



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004453
First-tier Tribunal No:
PA/52572/2021
IA/08302/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

HRM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. A. Bhachu, Counsel instructed by Freedom Solicitors
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 November 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. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Law, (the "Judge"), promulgated on 11 March 2022, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse his protection and human rights claim. The Appellant is a national of Iraq of Kurdish ethnicity.

2. Permission to appeal was granted by First-tier Tribunal Judge Dainty in a decision dated 20 April 2022 as follows:

“The grounds assert that the Judge erred in a number of ways including going beyond the issues agreed between the parties/behind a Respondent concession, failing to take into account important parts of the Appellant’s evidence, placing undue weight on the fact the Appellant has not joined an anti government organisation, improperly assessed risk on return, did not give the parties a proper opportunity to address the application of CG case XX (PJAK, sur place activities, Facebook), misapplied Devaseelan guidance and made an error of law in his assessment of the likelihood of the Appellant being able to redocument himself.

3. Since it appears that the Respondent did accept that the Appellant was a low level political supporter and did not put in issue that the sur place activities were opportunistic or non-genuine, it was arguably procedurally unfair and as such an error of law for the Judge to make the findings at [30] - [31] to the effect that the views expressed by the Appellant were not genuinely held, at least without giving reasons for the apparent departure from the Respondent’s concession. In addition, there is an arguable material error of law in failing to properly consider whether the urban nature of Sulaymaniyah, added to the passage of time since the evidence in the CG case of SMO was collated and the first inception of INID terminals, would of itself be capable of meeting the low standard of proof for showing that there was a real possibility that INID terminals had been rolled out in Sulaymaniyah. This would be material to either a humanitarian protection or article 3 risk based on the problems which would be encountered travelling from Baghdad to the IKR in order to obtain the INID in person. As such the appeal is granted.”

The hearing

3. At the outset of the hearing Ms. Bhachu stated that she had spoken to Mr. Lawson who conceded that Ground 7 involved the making of a material error of law. Ground 7 is concerned with the Judge’s findings in relation to redocumentation. Mr. Lawson then further conceded that there had been an error of law in the Judge’s approach as he had not raised points at the hearing which he then relied on to dismiss the appeal. In particular, with reference to Ground 1, the Respondent had not suggested at any point that the Appellant’s political activities were not genuine. Mr. Lawson asked that the appeal be remitted back to the First-tier Tribunal to be reheard de novo.
4. Given this concession, it was not necessary for me to go through all of the grounds of appeal. I heard brief further submissions in relation to these two grounds.

Error of law

Ground 1

5. Ground 1 asserts that the Judge erred in going behind the agreed issues between the parties. The Respondent, both in her decision and in her Review, had accepted that the Appellant had been carrying out genuine political activities in the United Kingdom. It was submitted that the issue to be determined was whether those activities were too low-level to create any risk. The grounds assert that this undermined the entire decision as it was “predicated on the finding that the Appellant does not hold genuine political views against the authorities in Iraq which have motivated his activities”.

6. I was referred to [16] and [21] of the Respondent's decision. At [21] she refers to the Appellant as a "low-level supporter". In her Review (page 833) she states that the Appellant has failed to demonstrate that he was "anything more than a low-level supporter". It was accepted by Mr. Lawson that it had never been an issue that the Appellant's political activity was not genuine but whether being a low-level supporter was sufficient to demonstrate risk.
7. At [6] of the decision the Judge quotes from [21] of the Respondent's decision: "you have failed to demonstrate that you are anything more than a low level supporter and it is not accepted that the authorities are or will become aware of your activities (paragraph 21)". He is aware of the Respondent's position. At [9] he sets out the Appellant's skeleton argument. At [10] he repeats the Respondent's position when setting out her Review - "However, the respondent's position remains that the appellant is nothing more than a low level supporter and the respondent does not accept that the authorities in Iraq are or will become aware of his activities."
8. The Judge appears to be aware that the Respondent's position was not that the Appellant's activities were not genuine, but that they were too low-level to cause him to be at risk. However, at [31] he states:

"I also have to consider whether the appellant would continue to express these views on return to Iraq. I take into account that he expressed no such views when he lived there, even though he insists he would continue to criticise the IKR government on return. I find that he would not do so, because their timing shows that his views are not genuinely held and, like his attendance at demonstrations, the purpose is solely to enhance his asylum claim. He is someone who was found to have been untruthful at his first appeal and he has put forward no explanations as to why the Tribunal on that occasion may have come to incorrect conclusions about his credibility. He has not satisfied me that he was telling the truth at his first appeal and he has not satisfied me as to the truth of his evidence now."
9. The Judge found that the Appellant's views were "not genuinely held". This was not an issue taken by the Respondent, and not an issue raised at the hearing. As the Appellant's political opinion was at the core of his claim, to go behind the Respondent's concession that the Appellant's views were genuine, albeit that he was a low-level activist, without putting this to the Appellant at the hearing is a procedural error of law, as properly conceded by Mr. Lawson.

Ground 7

10. I have set out above that it was further accepted by Mr. Lawson that the Judge had failed to deal properly with the issue of documentation. The grounds state at [14]:

"At paragraph 39 the Judge has found that if the Appellant can establish that there is a INID terminal in his home area, he will be exposed to a risk of harm. However, he finds that there is insufficient evidence for the Appellant to have discharged the burden of proof on him in relation to this issue. In so finding the Judge has made a material error as he has failed to fully consider the evidence contained in the CPIN report of June 2020. Although the Judge has quoted from parts of the CPIN in the preceding paragraphs, he has failed to take account of relevant information/evidence."
11. At [39] the Judge states:

“The appellant has to establish to the standard of reasonable likelihood that there is an INID terminal in his home area, in which case he could not obtain an identity document without going there in person - which would expose him to a risk of harm at a checkpoint. I find that the available evidence is insufficient for the appellant to discharge the burden of proof. Accordingly he has not established that whether in the UK or on return to Baghdad in possession of the registration document (1957) he would not be able to obtain a CSID card with the help of a family member or friend in his home area as his proxy. He admitted at the hearing that he his parents and brother were in Iraq when he left and I do not accept his evidence that he has for some unspecified reason become unable to contact them. In addition, I am not satisfied that the appellant would become destitute in the limited period of time he would have to spend in Baghdad while those arrangements were made, if the proxy had not made the arrangements while the appellant was still in the UK.”

12. Mr. Lawson properly conceded that the Judge had failed to consider the relevant background evidence. I find that this ground is made out for the reasons set out in the grounds.

13. Ms. Bhachu additionally submitted that, as the Appellant had previously submitted his CSID which the Respondent and the previous Judge had found to be fraudulent, the Appellant was undocumented. The Review states:

“Previously the appellant provided Iraqi Nationality Certificate and Personal ID, however, these were deemed to be fraudulent documents. You claim to have been documented in Iraq however you have made no attempt to obtain such documentation from family or friends in Iraq.”

14. It is not necessary for me here to assess the position in relation to documentation in any more detail. Since the date of the Judge’s decision, SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) (“SMO II”) has been promulgated. This sets out the position in regard to obtaining an INID. The appeal is to be remitted de novo. No findings are preserved so it will be a matter for the next Judge to decide whether the Appellant is undocumented taking into account all of the evidence presented, and then to consider the feasibility of return with reference to the case of SMO II and any further background evidence submitted by the parties.

15. I have taken into account the case of Begum [2023] UKUT 46 (IAC) when considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”

16. I carefully considered the exceptions in 7(2)(a) and 7(2)(b) when deciding whether to remit this appeal, together with the concession by Mr. Lawson. He conceded that the decision involved the making of a procedural error of law which went to the issue at the core of the Appellant's claim. I therefore agreed that it was appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

17. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.
18. The appeal is remitted to the First-tier Tribunal to be reheard de novo.
19. The appeal is not to be listed before Judge Law or Judge Osborne.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 November 2023