available in Iraq to assist him to obtain a CSID or an INID.

8. In reply, Mr Singh submits the appellant has always maintained that he does not know the whereabouts of his father and that he was subjected to abuse by his stepmother. He submits that in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) (“SMO II”) the Tribunal held that in order to enter and pass through security checkpoints, a person will require a civil identity document (a CSID or INID). The appellant has neither and the appellant would be returning to Iraq as a forced returnee. He submits that in the respondents CPIN; internal relocation, civil documentation and returns, Iraq, July 2022, at 2.6.9, the respondent confirms that those who return to Iraq or the KRI without a CSID or INID, cannot obtain one via a family member on arrival and who would be required to travel internally to a CSA office in another area of Iraq or the IKR to obtain one would be at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the ECHR. In these cases, a grant of Humanitarian Protection is therefore appropriate (unless the person is excluded from such protection).
9. Here, the respondent has said at paragraph [112] of her decision that the appellant is Kurdish and therefore he can return to the Kurdistan region of Iraq. He will be able to fly to Erbil International Airport (EBL) within the IKR. He will be able to relocate or return within the IKR.

DECISION

10. As the thrust of the grounds of appeal focus upon Judge Dixon’s assessment of the appellant’s credibility and claim it was not open to Judge Dixon to go behind the concessions that had been made by the respondent in her decision, It is useful to begin by reference to the respondent’s decision.

The respondent’s decision

11. The background to the appellant’s claim for international protection is summarised at paragraph [16] of the respondent’s decision. In order to be clear about the concessions made by the respondent in her decision dated 24 June 2020 I referred Mr Singh to the following:
 - a. It is accepted the appellant comes from Iraq; [para 35]
 - b. It is accepted the appellant is of Kurdish ethnicity; [para 41]

- c. It is accepted the appellant's father was a peshmerga; [para 45]
- d. The appellant's fear of the PMF started on 16 October 2017, as this was the day they took over Tuz Khurmatu. It is accepted that the PMF came to Tuz Khurmatu; [para 46 and 52]
12. As far as the appellant's account of events on 16 October 2017 is concerned, at paragraph [50] of her decision the respondent said:
- "You stated that at 10am after your stepmother left, your father's friend came and took you to a house however you are unaware of the location of this house (AIR 84). This is consistent with your assertion in your witness statement (WS 16). You stated that when you left the house with your father friend on the journey to the house, he advised you to keep your head down so you could not see anything but when getting in the car you could see houses and shops on fire, this is consistent with external information and is considered plausible (AIR 87, <https://alshahidwitness.com/security-tuzkhurmato-clashes/> accessed 17/06/2020)."
13. At paragraph [55] of her decision, the respondent said:
- "Following facts are accepted:
- Nationality
 - Kurdish ethnicity
 - Your father was a Peshmerga
 - PMF came to Tuz Khurmatu"
14. Finally, at paragraph [57] of her decision, the respondent said:
- "In light of the above conclusions, it is not accepted that you have a genuine subjective fear on return to Iraq. As it has not been accepted that you have personally come to the attention of PMF."
15. Prior to the hearing of the appeal the respondent had carried out a review having considered the appellant's Skeleton Argument and the appellant's bundle. In a document headed "Respondent's Review", the respondent confirmed she continues to rely upon her decision dated 24 July 2020.

The standard of proof applied by Judge Dixon

16. In various passages of the grounds of appeal the appellant claims Judge Dixon applied a 'higher standard of proof'. The claims made are misconceived. At paragraph [26] of his decision, Judge Dixon sets out a self-direction that the burden of proof in a protection claim is on the appellant and can be described as a reasonable degree of likelihood, which is a lower standard than the normal civil standard. It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Judge Dixon properly directed himself and there is nothing in the findings and conclusions set out at paragraphs [34] to [48] that even begin to suggest that the judge applied anything other than the 'lower standard' that applies.

17. The issue at the heart of the appeal before me is the adverse credibility findings made by Judge Dixon regarding matters the appellant claims were conceded by the respondent and were therefore not in issue between the parties.
18. The limited facts accepted by the respondent are identified in paragraph [55] of her decision. They are limited to the appellant's nationality, ethnicity, his father's occupation and the fact that the PMF came to Tuz Khurmatu on 16 October 2017 as the appellant claimed. In reaching a decision, the decision maker adopts a variety of different evaluative techniques to assess the claim. For instance, a decision maker will consider the consistency (or otherwise) of accounts given by the appellant at different points in time, and the extent to which the account is supported by reliable background material. Here, the respondent accepted the appellant's nationality because of the specific answers he was able to provide during interview that were consistent with country information about the area in which he claimed to live, Tuz Khurmatu, and Iraq. The respondent accepted the appellant's ethnicity because he was able to answer specific questions regarding his Kurdish ethnicity. The respondent accepted the appellant father was a peshmerga because the information provided by the appellant regarding his father's work and the uniform he wore, was consistent with the background material. The respondent accepted the PMF came to Tuz Khartum on 16 October 2017 because his claim in that respect was internally consistent and also consistent with background material confirming the PMF were in Tuz Khartum on that date.
19. At paragraphs [47] to [51] of her decision the respondent noted the appellant's account of what happened on 16 October 2017. She accepted the account given by the appellant in his asylum interview was consistent with the claims made in his witness statement, and the appellant's account is plausible. At paragraph [52] of the decision, the respondent said:

"Taking into account all of the above, it is considered you have provided a detailed, externally consistent and internally consistent account of PMF presence in Tuz Khurmatu. Therefore, it is accepted that the PMF came to Tuz Khurmatu."
20. That is simply a concession that the respondent accepts the PMF came to Tuz Khurmatu as the respondent subsequently confirmed in paragraph [55]. Although the respondent accepted the appellant's account of the particular events that he relies upon is plausible, that is not to say the respondent accepted the appellant's account is true.
21. The task of Judge Dixon was to make findings of fact in search of the truth. The burden of proof rested with the appellant albeit to a lower standard. It was in my judgement open to Judge Dixon to survey what is often referred to as the 'wide canvas' of evidence based upon all of the evidence before the Tribunal, so that the judge could decide whether the event claimed, had occurred or not. To simply say that an account is plausible adds nothing. An event might be considered plausible because it

is not inherently incredible and is supported by some background material, but that is not to say the Judge was bound to accept that that event occurred as claimed by the appellant. Put simply, where an appellant claims a fact occurred and there is no express concession that the fact occurred, a judge must decide for him or herself whether or not it happened. The fact either happened or it did not.

22. Judge Dixon acknowledged at paragraph [35] that the respondent accepted much of the appellant's account to be credible on the basis that it is consistent with the known background information. He confirms, at [36], that he approached the question of credibility with a considerable degree of caution because the respondent has accepted the appellant's account is consistent with the objective material and the appellant was only a minor at the time of the events he describes. It is clear therefore in my judgement that in reaching his decision as to whether an event occurred or not, Judge Dixon afforded the appellant the benefit of the doubt.
23. At paragraphs [37] to [42], Judge Dixon carefully considered the appellant's account that his stepmother and her children left Tuz Khurmatu with her brother and the appellant was abandoned in the city as his father was at work. Judge Dixon carefully considered the appellant's claim that his father's friend, Ali, came to the house and took the appellant to another place where he was safe, and where he was visited twice each week to be provided with food, for a period of approximately one year before arrangements were made by Ali for the appellant to leave Iraq. The appellant's account of events was tested in his oral evidence before the Tribunal. The oral evidence of the appellant is set out at paragraphs [11] to [18] of the decision. At paragraph [36] of his decision, Judge Dixon confirms he was not persuaded that the appellant has given a truthful account of matters. His reasons for rejecting the appellant's account of events are set out at paragraphs [37] to [43] of the decision. Judge Dixon was entitled, having heard the evidence of the appellant and having had the opportunity of observing that evidence tested, to conclude that on closer examination, the appellant's claims are vague and there is a stark lack of detail. It was in my judgement open to Judge Dixon to conclude at paragraph [43] that he did not accept the appellant was abandoned and taken to a safe house and confined there as he claims, and to reject the appellant's claim that his father is not available in Iraq to assist the appellant.

Documentation

24. As far as redocumentation is concerned, the evidence of the appellant as set out in paragraph [12] of the decision was that he had a CSID in Iraq that he had seen when he was a child. It was held by his father. At paragraph [46] of his decision, Judge Dixon said:

"As I have not found the appellant's account to be a truthful one, I find that his father is available in Iraq to assist him to obtain a CSID or an INID. Annex 1 to the Country Policy and Information Note, Iraq: Internal relocation, Civil Documentation and Returns: 'Information Obtained from the Home Office's

Returns Logistics Department April 2020', at question 4 under the heading 'Civil Status Identity Cards' indicates that his father would be able to act on his behalf to assist with the documentation process, in the first instance enabling him to apply for the registration document (1957) which can then be used to apply for an INID and other documents in Iraq."

25. Given the findings made by Judge Dixon that the appellant's father is available to assist appellant it was plainly open to Judge Dixon to conclude that the appellant's father is available to assist with the documentation process. I acknowledge that the CPIN referred to by Judge Dixon is now somewhat dated.
26. Mr Singh referred me to paragraph 2.6.9 of the respondents CPIN; internal relocation, civil documentation and returns, Iraq, July 2022. That does not assist the appellant. That paragraph refers to those who return to Iraq or the KRI without a CSID or INID, cannot obtain one via a family member on arrival (*my emphasis*) and who would be required to travel internally to a CSA office in another area of Iraq or the IKR to obtain one. However the question of 'redocumentation' does not arise. The appellant has a CSID and there is no reason to believe it is not held by his father. It is clear that the CSID held by the appellant's father could be sent to the appellant in the UK, or the appellant could be met by the appellant's father upon his arrival in the IKR. The respondent confirms at paragraph [112] of her decision that the appellant will be able to fly to Erbil International Airport within the IKR. The appellant will not therefore be required to cross check points between Baghdad and the IKR.
27. Having considered the decision of Judge Dixon I am satisfied there is no merit to the general claims made in the appellant's grounds of appeal. Judge Dixon carefully considered the claims advanced by the appellant and reached conclusions and findings that were open to him on the evidence before the Tribunal. He gives adequate reasons for the findings made. A fact-sensitive analysis was required. The findings and conclusions reached by the judge were neither irrational nor unreasonable in the *Wednesbury* sense, or findings and conclusions that were wholly unsupported by the evidence. It was open to Judge Dixon to conclude that the appellant is not a witness of truth and make an adverse credibility finding for the reasons set out in his decision. Here, it cannot be said that the Judge's analysis of the evidence is irrational or perverse. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence either individually or cumulatively, was a matter for him. The implication in the lengthy and repetitive grounds of appeal is that the evidence was considered by Judge Dixon, but not to the extent or in the way desired by the author of the grounds and the appellant. The appellant simply disagrees with the findings and conclusions that were open to Judge Dixon.
28. It follows that I dismiss the appeal.

Notice of Decision

29. The appeal is dismissed.

Case No: UI-2022-001643
First-tier Tribunal No: PA/51301/2020

V. Mandalia

Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 June 2023