



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005421

First-Tier Tribunal Nos: PA/50809/2022
IA/02291/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 3 August 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

A A H
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Mohzam (Solicitor)

For the Respondent: Mr C Bates (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 6 July 2023

Order Regarding Anonymity

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

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

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hobson promulgated on 24th August 2022, following a hearing remotely by CVP on 18th August 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, born on 18th January 1985, and of Kurdish ethnicity. He arrived in the United Kingdom on 20th December 2016 with his wife and four children and claimed asylum on the same day. A fifth child was born to him in 2018 in the United Kingdom. The Appellant appeals against the refusal of asylum following his later submissions on 10th February 2021, in a decision reached by the Respondent on 15th February 2022. He had earlier appealed the Respondent's refusal decision of 5th November 2018, which was dismissed by Judge Maka on 4th February 2019, after which he had become appeal rights exhausted on 12th March 2020, before his latest submissions, which led to a fresh decision by the Respondent.

The Appellant's Claim

3. The Appellant's claim is that he is at risk of an honour based killing if returned to Iraq because he married a woman of the Kakai faith which was against the wishes of both families in 2007. Following this, he and his wife had run away. However, in October 2015 his wife's brothers had eventually found them out and thrown a hand grenade at their home. They had moved to another village. However, in November 2016 their home was attacked again. The Appellant feared that he and his family would be killed by the relatives from either side of their families and so he fled to the UK and made a claim for asylum.

The Judge's Findings

4. When Judge Hobson heard the appeal in August 2022 he considered the previous decision by Judge Maka who has rejected the Appellant's claim that he had encountered problems with his wife's family. In fact, he decided that the Appellant and his wife had married with the blessing and consent of both their families and had lived happily in Iraq, raising four children there. The Appellant had complained that he had lost his CSID card but Judge Maka had rejected this as well finding that the document was available to the Appellant for his use upon his safe return to Iraq.
5. The Appellant's later submissions consist of a report from the Ashti Organisation for Human Rights (of 9th March 2020) which had investigated the matter and concluded that the problem does exist. It cannot be resolved between the families. The organisation had spoken to the Appellant's wife's family, but they could not change their minds, and the report concluded that if the Appellant's wife's family find the Appellant and his wife in Iraq, they will kill them. They will not be charged with any crime because this is a family feud (see paragraph 9(b)).
6. Given that this is was a second appeal, with the first one having been before Judge Maka, the judge had regard to the rule in **Devaseelan** which states that

the first determination will be the starting point for any subsequent judge looking into the matter.

7. At the hearing, Judge Hobson heard evidence from the Appellant that when he married his family had disowned him, so that he had no contact with them between 2016 and 2020, after which he reconnected with his family in Iraq through social media. He has since been in regular contact with them and they have told him that they keep being harassed by the Appellant's wife's family who have threatened to kill them on numerous occasions (paragraph 20). The Appellant at the hearing had referred to the documentation from the Ashti organisation, which had been approached by the Appellant's father, and subsequently a member of staff at the Ashti organisation had sent the documents on to the Appellant (at paragraph 21).
8. In cross-examination the Appellant had confirmed that none of his family had actually come to any harm at the hands of his wife's family "but they had told the Appellant they were being verbally abused regularly" (paragraph 28).
9. In coming to his decision, Judge Hobson, after referring to the rule in **Devaseelan** (at paragraph 32), made a finding that "there were considerable inconsistencies in the Appellant's evidence about his dealings with his family", such that his evidence was "confusing and contradictory" (paragraph 33). The Appellant had earlier stated that he was at risk, not only from his wife's family, but also from his own family, and the judge observed that "it was not at all clear to me why the Appellant's family has apparently changed their approach to the Appellant suddenly in 2020 (paragraph 34).
10. With respect to the latest evidence, Judge Hobson observed that, I also found the timing of the complaint to the Ashti organisation lacked credibility" (at paragraph 35) because it arose after Judge Maka had dismissed the Appellant's appeal in January 2019, and after permission to appeal any further was finally refused on 6th March 2020.
11. The judge went further and noted that that when the Appellant's father made his complaint on 6th February 2020 to the Ashti organisation, "at that time, the Appellant would have known that his appeal had been dismissed by the First-tier Tribunal ..." (at paragraph 36). Given this, the judge concluded that, "In my judgment, the Appellant was trying to find ways to overturn Judge Maka's decision", which was not credible when it was considered, "after 13 years of apparent dispute with the Appellant's wife's family and estrangement from his son, the Appellant's father suddenly decided to file a report with the Ashti organisation" (paragraph 36).
12. Indeed, "the contents of the report also appeared to contradict the Appellant's claim not to have had any contact with his family between 2007 and July 2020" (paragraph 37). In fact, Judge Maka was satisfied "that the Appellant and his wife had remained in contact with their families throughout their marriage" (paragraph 38). Judge Hobson observed that "The evidence adduced before me did not lead me to a different conclusion" (paragraph 38).
13. Finally, the judge had regard to the principles set out in **Tanveer Ahmed (Pakistan) [2002] UKIAT 00439** and concluded (at paragraph 39 to 41) that the claim was not a credible one in the light of all the evidence. All in all, there was no need for Judge Hobson to depart from Judge Maka's finding (paragraph 43). The appeal was dismissed.

Grounds of Application

14. The grounds of application state that, in assessing the evidence from the Ashti Organisation for Human Rights after rejecting the truthfulness of the Appellant's account, the judge had fallen foul of the principle in **Mibanga [2005] EWCA Civ 367**. He had also failed to give adequate reasons for finding against the Appellant with regards to how his family might behave upon the Appellant's return to Iraq. On 3rd November 2022, the First-tier Tribunal rejected the application for permission on the basis that the judge had set out a number of inconsistencies with the Appellant's evidence (at paragraphs 33 to 42), and not least in relation to the timing of the complaint after thirteen years of dispute in the context of what was a "honour" crime, which the Appellant feared. However, permission to appeal was granted by the Upper Tribunal on 25th November 2022 on the basis that the judge had dismissed the impact of the documents from the Ashti Organisation for Human Rights, *after* he had already found the Appellant's account to lack credibility (see paragraph 41). This violated the principle in **Mibanga**. The representatives of the organisation, as the judge himself accepted, had visited the Appellant's wife's family (see paragraph 40) and so the organisation's report should have been considered in the round together with the other evidence before the judge decided to dismiss the Appellant's claim on the basis of lack of credibility. It was not open to the judge to make separate credibility findings.

Submissions

15. At the hearing before me on 6th July 2023, Mr Mohzam, for the Appellant, began by emphasising that the judge had already made up his mind (at paragraphs 31 to 37) on the basis of separate credibility findings, before any regard was had to the documentation from the Ashti organisation. What he ought to have done was to have looked at the contents of the documents in conjunction with the other evidence and made a single holistic evaluation of all the evidence. The very reason why these documents were produced was because the appeal by Judge Maka has been refused on asylum grounds, and that in itself is not a reason for casting doubt on it, given that the officials of the Ashti organisation had gone to visit the family themselves. The suggestion by the judge (at paragraph 36) that, "it was a calculated reaction to the dismissal of the Appellant's appeal by the First-tier Tribunal" does not mean to say that the contents of the report are in themselves fabricated for that reason.
16. For his part, Mr Bates submitted that it was plain that the Ashti documentation had been considered in the evidence as a whole because the Home Office representative had, in his closing speech for the judge submitted that the Appellant had deliberately brought "a complaint in order to create the impression of a feud for the purposes of the Ashti organisation report" (paragraph 29). What the judge had done was to recognise that, given the previous appeal had been refused, a false narrative had now been created. However, after citing the rule in **Tanveer Ahmed** (at paragraph 39) the judge had approached the Ashti information on a holistic basis recognising that "there was nothing in the documents themselves to suggest that they do not originate from the organisation named". He also added that "I was prepared to accept that an organisation called Ashti had, indeed, received a complaint from the Appellant's father had spoken to the Appellant's wife's family as detailed" (paragraph 40). It was only after that that the judge had gone on to say (at paragraph 41) that "the

value of the documents is limited to the credibility of the complaint itself”, which the judge had rejected.

17. Essentially, what the judge was doing was to say that the weight to be attached to this documentation was limited. He had gone on to say that, “I am satisfied that neither he nor any of his dependants are at risk of honour based violence in Iraq if they return there” (at paragraph 42) when referring to the Appellant. Judge Maka had previously ruled that the Appellant was in contact with his family and Judge Hobson also found the evidence before him from the Appellant to be that in July 2020 he reconnected with his family in Iraq through social media (paragraph 20). When the Appellant had been asked at the hearing whether he feared his own family as well as his wife’s, he had said that “he was in fear of his own family, although his fear was mostly of his wife’s family”, but that after he had made contact with his mother in July 2020 “he had asked for his mother’s forgiveness and they had now reconciled” (paragraph 26).
18. What was even more important, submitted Mr Bates, was the fact that the judge did give specific consideration to the Ashti report. This was after the Appellant had been asked about the Appellant having moved abroad, being inserted as a statement in the report, which was dated March 2020, which did not make sense “if he did not tell his parents where he was until July of that year” (paragraph 27). The Appellant’s answer that “his parents might have made their own enquiries before he resumed contact” was not something that the judge found to be credible. It is only after the judge has analysed the Ashti report that he finds against the Appellant. He points out how it was that “Judge Maka was satisfied that the Appellant and his wife had remained in contact with their families throughout their marriage.” He explains how the, “the evidence adduced before me did not lead me to a different conclusion: indeed, the contradictions I have referred to further undermined the Appellant’s credibility, in my judgment” (paragraph 38). Whilst the Ashti organisation, as an NGO would have acted in good faith, they would only have recorded what was given to them as information from the Appellant’s side. The fact was that the judge had considered the report in the round in the context of the overall evidence and concluded that all that the NGO here had done was to go and talk to the families, who had then said that there was an ongoing problem which had not been resolved.
19. In reply, Mr Mohzam submitted that the consideration of the report plainly came after the judge had already made his findings against the Appellant because it is very early on in his findings and conclusions, which starts at paragraph 31, that the judge concludes that, “I found that there were considerable inconsistencies in the Appellant’s evidence about his dealings with his family” (paragraph 33). Therefore, submitted Mr Mohzam, there was plainly an error of law here.

No Error of Law

20. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that the decision of the judge below should be set aside. My reasons are as follows.
21. First, the judge’s findings begin at paragraph 31, and whilst it is true that the judge then quickly moves on to say (at paragraph 33) that, “I found there were considerable inconsistencies in the Appellant’s evidence about his dealings with his family,” he is at that stage only expressing a view about the evidence orally given before him which he had found to be “confusing and contradictory” (paragraph 33). The judge gave proper weight to the documents, where that was

due, namely, when making it clear that “there was nothing in the documents themselves to suggest that they do not originate from the organisation named ...” (paragraph 40).

22. Second, any further weight that was to be attached to the documentary evidence from the Ashti organisation had to be considered in the context of the other evidence, and here the judge concluded that “the value of the documents is limited to the credibility of the complaint itself” because the judge “did not accept that the Appellant’s wife’s family had been harassing his own family for many years”, and that “the fact that the complaint was repeated to a human rights organisation does not make it more credible” (paragraph 41).
23. Finally, having assessed the evidence in the round, the judge returned to consider whether, on the basis of the principles in **Devaseelan**, the earlier decision of Judge Maka should be departed from. The judge concluded that with respect to the Appellant it was not the case that “his further submissions allows me to depart from the starting point of Judge Maka’s findings” (paragraph 42). That was a conclusion that he was entitled to come to.

Notice of Decision

24. There is no material error of law in the judge’s decision. The determination shall stand.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21st July 2023