



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000133

First-tier Tribunal No: PA/54606/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 28th of November 2024

Before

UPPER TRIBUNAL JUDGE LODATO

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

XXX
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Dr Ibsi, Senior Presenting Officer
For the Respondent: Mr Da Silva

Heard at Field House on 12 November 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

Introduction

1. I have decided to maintain the anonymity order originally made in these proceedings by the First-tier Tribunal because the underlying claim involves international protection issues in that XXX states that he fears persecution or serious harm on return to Iraq. In reaching this decision, I am mindful of the fundamental principle of open justice, but I am satisfied, taking XXX's case at its highest for these purposes, that the potential grave risks outweigh the rights of the public to know his identity.
2. The Secretary of State appeals with permission against the decision, dated 13 December 2023, of First-tier Tribunal Judge Trevaskis ('the judge') to allow XXX's appeal on international protection grounds.
3. To avoid confusion, and for the remainder of this decision, I will refer to the appellant in these proceedings, the Secretary of State for the Home Department, as the respondent and the respondent in the Upper Tribunal, XXX, as the appellant, as they were before the First-tier Tribunal.

Background

4. The appellant appealed to the First-tier Tribunal against the refusal, dated 14 July 2023, of his protection claim made on 22 February 2020. In broad summary, his factual case is he is a Sunni Muslim who had worked as a judge in Baghdad from 1980 until his retirement in 2013. The centrepiece of his claim was an incident in 2006 or 2007 when a firearm was fired at his official car.

Appeal to the First-tier Tribunal

5. The appellant appealed against the refusal of his claim. The appeal was heard by the judge on 30 November 2023 before allowing the appeal on asylum grounds in a decision dated 13 December 2024. For the purposes of the present proceedings, the following key matters emerge from the decision:
 - The judge noted that it was not disputed that the appellant was an Iraqi Sunni Muslim who formerly worked as a judge in Baghdad between 1980 and 2013. He further recorded that the appellant had been issued with UK visit visas in 2010, 2012 and 2019. He left Iraq in 2013 to spend five years of his retirement in Jordan. He travelled to the UK on 14 September 2019 and claimed asylum on 22 February 2020. [13]
 - The appellant was found to have dishonestly declared an intention to return to Iraq when he applied for a visit visa in 2019. [14]
 - The judge set out the core incidents of violence which underpinned the asylum claim before noting that he departed Jordan while an asylum claim was pending, and that the UN had refused to grant him refugee status. [15]
 - The appellant was found to be broadly credible according to the lower standard of proof. [16]
 - Turning to the assessment of risk, the judge reached the following important conclusions between [18] to [20]:

Sunni Muslims are the minority sect in Iraq. Shia militia continue to perpetrate human rights violations against Sunni Muslims. Sunni judges have been replaced by Shia judges, but that does not mean that former Sunni judges are no longer at risk based upon their past activities. It is not relevant to the risk that the judge was a civil judge. Even if the appellant is unable to be sure that past incidents were directed at him, that is not the standard of proof required of him. I find that there is a real risk that he was the intended target; the fact that they took place some time ago does not mean that they will not be repeated if the appellant returns now.

It must also be borne in mind that the appellant is now 75 years old. This will make him more vulnerable to adverse treatment if he is returned to Iraq. Although he has an Iraqi passport, the appellant will need to renew his civil documentation on return; as well as arrival at the airport, he will also face scrutiny at the office where he will need to re-register. Given my findings regarding his risk profile, I find that this will be increased at these "pinch points".

Appeal to the Upper Tribunal

6. The respondent sought permission to appeal against the decision on a single ground. It was submitted that the judge provided inadequate reasons for allowing the appeal. In support of this ground, it was suggested that the judge had not adequately addressed the passage of time which had elapsed between the acts of violence and his departure for Jordan during which period he had not been targeted. It was further submitted that the appellant had not been harmed in the incidents he relied upon, and it could not be known whether he was the intended target. It was noted that neither his religion nor his former profession put him at risk. The objective country information going to these matters was said to have been disregarded by the judge.
7. In a decision dated 12 January 2024, First-tier Tribunal Judge Khurram granted permission for the grounds of appeal to be argued.
8. I heard oral submissions from the parties at the error of law hearing. I indicated at the conclusion of the hearing that I would dismiss the appeal with reasons to follow in this reserved decision.

Discussion

9. Both in the written grounds of appeal and in oral submissions during the hearing, the respondent emphasised that the evidence did not establish that the appellant was the intended target of the armed attacks he suffered in Iraq and that the passage of time strongly indicated that he was not at risk. These submissions struck me as an attempt to reargue the matters which were before the judge and resolved against the respondent. The judge addressed both points at [18] while directing himself in accordance with the low standard of proof which applied to this claim. It is fair to say that concise reasons were provided in support of the decision that the appellant remained at risk to a reasonable degree of likelihood. However, brevity alone is not sufficient to make good a challenge that the reasons are defective in law.

10. To successfully challenge the lawfulness of the judge's reasons, they must be legally inadequate such that the decision cannot be understood or that material matters were not addressed. Neither complaint stands up to scrutiny here. At [18], the judge addressed both the question of whether the appellant was the intended target of the attacks and the passage of time since the last attack. The judge recognised that the appellant did not claim any certainty that he was the intended target before he reminded himself of the applicable lower standard to be applied, namely, a real risk. When measured against that standard, there was a real risk that he was the target. This finding is of importance because it amounts to a finding that the appellant had been the victim of persecutory acts in the past. While the judge did not expressly say as much, reading his reasons benevolently as an expert tribunal, I am satisfied that this episode from the past was treated as a strong indication of risk for the future in accordance with well-established legal principle in this field. The judge's approach tends to reveal why the generic country background information relating to the broad risk to Sunni Muslims and/or former judges was not the subject of express consideration. Having concluded that this particular Sunni Muslim former judge was at risk, there was little to be gained by assessing the broader country information which went to the general risk to a man with the appellant's profile.
11. The passage of time was also briefly addressed at [18] which shows that the judge had this factor in mind when conducting the necessary risk assessment.
12. It is important to keep in mind when assessing the adequacy of reasons, that the legal test is not whether the reviewing judge might have come to a different decision on the facts or even if the challenged decision is objectively generous. Instead, the test is whether the parties can understand why the proceedings were decided in the way they were having taken the material matters into account. I am satisfied that the judge's reasoning met the standard for being a lawful articulation of why the appeal was allowed. I find that the decision did not involve an error of law.

Notice of Decision

I am not satisfied that the decision involved an error of law. It follows that I dismiss the Secretary of State's appeal. The decision of Judge Trevaskis stands.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 November 2024