



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003490

First-tier Tribunal No: PA/53150/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 11 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

DJ
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan of Counsel

For the Respondent: Mr Bates a Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 21 June 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. The Appellant was born on 1 December 1995. He is a citizen of Iraq born in Mama village in South Dubis in Kirkuk province. He appealed against the decision of the Respondent dated 8 June 2021, refusing his protection and human rights claim. That appeal was dismissed by First-tier Tribunal Judge Hillis in a decision promulgated on 29 June 2022.

Permission to appeal

2. Permission was granted by Judge Kudhail on 15 July 2022 who stated:

"2. The grounds assert that the Judge erred in his assessment of the Ms Lazier's report in finding that there was no assessment of the plausibility of the appellant account of having worked for the PMF and also inferring Ms Lazier believed this not to be in dispute. The grounds reference various aspect of the report which suggest otherwise. It is arguable the Judge has misdirected himself on the evidence, which has led to adverse inferences on a key issue. There is an arguable error of law."

The First-tier Tribunal decision

3. Judge Hillis made the following findings relevant to this error of law appeal:

"53. The qualifications and area of expertise of Ms. Laizer are not in dispute. She states at paragraph 3 *"I have been instructed to comment upon the plausibility of [Appellant named] fear of the PMF (Hashd al-Sha'abi) and the Iraqi Army."* It, therefore, appears from the instructions Ms. Laizer received that she was not asked to consider the plausibility of the Appellant's claim to have worked for the PMF from September 2017 to August 2019 and I can find no assessment of this issue in the report. The nearest reference I can find to an assessment of the plausibility of his account of being employed by the PMF is at paragraph 3 (xiv)b and is, in my judgment, lacking in a full reasoning of the issue. I infer that Ms. Laizer was under the impression that this aspect of the Appellant's claim was not in dispute.

54. Ms. Laizer considered the Appellant's claim that he was in fear of the PMF from paragraph 3 (ii) and expressed the opinion that the Interviewing Officer (IO) was not properly aware of the actual political situation on the ground or the make-up of the disparate Militias (paragraph 3 (xi)) which formed the PMF prior to ISIS taking control of the area, the Peshmerga ousting them and the Shia Militia latterly ousting the Peshmerga from the contested areas. She concluded that the Respondent was identifying inconsistencies where none, in fact, existed and gave the issue of the lack of insignia on the Appellant's uniform as an example (paragraph 3 (xiii)).

55. Ms. Laizer concluded at paragraph 3 (xiv) *"With regard to the RFRL at paragraph 46, I consider that Mr J provided a detailed and plausible explanation in interview as to his family background and family life in Dibis etc. and again in relation to the money he received as payment from the PMF at Q. 86 being some 700,000 IQD. GPPI notes:"*

56. At paragraph 3 (b) (i) Ms. Laizer considered the Appellant's knowledge of the commander of the base being a Turkman of Shia origin to be a fact that would not be known to *"outsiders"* which I infer are people not in the employ of the base he worked in or members of the PMF.

57. The conclusions reached by Ms. Laizer were summarised as follows,

"Under the circumstances as set forth above, I consider J's account to accord with the timeline of events in Tuz Khurmatu. I therefore consider the account plausible with regard to the associated risks on return to Iraq as a Kurd who briefly worked for the PMF but became a victim of the sudden and profound change of internal circumstances (that no one could foresee) following the positive result in the Kurdistan independence referendum on 15 September 2017.

The PMF may very likely have put his name on their blacklist under any pretext they wish.

In summary, I consider that a Sunni Kurd from Tuz Khurmatu born in 1995, Mr. J could not safely return to his birthplace or relocate anywhere else outside the KRI without facing risks to his security of life from the Shi'a militia, the Kurds and from ISIS. He would face generalised risks from ISIS forces that have been regrouping in the disputed territories owing to the power vacuum created there since the Peshmerga were forced out."

58. I infer from the above that Ms. Laizer understood the Appellant's birthplace to be Tuz Khurmatu which is inconsistent with the Appellant's account in his interviews. At SI 1.9 he stated he was born in Mama Duz in Iraq. In the chronology he relies on it states he was born in Mama, Dibis, Kirkuk Province Iraq. At paragraph 4 of the skeleton argument it states he was born in Mama village in South Dubis, in the Kirkuk Province, Northern Iraq. On the Appellant's account he and his family fled their home village when it was overrun by ISIS (AI 24).

59. ... it is not plausible the PMF would employ a Kurd who spoke no Arabic to be a security guard at the gates of their military base as this would create a risk of unauthorised personnel entering the base due to the Appellant's inability to question them in Arabic and read their identity documents. I do not accept it is reasonably likely that the commander in charge of the base would allow such an important security post to be manned by someone who did not speak Arabic.

60. ...the Appellant, having only been working for the PMF for about a month, a week of which was involved in training, would no longer have been placed in the position of security guard at the gates of the base when the PMF inside it were in an armed conflict with the Kurds from 16th October, 2017. The commander would not have taken such a course which could have led the Appellant to allow his fellow Kurds into the base to attack them.

61. The Appellant stated in his AI that his problems started in August 2019 when his colleague, A, told him that the PMF suspected him of being an ISIS spy and tipped him off in a mobile telephone conversation. In my judgment, it is not reasonably likely that the PMF would not have immediately arrested him at the base before talking about this in front of his friend, A, who might have been regarded as likely to tip off his friend allowing him to escape. On his own account, at AI 24 he said *"So they, as I say, they continued threatening us, the soldiers and commanders of the PMF until one day I received a telephone call from a friend of mine. He said the PMF managed to capture one of the ISIS members. That ISIS member was tortured and under the torture he mentioned my name and said I was with them. He advised me to go into hiding because the arrest warrant had been issued so on the same day it was around August 2019 I left Daz and went to Jalaula (sic). I knew they made it up against me some members of PMF fabricated that the same issue had been done against some of the Kurdish people before me and they were imprisoned for life."*

62. It is also not reasonably likely, in my judgment, that once the conflict started in October 2017 the Appellant's home and family would not have come under attack by the Kurdish community in which they lived if the Appellant was regarded as a traitor to their cause. On his own account, at AI 24 he said, *"in October 2017 a fight occurred between Kurds and Arabs in that area so Kurds were obliged to evacuate after that incident their behaviour had changed towards us simply because we were Sunni and they were Shia's. The officers of PMF were looking at us suspiciously like a traitor and they made threats against us, we were not able to go back to the Kurdistan controlled area, the Kurdistan region areas, because the Kurdish people thought that we betrayed them, we destroyed their properties."*

63. I do not accept as credible the Appellant's account that his training once he joined the PMF lasted for one week for such an important role as a security guard at the gates of the base and that it only entailed running, jogging and how to shoot a weapon (AI97). In my judgment, it would have required, at the very least, instruction and training in how to recognise genuine identity documents of people seeking entry to the base and how to approach them and ask them questions which the Appellant would have been unable to do as he does not speak or read Arabic. His account that he was not there to fight is simply not plausible as had there been an attempt by the Kurds or any other foe to get into the base by force he would have been required, in the first instance, to fight them off. That is why he would have been supplied with an AK47 assault rifle.

64. ... the Appellant has failed to show, to the low standard required, that he faces a risk of death, persecution and/or ill-treatment on removal to Iraq for any reason recognised by the Refugee Convention and, in particular, an imputed political opinion resulting from his employment by the PMF and/or being suspected by the PMF as an ISIS spy.

...

The Appellant's Private Life

75. The Appellant accepts that his circumstances do not engage the terms of paragraph 276 ADE and that he does not pursue an appeal based on a private life in the UK under any relevant Immigration Rule. I have found nothing in the evidence before me to show that this concession is in error."

The Appellant's grounds seeking permission to appeal

4. The grounds assert that:

"5. At [53] of the FTTD, the FTTJ has misdirected himself in finding that Ms. Laizer, the author of the Appellant's expert report, dated 02.02.2022 (the report), was under the impression that the plausibility of the Appellant's account of working for the PMF was not in dispute.

6. At [3] (i) - [3] (xv) of the report, Ms. Laizer had acknowledged the contents of [31] - [42] of the Respondent's Reasons for Refusal Letter, dated 08.06.2022 (RFRL), namely, the reasons that the Respondent had provided, under the subheading, 'You worked for the PMF and subsequent problems,' for rejecting this aspect of the Appellant's claim.

7. It is respectfully contended, that Ms. Laizer had therefore acknowledged as a matter of fact, that the Respondent had not accepted the Appellant's membership of the PMF, as affirmed at [42] of the RFRL. Furthermore, in view of Ms. Laizer's engagement of the contents at [31] - [42] of the RFRL, at [3] (i) - [3] (xv) of the report, Ms. Laizer had acknowledged the Respondent's Reasons for rejecting the Appellant's account of his employment for the PMF and subsequent problems.

8. Ms. Laizer had specifically addressed the plausibility of the Appellant's account of his employment for the PMF at [3] (iv), [3] (v), [3] (vi), and [3] (x) of the report. It is submitted that the FTTJ has misdirected himself in finding that Ms. Laizer was under the impression that it is was not disputed that the Appellant had worked for the PMF, and in doing so, the FTTJ has failed to consider critical evidence provided by Ms. Laizer, in assessing the plausibility and credibility of the Appellant's claim to have been employed by the PMF.

9. Based on the submissions, as set out above, it is submitted that there are grounds to review the FTTJ's finding at [59] of the FTTD, where the FTTJ has found that it is not plausible that the PMF would employ a Kurd who spoke no Arabic to be a security guard at the gates of their military base.

10. At [58] of the FTTD, the FTTJ has misdirected himself regarding Ms. Laizer's knowledge of the Appellant's birthplace. At [58] of the FTTD, the FTTJ has found that Ms. Laizer had understood the Appellant's birthplace to be Tuz Khurmatu (Tuz); however, this is incorrect, as Ms. Laizer had acknowledged the Appellant's family background and family life in Dibis, at [3] (xiv) of the report.

11. It is submitted that in view of the contents at [3] (xiv) of the report, Ms. Laizer's reference at [xi] under subheading, Conclusions of the report, at page [462] of the Appellant's Court Bundle (ACB), identify the Appellant as a former resident of Tuz Khurmatu.

12. It is submitted that it is necessary to review the FTTJ's finding at [58] of the FTTD, as set out above, on account of its interference of the reliability placed on the evidence and expert opinions provided by Ms. Laizer within the report.

13. At [59] of the FTTD, the FTTJ has found that it is not plausible that the PMF would employ a Kurd who spoke no Arabic to be a security guard at the gates of their military base as this would create a risk of unauthorised personnel entering the base due to the Appellant's inability to question them in Arabic, and read their identity documents. It is submitted that for the reasons, as set out below, the FTTJ has misdirected himself in assessing the Appellant's evidence of his role within his employment for the PMF.

14. At [59] and [63] of the FTTD, the FTTJ has inferred that the Appellant's role within his employment for the PMF included questioning personal upon entry to the base and

checking identity documents of personal seeking to enter the base. It is submitted that the Appellant's evidence does not suggest that his role entailed the duties as described by the FTTJ at [59] of the FTTD, nor does the Appellant's evidence suggest that the base that he had worked out was, as the FTTJ has found at [59] of the FTTD, an important security post.

15. Furthermore, at [3] (b) (i) of the report, under subheading 'Intra-PMF Coordination and Command,' Ms. Laizer had explained the matrix of the PMF umbrella in Tuz, and that there are a variety of PMF groups in Tuz, working under one umbrella; hence, there are various bases belonging to a variety of PMF groups, in close proximity. Ms. Laizer's evidence supports that the base where the Appellant was employed, under the Hadi al-Almeri of Badr [sect] ([3] (b) (i) of the report), was a local base of a PMF group and not the main PMF headquarters in Tuz.

16. For the reasons as set out above, the FTTJ has misdirected himself in assessing the Appellant's evidence, and in doing so, has respectfully inaccurately assessed the Appellant's role within his employment at the base, and the nature of the PMF base itself.

17. It is submitted that had the FTTJ not have misdirected himself, in his assessment of the Appellant's evidence, based on the reasons as set out above, he may have come to a different conclusion in his assessment of the plausibility and credibility of the Appellant's claim to have been employed by the PMF.

18. At [60] and [62] of the FTTD, the FTTJ has misdirected himself, in inferring that the conflict in the Appellant's home area, that started on 16.10.2017, was a dispute solely based on ethnicity. As explained by Ms. Laizer at [3] (b) (ii) - [3] (b) (xiv) of the report, the cause of the conflict starting on 16.10.2017, had evolved from several complex political reasons, and was not solely based on ethnicity alone, as stated at [3] (b) (iv) of the report.

19. It is respectfully submitted that the FTTJ has misdirected himself, in determining the Appellant's claim on the basis that the conflict was based solely on reasons of ethnicity, and in doing so, has drawn unreliable inference from an inaccurate basis, in reaching findings on the plausibility and credibility of the Appellant's account.

20. At [61] of the FTTD, the FTTJ has provided inadequate reasons for finding that it is not plausible that the PMF members would have talked about the accusations made against the Appellant in front of his friend, who may have been regarded as likely to tip off his friend [the Appellant]. It is submitted that the FTTJ has misdirected himself in assuming that the PMF members knew of the Appellant's relationship to his friend. Furthermore, the FTTJ has failed to consider that the PMF members had not directly spoken to the Appellant's friend, and any language barriers that the PMF members may have plausibly assumed would prevent the Appellant's friend from intercepting details of their conversation.

21. At [53] - [64] of the FTTD, for the reasons as set out above, the FTTJ has provided inadequate reasons for finding that the Appellant's account of his employment for the PMF and subsequent problems is not credible.

22. At [70] - [72] of the FTTD, the FTTJ has rejected the Appellant's explanation of why he has not attempted to contact his family, namely because he feels that in doing so, this may place his family in danger, due to his own problems with the PMF in being accused of collaborating with ISIS. It is submitted that for the reasons, as set out in the paragraphs above, the FTTJ's assessment of the Appellant's overall credibility is inadequate and made in error; therefore, should permission to appeal be granted, this aspect of the Appellant's claim ought to be redetermined.

23. It is submitted that as the Appellant is unable to attempt to contact his family, due to his fear of this placing his family in danger, he is unable to reach out to his family to seek support in re-documenting himself.

24. GROUND TWO- PARAGRAPH 276 ADE 1 (vi) (HC395 AS AMENDED)

25. At [75] of the FTTD, the FTTJ has misdirected himself in recording and assessing the Appellant's claim under paragraph 276 ADE 1 (vi) of the Immigration Rules. It is reaffirmed that the Appellant claims to meet the requirements of paragraph 276 ADE 1 (vi) of the Immigration Rules, on account of the same basis of his claim for Refugee status, or alternatively Humanitarian Protections status, as set out in the Appellant's Appeal Skeleton Argument."

Rule 24 notice

5. The rule 24 notice of 22 August 2022 states;

“4.The FTTJ refers to the instructions that were given to the expert and finds that it appears from the instructions the expert was not asked to consider the appellant’s claim to have worked for the PMF from September 2017 to August 2019. The FTTJ finds that there has been no assessment of this issue in the report and the nearest reference that he can find in the report the FTTJ finds that there is a lack of reasoning on the issue. It is submitted that the FTTJ has provided adequate reasons as to why he inferred that the expert was under the impression that this aspect of the appellant’s claim was not in dispute [53].

5. The letter provided by the expert with the GOA dated 4th July 2022 confirms that the question was as to fear of the PMF and not specifically the appellant being employed. While the expert goes on to say that she considered his explanation adequate the FTTJ finds that there is a lack of full reasoning on this issue [53].

6. It is submitted that the issue in relation to whether the expert misunderstood the appellant’s birthplace is not material to the outcome of the appeal. On reading the paragraph in the expert report [SB/pg462/paraxi] that the FTTJ refers to it can be seen why the FTTJ made the inference that he did [57-58] however the FTTJ merely points out that this is inconsistent with the appellant’s account. He makes no findings as to credibility or weight to be placed on the report in light of this inference.

7. It is submitted that the FTTJ provides adequate reasons as to why he does not find the appellant’s account that the PMF would employ a Kurd to be plausible. The FTTJ refers to the risk of unauthorised personnel entering the base [59], the appellant’s oral evidence at the hearing was that *“he was never asked to let anyone in he was not allowed to come in and he has never let anyone in who was not permitted”* [18]. It is submitted that the appellant’s oral evidence suggests that he was responsible for letting people into the base.

8. The respondent relies on FAGE UK Limited and Chobani UK Limited [2014] EWCA Civ 5 paragraph 114 and 115. It is submitted that the FTT J has made an evaluation of the evidence and the inferences to be drawn from that evidence. The FTTJ has provided adequate reasons as to why he concluded from the evidence as a whole that the appellant had not provided a credible/plausible account [60-64].”

Oral submissions

6. Mr Bates submitted regarding Ground 1 that at [59] the Judge gave careful consideration to the account and found it was not reasonably likely he would be asked to be a prison guard given the language barrier.
7. Ms Laizer’s report at [3 (iv)] noted the pre-existing inter-ethnic animosity and suspicion from before the change of control over the disputed territories from Kurdish control reverting to Baghdad which was intensified by the latest events.
8. Mr Bates asked why would the Appellant be needed to be a gate guard if he was not checking comings and goings?
9. The Judge was entitled to find that the family staying without problem undermines the claim.

10. Ms Laizer says the attacks were indiscriminate.
11. It is for the Judge to attach such weight as he was felt to be appropriate to the report. There was nothing irrational in what the Judge said at [60].
12. Ms Laiser noted at [3 (c) (viii)] “because the PMF and local forces were accorded legitimacy at state level and took the law into their own hands, thereafter, the Kurdish population...instantly became vulnerable on the basis of their ethnicity as well as the pretext of their Sunni sect to claim they were supporting ISIS, at the hands of the Shi’a militia...”
13. Ms Laiser did not provide evidence there would be no need to check documents.
14. There was nothing irrational in the Judges findings.
15. On one hand the Appellant was saying he was at risk from PMF and Kurds but his family home was not attacked and he cannot contact family. The Judge was entitled to find this was not credible.
16. The further report from Ms Laiser was not before the Judge. The Judge cannot be criticised for not considering it.
17. The Judge was entitled to find in light of Ms Laiser’s report that it was not plausible a private conversation could be overheard between the Appellant and his friend.
18. Regarding the Tuz Khurmato flashpoint, Ms Laiser sets out the background to the problems and suspicions between the groups. The Judge was entitled to find that the Appellant’s account was not plausible. Most of the background supports Judge’s conclusions.
19. Mr Khan submitted that inadequate attention was given to the report of Ms Laiser who was asked to consider the Appellant’s fear on return to Iraq due to his work. He was able to name the local commander which she referred to at [3 b) i)] which was not likely to have been known to an outsider.
20. The error suggesting Ms Laiser identified a wrong place of birth is material.
21. Judge failed to consider her findings in [3 c)] regarding the risk on return. The Judge did not apply an appropriate level of scrutiny. The Appellant is entitled to know why he lost. Ms Laiser’s report is an integral part of the evidence.
22. Regarding [276ADE], the Judge should have dealt with whether there were very significant obstacles to the Appellant returning to Iraq and should have factored in the findings in the experts report. The findings are inadequate regarding how the Appellant would get from

Baghdad to Basra without documents. This issue is dealt with by Ms Laiser at [5].

23. Mr Bates responded that where the Appellant was born is not material. At [59] there is a clear finding regarding not employing Kurds. There is limited reference to the expert as her view is predicated on his employment. [60] is in the alternative. Ground 2 is conceded by the Appellant as set out in the decision at in [42] as [276ADE] does not specify subdivisions. This usually stands and falls with the protection appeal. Regarding the documentation, at [70] the Judge points out the options to the Appellant.

Discussion

24. Regarding Ground 1, I accept that Ms Laiser was aware that the issue of whether the Appellant worked for the PMF was in dispute for the following reasons in [25-30].
25. She notes at [3 (vi)] that “Para. 46” of the refusal letter “reaches an incorrect conclusion as to risk not looking at the plausible high risks to a Kurd that had worked as a guard for the PMF under Badr and the long term imputed political opinion of therefore being a traitor to the Kurds.”
26. She also notes the question she was asked to consider at [3 c)] “The ongoing risks to [DJ] as a Sunni Kurd who worked for Badr and the PMF unit in Tuz Khurmatu as a security base guard, recruited before the internal boundary change.”
27. She opined at [3 c) i)] that DJ “can readily be scapegoated by both the PMF and Badr and by the KRG leadership in having worked for the PMF.”
28. She further noted at [3 b) i)] that DJ “also named Hatif Najad as the local commander, and a Turkmen of Shi’a origin. That information would not likely be known to outsiders.”
29. She further opined at [3 vi)] that DJ “plausibly suddenly found himself in altered external circumstances to those obtaining from the period when he joined up. Like others of his generation he was also in need of a job.”
30. Even though the Judge wrongly asserted that Ms Laiser did not believe the employment to be in dispute, the Judge considered her evidence in his assessment of that employment between [55-57] when considering the credibility of his claim to have worked as a security guard for PMF and hence the risk that flowed from that due to his ethnicity. The Judge therefore did not materially err.
31. I accept that the Judge erred regarding the place of birth issue. Ms Laiser identified him being born in Mama Village, and acknowledged his family background and family life in Dibis, at [3 xiv]. It has not however been explained either in the grounds or oral submissions how this error is material.
32. Regarding Ground 2, the material error in relation to the risk emanating from his ethnicity and claimed employment is plainly relevant

to the question of whether there would be very significant obstacles to him returning to Iraq. The Judge considered this as set out above and therefore did not make a material error of law.

Notice of Decision

33. The Judge did not made a material error of law. The decision of the First-tier Tribunal shall stand.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
26 June 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.