IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004087

First-tier Tribunal No: PA/53206/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

BSASA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Lemer counsel instructed by Kidd Rapinet LLP
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 19 December 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 is a national of Iraq and is in his late 20s. The appellant left Iraq in 2019 and travelled to Turkey. From there, he travelled through several European countries over a time period of about 18 months and then came to the United Kingdom from France by boat, arriving in the UK on 22 September 2020.

2. The appellant claimed asylum shortly after arrival and the respondent refused his claim by letter dated 29 July 2022. The appellant appealed to the First-tier Tribunal (FtT) and in a decision promulgated on 22 August 2023 Judge Chapman (the Judge) refused the appeal.

In the First-tier Tribunal

3. In the FtT the issues were (as the Judge details them):

   a. Whether the Appellant would face a real risk of persecution on return to Iraq for being part of the Sunni Al-Rawi tribe, and its association with the former president of Iraq Saddam Hussein through Ayad Futayyih Al-Rawi, who was a commander in Saddam Hussein's Republican Guard.

   b. Whether A would face a real risk of persecution because he has an arrest warrant against him for the crime of insult and defamation contrary to Article 433 of the (Iraqi) Penal Code.

4. The appellant's case was that the arrest warrant was issued because he witnesses a fatal shooting of a neighbour, following which he left Iraq.

5. The FtT heard evidence from the appellant (through an interpreter) and from Dr Hafidh, who was called by the appellant to give evidence on the arrest warrant. The Judge considered 4 Country Information and Policy Notes (CPINs) and reports of both Dr Hafidh and Dr Giustozzi (the latter producing a "country expert report"). The Judge considered the Country Guidance case of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC).

6. The Judge analysed the evidence in light of the submissions of the parties and found against the appellant on the first issue (a decision that is not subject to appeal).

7. On the second issue, the Judge found that the claim was a plausible one, in that his account of the shooting was consistent with other evidence about arbitrary shootings and evidence that arrest warrants making false allegations were used by the authorities in inappropriate ways.

8. The judge considered the level of detail in the appellant's account, and was satisfied that the appellant had witnessed a murder.

9. The judge went on to consider a number of factors about the arrest warrant, including the analysis of it by Dr Hafidh, between [45] and [56]. In summary, these are:

   a. If an arrest warrant has been issued against the appellant by the Iraqi authorities, this would be determinative of the appeal in the appellant's favour;

   b. The appellant's evidence on whether the photograph of the warrant which was sent to him is unclear as to whether it was a photograph of the original or a photograph of a scan or photocopy;

   c. Dr Hafidh's experience of authentication of documents was limited. Dr Hafidh's evidence was that he does not authenticate documents, but

merely vouches for their plausibility and this is more difficult when presented with a photograph of a document rather than a photocopy or scan. Dr Hafidh could not explain why he considered the comparison document he used to be authentic. His evidence was that not having the original document meant that he was unable to give the strongest assessment about authenticity. Dr Hafidh's evidence was that he considered the warrant less likely to be authentic if it was a photograph of the original he was examining, rather than a scan or photocopy. Having considered Dr Hafidh's evidence, the Judge concluded that it was impossible to decide whether the appellant had provided a copy of an original warrant or a copy of a false warrant to the expert.

10. Having come to that assessment of the expert's evidence, the Judge goes on to consider the appellant's evidence on the arrest warrant.

11. The Judge notes that the appellant gave live evidence in the hearing that he had the original arrest warrant with him when he left Iraq and lost it when he was crossing the border between Greece and Albania.

12. In the Preliminary Information Form (PIF) provided to the Home Office, notes the Judge, the appellant did not claim to have seen the original and said that the copy he had handed to the Home Office was the same copy he had seen.

13. The Judge found his account of how he was able to obtain the copy arrest warrant incoherent, inconsistent and not credible. Because of this, says the Judge at [55-56], he found that he could not rely on the 'copy document presented in evidence to be a copy of a genuine arrest warrant'.

14. The Judge then details 8 other difficulties with the evidence on whether the appellant came to the adverse attention of the Iraqi authorities at [57]:

a. In the PIF the appellant was making a claim about the risks arising from being a Sunni Muslim, in contrast to his claim on appeal to the FtT;

b. The appellant stated in the PIF that a further person had seen the shooting;

c. The PIF does not mention that an arrest warrant was issued against him on the date of the incident, and being the reason for him leaving Iraq. This was inconsistent with his case on appeal to the FtT;

d. In his asylum interview the appellant stated that it was the police who were looking for him. In the PIF he claimed this was the military;

e. Although disputing the PIF in the FtT, he had signed the declaration of truth on the PIF, and it was read to him in a language he could understand;

f. The appellant claimed in the FtT that his previous representatives had made errors in the PIF, but the appellant had not provided evidence that satisfies the requirements of BT (Former solicitors' alleged misconduct) Nepal [2004] UKIAT 00311;

g. Although the appellant pointed to his mental health, the Judge noted that this had not been raised earlier and the Judge found no explanation why his memory was affected in relation to factors which might weight negatively against him, but not those which are favourable to him;

h. The appellant had not explained why or how the authorities are said to have identified him as a witness rather than his father or three brothers, all of who lived at the same address outside which the murder happened;

i. The appellant was inconsistent in his evidence on his time between leaving Iraq and entering the UK.

15. The Judge also identifies that when the appellant was asked in his asylum interview (as recorded in the AIR), he stated that he had seen the same copy which had been handed to the Home Office. He did not say that he had seen the original [54]. A further inconsistency identified by the Judge was that the appellant states he claimed asylum in Greece in the Preliminary Information Questionnaire, but in his asylum interview record only claims to have been fingerprinted in Greece.

16. The Judge found that the appellant's credibility was damaged because he had not claimed asylum in one of the safe countries he travelled through before arriving in the UK.

17. The judge was not persuaded that the arrest warrant was real, that the shooting happened on the claimed date or that this was the reason for the appellant leaving Iraq.

In the Upper Tribunal

18. The appellant sought, and was granted, permission to appeal on the single ground that the Judge had mis-recoded the appellant's evidence with regards to his possession of the arrest warrant. Rather than his evidence being that the had left Iraq with the arrest warrant, his evidence had been that his father had copied the arrest warrant before sending it to the appellant. As the permission to appeal put it, this may have infected the final decision on the credibility of the appellant's case.

19. I was provided with a copy of counsel for the appellant's note from the FtT hearing. The respondent did not object to it being submitted but submitted that a transcript of the hearing would be preferable.

20. The appellant submitted that the Judge's approach in considering the expert evidence and then the appellant's evidence was proper, and shows that a proper analysis of the appellant's account is key. Central to this is the appellant's account that he did not have the warrant with him on leaving Iraq, but that his father took a copy of it (which was later sent to the appellant on his phone).

21. The respondent pointed out that there were other points that went against the appellant's credibility.

22. Having heard the submissions of both representatives I came to the conclusion that fairness required me to have an accurate record of the appellant's live evidence available to me. Whilst I do not doubt the competence of counsel who

had represented the appellant in the FtT, I concluded that I should obtain a copy of the recording of the hearing as this would conclusively answer the question of what the appellant said. It proved impossible to obtain a link to the recording on the day of the error of law hearing, which was initially thought to be a possibility. I therefore rose and, later that day, gave directions as annexed to this decision.

23. Once the recording was available to me as outlined in my directions, I listened to the appellant's evidence. His evidence on how the arrest warrant left Iraq was to the effect that the arrest warrant was given by his father to a taxi driver from Baghdad, who drove it to Baghdad and sent it to Greece by DHL. This is at odds with the Judge's account of the evidence in the determination – the Judge's record of the evidence of the appellant was that he had the warrant with him when he left Iraq.

Analysis and conclusions

24. Having reviewed the recording of the evidence, it is clear to me that the Judge mis-recorded the evidence of the appellant with regards to whether he had the warrant with him when he left Iraq.

25. Although the Judge weighs all the evidence before him together when considering the arrest warrant, the Judge makes clear at [56] that the appellant's account of how he was able to obtain the copy arrest warrant was incoherent, inconsistent, and not credible. The Judge therefore concludes that the copy document presented in evidence is not a copy of a genuine arrest warrant.

26. It is conceivable that mis-recording an element of evidence, perhaps some peripheral that does not go to any issue in a case, would not necessarily lead to an error in the evaluation of the evidence. The mis-recording of evidence in this case weighs directly into the Judge's assessment of the credibility of the appellant's account. I assess that this is an error in the evaluation of the evidence, and so an error of law.

27. I take into consideration the other difficulties with the appellant's evidence that the Judge outlines. I have outlined them in some detail as I need to address the question of whether the error is material. That is to say, whether the FtT's error might, or could, have affected the outcome. In other words, whether there was any prospect of a different decision being made.

28. Without the Judge's error, the FtT would have been left with a different set of factors upon which to assess the appellant's case. In the appellant's favour is the conclusion that he had witnessed a fatal arbitrary shooting, and that an account of an arrest warrant being issued with false allegations in order for the authorities to exercise power over someone is consistent with other evidence about arbitrary shootings.

29. The conclusion on Dr Hafidh's evidence would have remained that it is impossible to decide whether the appellant had provided a copy of an original warrant or a copy of a false warrant. His evidence that he does not authenticate documents but vouches for their plausibility is in itself of note.

30. In considering the appellant's evidence, the FtT would have been in the position of having an explanation of how the appellant had come by the copy of the document on his phone. The appellant's account of how he lost the original

would remain unchanged. The appellant's case and account would retain the difficulties I outline at para 14 and 15 above. The appellant's credibility would remain damaged as he had not claimed asylum in a safe country through which he passed on the way to the UK.

31. The FtT would have been left with one less inconsistency in the appellant's evidence. Taking all the factors in the case into consideration, I find that there was no prospect of the Judge coming to a different conclusion on the appellant's appeal. Keeping in mind the lower standard of proof, the removal of one inconsistency would not have raised the appellant's evidence to a standard where he had proved that the copy document presented in evidence was a copy of a genuine arrest warrant, or to a standard where he had otherwise proved he had a well-founded fear of persecution for a Convention reason. The Judge may not have expressed this conclusion in the same way as he did in the FtT determination, but there was no prospect of a different outcome.

32. I therefore find that the error of law was not material in this case.

Notice of Decision

1. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

2. I do not set aside the decision.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 February 2024

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-994087

First-tier Tribunal No: PA/08516/2022

THE IMMIGRATION ACTS

Directions Issued:

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Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

B S A S A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME OFFICE

Respondent

Representation:
For the Appellant: Mr D Lemer of counsel, instructed by Kidd Rapinet LLP
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Order Regarding Anonymity

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DIRECTIONS

1. This case was listed before me for an Error of Law hearing on 19 December 2023. The appellant is a national of Iraq and had claimed asylum. The respondent refused the application and the appellant's appeal to the First-tier Tribunal (FtT) was unsuccessful.

2. The appellant's appeal centres on the question of whether the FtT wrongly recorded, or misunderstood, the appellant's evidence on whether he had in his possession an arrest warrant (which was later lost) when he left Iraq. In the preparation of this appeal the appellant had not sought a copy of the recording of the FtT hearing or a transcript of it.

3. After hearing full submissions by both parties, I concluded that it is desirable to adjourn the case to obtain a copy of the recording of the hearing, if possible. The recording will either confirm or correct the appellant's assertion about the FtT wrongly recording or misunderstanding the evidence that was given and so I do not find that a further hearing is necessary, after receipt of the recording, before I consider my decision on the Error of Law.

4. Having put the case back in the list I was informed by court staff that the method of recording used for this case in the FtT required CDs of the recording to be burnt by the court centre in Birmingham and sent to this Tribunal. I had hoped that the recording of this case would have been available via a link, but I am informed that this is not possible. I therefore adjourned the case.

5. I now give the following directions:

    a. On receipt of the relevant CD, the tribunal will offer each party the opportunity to attend Field House, within a fortnight of Field House staff receiving the CD, to listen to the recording;

    b. I reserve my decision on the Error of Law, which I will consider having heard the record of proceedings in the FtT;

    c. No further submissions are invited on the Error of Law, submissions having been heard today;

    d. Parties are at liberty to apply to vary these directions.

D Cotton

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 December 2023