



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-004584

First-tier Tribunal Nos:
PA/52399/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of July 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

BJA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Martin, Scott Martin Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at Edinburgh on 27 June 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 appeals against a decision made on 5 April 2023 to refuse his asylum and human rights claim. His appeal against that decision was heard by First-tier Tribunal Judge McGrade and refused for the reasons set out in his decision, promulgated on 2 October 2023. That decision was overturned in part for the reasons set out in the decision. He appealed against that decision to the Upper Tribunal and following a hearing on 4 April 2024, Upper Tribunal Judge Macleman found an error of law in the decision of the First-tier Tribunal and set it aside. A copy of Judge Macleman's decision is annexed to this decision.
2. Subsequent to a transfer order, the appeal came before me at Melville Street on 27 June 2024.
3. As Mr Martin fairly accepted, the issues in the re-making are narrow. The appellant is an Iraqi national of Kurdish ethnicity from Sulaymaniyah, in the Iraqi Kurdish Region ("IKR"), Iraq. His case is that he is at risk from the Kurdish authorities and the government of Iraq due to his actual and imputed anti-regime political opinion. His claim was, when made on 7 October 2014, the date which he arrived in the United Kingdom, was that he had deserted the Peshmerga forces and was at risk. That aspect of his claim was rejected.

Procedural History

4. As noted above, the appellant entered the United Kingdom in October 2014. His initial claim was refused and an appeal against that decision dismissed on 19 May 2017. Further submissions were made on 19 July 2019 but were refused although a right of appeal was granted. That appeal was also dismissed and further submissions were made on 2 February 2023. These were again refused giving rise to the decision under appeal dated 5 April 2023.

The Hearing

5. It was agreed that the appellant would not give evidence and instead I heard submissions from Mr Martin and Mr Diwnycz, Mr Martin having a reply to Mr Diwnycz's submissions. Mr Martin relied on his detailed skeleton argument. He did, however, depart from some of that in his oral submissions.
6. The appellant's case is that he has established a significant anti-regime profile through attendance and assisting in the organisation of demonstrations outside the Iraqi Embassy in London and outside the Iraqi Consulate in Manchester. It is his case also that he would continue to be an active opponent of the regime if returned to his country of origin and, as Mr Martin submitted, relying on SMO and KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 ("SMO (2)) and

the most recent CPIN that he would be at risk of being detained and tortured which would amount to persecution for a Convention reason.

7. Mr Martin conceded in his skeleton [6] that the decision of the First-tier Tribunal Judges should be the starting point for consideration and accepted that only part of Judge McGrade's determination was set aside. It is noted that the core of the appellant's prior claim was rejected as incredible. It is submitted that the issue must focus on the appellant's engagement in sur place anti-regime activities. It is submitted that the Tribunal's prior adverse credibility findings may militate against him but there is a limit as to how far this can be done in light of the concession by the respondent that the anti-regime activities had been carried out bona fide [**note to self: insert quote**].
8. Mr Martin submitted that the appellant's immigration history and lack of documentation will require him to undergo some form of check in the United Kingdom before a laissez-passer can be issued to permit him to return to Iraq which he accepts would be to Sulaymaniyah in the IKR. He submitted that the appellant is likely to be interrogated on return by the Asayish, that being the body being responsible for the security screening process (see SMO(2) at [30]).
9. Mr Martin submitted there is a reasonable likelihood that the appellant's Facebook profile will be interrogated, and that following XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23, applied by analogy to Iraq, that there is a reasonable degree of likelihood the appellant would be asked about his lengthy absence from the country, his activities in the United Kingdom and that this is likely to give rise to a risk of ill-treatment on the basis that he is a political opponent of the regimes in Iraq and the IKR. It is further submitted that the Asayish ignore the law and are responsible for politically motivated disappearances and abuses.
10. Mr Martin submitted that the Facebook posts are open and that the appellant posts frequently, that he would be at risk at the point of return.
11. It is further submitted in the skeleton at [3] that the appellant does not hold a CSID or INID and that if he is to be believed, he cannot return to his local Civil Status Affairs office in Sulaymaniyah where he would go to be documented as that area has introduced the new INID. It is submitted that he cannot safely attend his local Civil Status Affairs office to get documented as he would be at risk due to his anti-regime political opinion and avers also he has no family support network in Iraq.
12. Mr Martin noted that there was prior finding that the appellant's CSID was with his family.
13. Mr Diwnycz submitted that the background evidence was no better in supporting the appellant's position since the appeal before the First-tier. He submitted that there was nothing to show a systematic approach by the Iraqi or IKR authorities to ill-treat those who had demonstrated against the regime in the United Kingdom. He submitted that the risk factors

identified in SMO(2) are directed to identifying those who may have had a connection with ISIS or ISIL and that there was insufficient evidence of an interest in those who had taken an anti-regime stance.

14. In response Mr Martin submitted that there was some support in **SMO** for the submission that political activists are at risk and that there is evidence of a crackdown and dissent within the IKR. He accepted the core issue here is whether the appellant's subjective fear is objectively justified.

The Law

15. It is for the appellant to demonstrate he has a well-founded fear of persecution, to the lower standard.
16. In assessing the appellant's claim I have done so in the light of the background evidence, and in particular with regard to the most recent guidance SMO (2) bearing in mind the appellant's case is that he is at risk on account of his political views
17. The starting point in this case is whether the appellant would be at risk in his home area and or elsewhere in Iraq, given that he fears the authorities.
18. It is accepted that the issue in this case is a narrow one. It is accepted that the appellant has established an online process setting out his objections to the current regime both in the IKR and Iraq. It is accepted also that he has attended demonstrations outside the Iraqi Embassy and the Iraqi Consulate.
19. It is submitted first that he would be at risk at the point of return of being subject to interrogation and ill-treatment on account of his established profile; or, that even if released into the country, he would seek to continue his activities as before and that this would bring him to the adverse attention of the authorities.
20. I accept that the appellant has produced articles critical of the regimes on Facebook. I accept he has also attended in good faith demonstrations and that the articles were written in good faith. Despite the other findings with respect to his credibility reached by previous judges, I accept that he has done so in good faith and that it follows that he has a subjective fear on return to Iraq. The question is whether that fear is objectively justified bearing in mind the low standard applicable in asylum cases.
21. There is limited information about the extent to which the Iraqi or IKR authorities monitor the activity of anti-regime activists within the United Kingdom. There is limited information also regarding as to how they react to those people if returned.
22. I have considered carefully the CPIN "Country Policy and Information Note Iraq: Opposition to the government in the Kurdistan Region of Iraq (KRI) Version 2.0 June 2021" set out in the First-inventory of Productions provided to the First-tier Tribunal. I was not taken to any later version.

Section 11 of the CPIN is entitled "Treatment of opponents to the KRI authorities". Much of that relates to the arrest and detention of demonstrators, principally civil servants, who had not been paid. There is also evidence [11.1.7] of a campaign of arrests of civil society activists to prevent them demonstrating. This continued on into 2021, but I am not satisfied that this is indicative of a risk to the appellant given the absence of evidence of his involvement with this specific issue. Nor does this information related to actions taken outside Iraq, although I do accept from [11.2] that actions have been taken against journalists and media offices within the IKR due to actions taken there. There has also been, I accept, incidents in which there were extrajudicial killings and excessive use of force.

23. I note also from section 11.5 that the Law to Prevent the Misuse of Telecommunications Equipment has been used against demonstrators and to stifle dissent, this does not appear to have been used against those outside Iraq. Mr Martin did not take me to any passages in the material which indicate such actions by the Iraqi or IKR authorities
24. I accept the submission made by Mr Martin that it is reasonable to expect that when a laissez-passer is applied for, that the Iraqi Consulate or Embassy would undertake checks. I am prepared to accept also that it is likely that they would do a simple Google search on such a person and that he is likely to be asked questions about what he has been doing in the United Kingdom for the last ten years.
25. I find it unlikely that the Iraqi consular officials would not ask what the appellant had been doing in the United Kingdom and it I consider it would surprising if he was not asked if he had sought asylum in the United Kingdom and at the least an outline of the basis of his claim. What is less clear is what the Iraqi or IKR authorities would do about that information. I accept given the background of what is said in SMO (2) that the understandable interest that the authorities have in returnees that he would be questioned on return. The tenor of the background is of course, as noted in SMO (2), concerns of those who had been involved with ISIS or ISIL returning to IKR or Iraq which would give rise to serious security concerns. Those factors are identified in SMO (2). I do not, however, consider that this appellant falls within those categories. It would be evident that the appellant although of military age, was not coming from an area of ISIS or ISIL activity and indeed having spent the previous ten years in the United Kingdom this would tend to suggest that he was not involved.
26. Whilst Mr Martin has referred me to XX (PJAK) care must be taken in applying those considerations which apply there in trying to read over how the Iraqi or IKR authorities would react as opposed to how the Iranian authorities would react on coming across somebody who had expressed anti-regime activities. How Iran reacts to dissent is well-evidenced.

27. Bearing in mind Mr Martin's careful submissions and the background material, which provides little evidence of a systemic approach to those active against the regime, I find there is in reality insufficient evidence to show that adverse interest would flow from somebody who had made the type of posts made by the appellant or had attended anti-regime or even organised anti-regime demonstrations. I accept that he may be questioned about it but I am not satisfied on the basis of the evidence, that even bearing in mind the low threshold that there is a reasonable likelihood of the appellant being seen as of being such adverse interest that he would be ill-treated or otherwise subject to persecutory treatment. I do not discount his subjective fear of that but I simply find that there is no proper objective basis to support his claim to be at risk of persecution.
28. Similarly, I find insufficient evidence to show that if he were to continue the activities at the same level as he did in the United Kingdom that this would lead to the adverse attention of the authorities. Whilst there is some evidence of a crackdown and dissent, there is no sufficient evidential basis on which I could, even bearing in mind the low threshold, conclude that he would be at risk from continuing to make posts on Facebook or in attending demonstrations; or, for that matter assisting in the way he had done before.
29. With regard to documentation, I note the preserved finding by Judge McGrade at [13] that:
13. I am not satisfied it is appropriate to depart from earlier findings that the Appellant has family in the IKR, has a CSID there and that his family can assist him.
30. In the circumstances, I am not satisfied that he would be in difficulty on arrival owing to not having a CSID or in obtaining an INID.
31. In summary, for these reasons, I consider that the appellant has failed to establish a well-founded fear of persecution in Iraq and I dismiss the appeal.

Notice of decision

- 1 The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
- 2 The decision is remade by dismissing the appeal

Signed

Date: 2 July 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal

ANNEX – ERROR OF LAW DECISION

Case No: **UI-2023-004584**

First-tier Tribunal No: PA/52399/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

26/04/2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

B J A

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr T Haddow, Advocate, instructed by Jain, Neil & Ruddy, Solicitors For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at Edinburgh on 4 April 2024

DECISION AND REASONS

1. FtT Judge McGrade dismissed the appellant's appeal by a decision dated October 2023.
2. The appellant sought permission to appeal to the UT, submitting lengthy grounds.
3. FtT Judge Cartin's decision dated 13 October 2023 is headed, "Permission to Appeal is Granted on the ground that a finding was reached which was contrary to the Respondent's concession."

4. The grant says:

[2] The Respondent appears to adopt the position in the refusal letter that the Appellant's *sur place* activity is reflective of his genuine opposition to the Kurdish and Iraqi governments (RFRL paragraph 31). The grounds complain that the Judge was wrong to disregard this stance and progress to making contrary findings; that his political activism was effectively opportunistic.

[3] It is arguable that, without placing the Appellant on notice, that the Judge erred in law by reaching adverse findings on matters which were not said to be in issue. It also means that the Judge did not make findings on the Respondent position which was that continued low-level political opposition from within the IKR or Iraq would not be of interest to the authorities. I consider this therefore to be an arguable error of law. Permission is granted on this ground.

[4] The remainder of the grounds are somewhat rambling and I am unable to discern a specific error of law which it can be said the Judge might have made. Permission is granted on the above ground only.

5. The appellant did not apply to the UT for permission on the remaining grounds.
6. The respondent's refusal letter dated 12 April 2023 (p 124/259 of the bundle prepared by the UT) says at [31], "... it is accepted that you likely hold a genuine opposition to the Kurdish and Iraqi governments to some degree (or aspects of their respective human rights records)".
7. At [32], the letter says that the appellant should not have to conceal his beliefs, but his activism is not at a level to attract the attention of the authorities, and could continue with "little interest" from them.
8. There is no record in the decision that the presenting officer in the FtT submitted to the contrary of the refusal letter on this point. Parties confirmed that no such submission was made.
9. The appellant's position was that (i) his activities were genuine and (ii) were at a level which were reasonably likely to result in persecution.
10. The FtT Judge said at [24]:

I do not accept the appellant's position that he is committed to the issues raised in the postings and at the demonstrations, and will remain politically active, should he return to the IKR. The timing and nature of the appellant's political activities are such that I am satisfied that they have been carried out solely in an effort to bolster his prospects of success with an asylum application.

11. Mr Diwnycz accepted, correctly, that the Judge should not have gone behind a concession made by the respondent without putting the appellant on notice of a matter which he was entitled to think was not in issue. He confirmed that the respondent does not depart from the position that the appellant's activities have been genuine, at least to the extent necessary for the case to be considered on that basis. He argued, however, that the error was immaterial, for the same reason as at [32] of the refusal letter.

12. Mr Haddow submitted that the error was material. He said that the Judge at [18] correctly identified two questions (i) whether discovery of the appellant's activities to date would present a risk during return and (ii) whether activities after return might place him at risk. The Judge went on to answer (i) but, due to his finding at [24], he overlooked (ii). The appellant had put his case on that issue and was entitled to a resolution. Immateriality could not be shown by inviting the UT to agree with the respondent's case without considering the appellant's.
13. I reserved my decision.
14. Having considered the submissions, I consider there was error in finding the appellant's activities wholly unprincipled, without giving him the opportunity to meet that proposition, and that it was material, because the tribunal left the issue of risk from activities after return undecided, even in the alternative. The decision is set aside on that matter only.
15. Given the position taken by the respondent, there is no apparent need for re-hearing of oral evidence. The remaining issue is apt for resolution by submissions. The case is retained in the UT and will be re-listed with a view to final decision on the next available date.
16. Parties are directed to file, not less than 7 days prior to the resumed hearing, all materials on which they rely for remaking the decision on the outstanding issue, and outline written submissions, referenced to the background materials on which they rely. Filing is to be in accordance with the *Practice Direction of the Immigration and Asylum Chamber of the Upper Tribunal relating to Electronic Filing - CE-File*.
17. (Ideally, the materials should be comprised in an agreed bundle.)
18. Anonymity is preserved at this stage.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
4 April 2024