



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001964

First-tier Tribunal No: PA/50202/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 11th of January 2024

Before

UPPER TRIBUNAL JUDGE REEDS
DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

AKA
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ahmed of Counsel

For the Respondent: Miss Young a Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 3 January 2024

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 6 March 1996. He is a citizen of Iraq from Fallujah in the Anbar province of Iraq which is not in the Iraqi Kurdish Region (IKR). He appealed against the decision of the Respondent dated

19 May 2020, refusing his international protection and human rights claim.

2. The Appellant appeals against the decision of First-tier Tribunal Judge Fisher, promulgated on 10 February 2021, dismissing the appeal.

Permission to appeal

3. Permission was granted by First-tier Tribunal Judge Scott Baker on 5 March 2021 who stated:

“4. It is asserted that the judge had erred in law in finding that the appellant had contact with his family and gave no reasons. The judge had concluded overall that the appellant was not a credible witness. The findings in the decision are arguably adequate noting in particular the finding by the judge that in the alternative the appellant could apply for a 1957 Registration Document through the Iraqi Embassy in the UK which would enable him to obtain replacement documents on return. However the judge made no findings as to the risk to the appellant on return to Iraq with the 1957 Registration Document and whether there was any necessity to obtain further documents to enable him to travel to Fallujah. No findings as to the place of return or to the risk to the appellant in travelling to this place from Bagdad have been made and arguably the absence of such findings amount to an arguable error of law.”

Grounds seeking Permission to appeal

4. The grounds stated;

“2. It is asserted that the findings of the IJ are fundamentally flawed in respect of the issues of contact the appellant has with his family and documentation issues, due to a lack of reasoning for the findings made.

3. The IJ finds states that he does not accept the appellant has no contact details for his family, however fails to support this finding with any reasoning as to why. Similarly, the IJ finds that the appellant is in possession of his identity documents or can contact his family who can send these to him, with no consideration of the evidence and basis which has led to these findings.

4. It is also asserted that there is minimal consideration of the redocumentation issue, which forms a substantial part of the appeal. The IJ merely states that the appellant could apply to the Embassy in the UK for a 1957 Registration Document which would enable him to apply for replacement documents upon return to Iraq. The IJ does not consider this issue any further, failing to discuss the place of return, or whether the appellant could use this document in the place of return to obtain any replacement documentation. These are key considerations and require detailed analysis, which has not been done.”

The First-tier Tribunal decision of 10 February 2021

5. The decision of Judge Fisher does not contain any paragraph numbers. In order to be able to more easily understand the decision, as agreed with the representatives, we have included numbers for the findings section which we set out below having omitted the first paragraph which is not relevant to this decision. That is the only addition. The text is as written. The Judge made the following findings:

“1. The question of whether the Appellant’s father was involved in the Ba’ath party was not relevant to the issues in the appeal. Mrs Telford confirmed that it was not relied upon in support of his claim and the Appellant was not challenged on that aspect of his account in cross examination.

2. I am satisfied that this appeal largely turns on the issue of credibility. The January 2021 CPIN at paragraph 2.3.15, providing guidance to case workers, indicates that, where the actor of persecution is the PMF, protection is unlikely to be available. At paragraph 4.2.1, the PMF is described as a “hybrid actor”, operating at times in tandem with the State whilst, at others, competing against it. In paragraph 4.2.3, the DFAT in its August 2020 report describes the PMF as a State sponsored umbrella military organisation. In the light of all of this evidence, I conclude that State protection would not be available and I am not persuaded that internal relocation would be a viable option for the Appellant.

3. However, when assessing the credibility of the Appellant’s account, I note that, in response to question 4.1 of his screening interview, when he was asked to briefly explain all of the reasons why he could not return to Iraq, he replied that it was not safe for him in Iraq due to the fighting and the presence of ISIS in his village. He made no reference at all to a fear of the PMF. His explanation for this in cross examination was that he was not specifically asked that question and that he was concentrating on the question asked. I reject that as a satisfactory explanation. The question was quite clear. Although invited to be brief, he was asked for *all* (my emphasis) of the reasons for his claim. It is well established now that appellants are expected to be truthful in the screening interview and that answers given therein can reasonably be compared to later evidence: **YL(China) [2004] UKIAT 00145**. Question 4.1 of the screening interview gave the Appellant every opportunity to mention his fear of the PMF. The fact that he did not do so casts substantial doubt over the credibility of his account and is strongly suggestive of an account which has been changed after his arrival in the UK.

4. The Appellant went on to complete a Preliminary Information Questionnaire with the assistance of his representatives, who are experienced immigration practitioners. On that form, he claimed that both ISIS and the PMF had pressured him to join them. In cross examination, he denied having said this. I do not find it credible that his experienced representatives would have misunderstood his evidence so fundamentally and mistakenly inserted that information if, as he claimed, he had actually said to them that his brother had been killed by ISIS, and that it was his brother who was pressured by ISIS. That account is profoundly different to the information on the PIQ, and this discrepancy further reduces the credibility of the Appellant’s account.

5. I also found that the Appellant’s account was chronologically inconsistent. He told Mrs Charles, in cross examination, that he was approached to join the PMF once, and once only, in 2014. Her question could not have been made any clearer. Soon after, he said, his father sent him to the camp. That is inconsistent with his evidence in the substantive interview that he spent only 1½ to 2 months in the camp before he left Iraq. When Mrs Charles pointed out to him that this was inconsistent with his responses in interview and with the witness statement which he adopted, he then claimed that it was his brother who was approached by ISIS in 2014 and that the PMF approached him (the Appellant) in 2017. In his screening interview, at question 1.14, he said that he had spent six years in the camp. That is obviously inconsistent with his account of spending only 1½ to 2 months in the camp. There was no satisfactory explanation for these discrepancies.

6. The Appellant’s evidence in relation to his documents was also inconsistent. In his screening interview, he said that he had left his passport in Iraq. However, in cross examination, he indicated that his passport and CSID had been handed over to the agents en route to the UK. Once again, there was no satisfactory explanation for this discrepancy. It leads me to conclude that I cannot accept that he does not have access to his documents. I do not believe that the Appellant would not have contact details for his family, in order to let them know that he had arrived in a safe country, and I do not find it credible that his father’s friend would have his father’s contact details when the Appellant did not. I am satisfied that he is either in possession of his ID documents, or is in contact with his family who could send them

to him. In the alternative, I am satisfied that he could apply for a 1957 Registration Document through the Iraqi Embassy in the UK which would enable him to obtain replacement documents on return. Consequently, he cannot succeed on humanitarian protection or Article 3 grounds due to the lack of documentation.

7. Mrs Telford invited me to find that all of these matters were not inconsistencies, but examples of the Appellant expanding on his account or clarifying certain matters. If that were the case, I would have expected his later statements to add a gloss to his account. In fact, the variations in his account amounted to fundamental differences in it. I cannot therefore accept that submission and I find that these discrepancies are proof of an invented account, the details of which the Appellant has been unable to recollect consistently when asked about it on the differing occasions.

8. The Appellant travelled to the UK via Italy and France, both of which are safe countries. He did not claim asylum in either. He was fingerprinted in Italy on 7 June 2017. Even if he was under the control of an agent, his exposure to the Italian authorities whilst being fingerprinted would, in my judgement, have afforded him a reasonable opportunity to claim asylum. On that basis, I make a negative credibility finding against him under Section 8 of the 2004 Act. Obviously, it is not my starting point in the assessment of credibility, nor can it be determinative. It does, however, further reduce the credibility of any account which I have found lacking for all of the reasons set out above.

9. In conclusion, I am satisfied that the Appellant's account is a fabrication and so I dismiss it in its entirety. I do not accept that he has had any problems with the PMF, and so he can return to Fallujah without there being any breach of the Refugee Convention or the European Convention on Human Rights. There is no generalised Article 15(c) risk in Fallujah following the country guidance in **SMO** and others. Even if the Appellant were regarded as a single man of fighting age, his family has no association with ISIS and he would be able to evidence his recent return from the UK. None of the personal characteristics relevant to the sliding scale analysis are relevant to him."

Rule 24 notice

6. There was no rule 24 notice.

Oral submissions

7. Miss Young submitted that the reasons were adequate. The Judge noted that the Appellant's evidence was inconsistent regarding his documents. There was no satisfactory explanation for this. The Judge did not accept he did not have access to his documents. The Judge found he was in contact with his family. Paragraphs 6 and 7 of the findings section have to be read together as the reasons are contained therein. The findings regarding the 1957 Registration Document were in the alternative to the primary finding that had access to his documents. There is therefore no breach to his Article 3 rights. The Judge does not materially err in not mentioning he would be returned to Baghdad.
8. Mr Ahmed submitted that he was relying on the grounds seeking permission to appeal. On first reading there is no material error of law. The strongest point related to the 1957 Registration Document. The Judge made no finding as to the risk on return to Iraq on a 1957 Registration Document or the need to get further documentation to return to Fallujah. That is the main critical error. It was imperative for the Judge to grapple with it. This was in March 2021. There was no reference

to **SMO(1)** and no engagement with the risk on return. The Appellant is a Kurd and a Sunni Muslim. He would be returned to Baghdad. Changes have to be considered. This hearing is 4 years after the Respondent's decision. This is the only point relied on.

Discussion

9. There is no challenge to the findings that the Appellant had failed to establish any real risk from PMF or ISIS or to the assessment of risk of harm to the Appellant in his home area as a former contested area applying the "sliding scale" approach applying the Appellant's personal characteristics (see final paragraph of the FtTJ's decision). The grounds (paragraphs 2 and 3) assert that the FtTJ failed to give adequate reasons for the finding that the Appellant had contact details of his family or that he was in possession of his identity documentation. In assessing the grounds, we acknowledge the need for appropriate restraint by interfering with the decision of the FtTJ bearing in mind its task as a primary fact finder on the evidence before it and the allocation of weight to relevant factors and the overall evaluation of the appeal. Decisions are to be read sensibly and holistically; perfection might be an aspiration but not a necessity and there is no requirement of reasons for reasons.
10. The factual findings made by the FtTJ are set out above at paragraph 5. As set out there is no challenge to the findings of fact made which concluded that the Appellant had not given a consistent and credible account concerning the events in Iraq (see paragraphs 1 -7 of the FtTJ finding of fact section in the decision). Those findings made as to the Appellant's credibility should be read holistically alongside the other findings of fact are set out between paragraphs 6 and 9 of the FtTJ finding of fact section in the decision. The conclusion reached by the FtTJ having assessed the evidence was that he was satisfied that the appellant's account was a "fabrication "and stated that he "dismissed it in its entirety".
11. There is no material error of law regarding a lack of reasons on family contact or documentation. The reasons are set out at paragraph 6 and when read alongside the earlier findings of fact and paragraph 7 of the FtTJ finding of fact section in the decision as set out above. That is because the Judge found the Appellant would need them "in order to let them know that he had arrived in a safe country, and I do not find it credible that his father's friend would have his father's contact details when the Appellant did not." That reasoning was adequate and hence the finding was available to the Judge.
12. There is no material error of law in relation to the 1957 Registration Document as even if the Judge was wrong regarding problems he may have in obtaining such a document, the primary finding was that "I am satisfied that he is either in possession of his ID documents, or is in contact with his family who could send them to him." The reference made to the 1957 Registration Document was plainly in the alternative. As the FtTJ's

primary finding was that there was a reasonable likelihood that the appellant was in possession of his ID documentation, or that as he was in contact with his family, he did not therefore need a 1957 Registration Document. No challenge was made to suggest that this finding was not open to the Judge on the evidence.

13. There is no material error of law regarding the Judge not mentioning the Appellant would be returned to Baghdad. The FtTJ was plainly aware that the appellant's home area was in Fallujah and that this was a former contested area in the Anbar Province of the GOI (see paragraph entitled "introduction" and last paragraph which sets out his assessment of the issue of humanitarian protection and the Article 15 (c) risk in Fallujah). There was also no dispute that return for former residents of the GOI would be to Baghdad (see decision letter at paragraph 43 citing SMO (2019) and the ASA and the respondent's review). As the Judge was entitled to find the Appellant had, or had the ability to obtain, the documents that would enable him to safely return to Fallujah from Baghdad there was no other basis raised for asserting that he would be at risk of harm. It was the Appellant's evidence that he spoke Arabic as well as Kurdish. There is no challenge to the findings of fact that he was not at risk of harm in his home area nor to the assessment made that even if he were regarded as a single man of fighting age, his family had no association with ISIS, and he would be able to evidence his recent return for the UK. The FtTJ found that none of the personal characteristics relevant to the sliding scale analysis were relevant to him.
14. Mr Ahmed raised the length of time taken from the appellant's arrival in 2017, and the respondent's decision in 2020 and the hearing. The fact that this hearing is 4 years after the Respondent's decision does not indicate there is a material error of law as this was not pleaded in the grounds. In any event, the Judge's decision was only 9 months after the Respondent's decision and we are required to look at whether on the evidence then available to the Judge he materially erred, not on the evidence of the current situation.

Notice of Decision

15. The Judge did not make a material error of law. The decision of the First-tier Tribunal stands.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 January 2024

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.