



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000905

First-tier Tribunal No: PA/50467/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of June 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

A1
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown instructed by Parker Rhodes Hickmotts Solicitors.
For the Respondent: Mr Thompson, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 7 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 with permission a decision of First-tier Tribunal Judge Handler ('the Judge'), promulgated following a hearing at Manchester on 18 January 2024, in which the Judge dismissed his appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other basis.

2. The Judge sets out the issues in dispute at [7], matters not in dispute at [8], before setting out findings of fact from [17] of the decision.
3. The relevant issues are recorded as being:
 7. The parties agree that the following issues are in dispute:
 - (a) Has the appellant shown that he faces a risk of persecution for a Convention reason from his ex-wife's family and/or the KDP based on the narrative that he relied at his previous appeal?
 - (b) Is there sufficiency of protection so far as his claim to be at risk from his ex-wife's family is concerned?
 - (c) Has the appellant shown that he faces a risk of persecution for a Convention reason as a result of his sur place political activities?
 - (d) Can the appellant succeed in a claim for humanitarian protection on the basis that he is not documented?
 - (e) Has the appellant shown that there are very significant obstacles to his integration into Iraq and if not can the appellant succeed with reference to article 8 outside the immigration rules?
4. The Judge refers to an earlier determination promulgated on 17 April 2019 which dismissed a previous appeal brought by the appellant, which the Judge took as her starting point in accordance with the Devaseelan principle.
5. The Judge's core finding is that it was not accepted the current evidence justified any departure from the earlier decision for the reasons set out at [18 (a) - (e)] of the decision under challenge. The Judge therefore dismissed the appeal in relation to events said to have occurred in Iraq giving rise to a real risk, at [19]. That is a sustainable finding.
6. The Judge went on to consider the appellant's sur place activities from [20]. In that paragraph the Judge notes the Secretary of State had accepted that the appellant has a genuine political opinion and that he has engaged in political activities in the UK as claimed.
7. The Judge rejects the appellant's claim there is a reasonable likelihood he will have come to the adverse attention of the authorities in Iraq, for the reasons set out at [22] (a) - (b) of the decision under challenge. That is a sustainable finding.
8. At [23] the Judge again refers to the respondent accepting that the appellant's political opinion is genuine and refers to his oral evidence that he would not continue his political activities in Iraq because of the risk of ill-treatment that he would face as a result. In the same paragraph the Judge writes "*This was not challenged by the respondent. I found the appellant's evidence on this point to be clear and credible*".
9. At [24] the Judge records the submissions made by the advocates in relation to whether if the appellant did undertake his political activities in Iraq he would face a real risk. At [26] the Judge finds that even if this was the case the appellant would only play a low-level role in protests against the IKR and would not be at risk as a result of this or his Facebook activities. At [28] the Judge writes:
 28. Considering the above matters in the round, I find that the appellant has not shown on the balance of probabilities that he does in fact fear persecution in Iraq as a result of his political opinion and has not shown that there is a reasonable likelihood that he would be persecuted for his political opinion on return.
10. The Judge considers the issue of documentation from [30] finding the appellant had not shown there was a reasonable likelihood he could not access his CSID on the basis he either had it with him or his family in Iraq could send it to him.

11. The appellant's claim pursuant to Article 8 ECHR was considered from [34] and refused at [39].
12. The application seeking permission to appeal asserts the Judge has failed to adequately assess whether the appellant will be at risk of persecution on return based upon the Secretary of State's concessions on the evidence, the positive findings made by the Judge, and the appellant's vulnerability on account of his psychiatric condition.
13. The appellant asserts the Secretary of State accepted he had been filmed as claimed, that he held a genuine anti-regime political belief and opinion, and that there will be no sufficiency of protection or internal flight option if the appellant showed that he was at risk as a result of his sur place activities at [8] of the determination.
14. Permission to appeal was granted by another judge of the First-tier Tribunal on 7 March 2024, the operative part of the grant being in the following terms:
 2. It is arguable that the Judge failed to reconcile her finding that there was a reasonable degree of likelihood that the appellant would be detained for a short period [§20,23 and §26] due to his political opinion with the impact this would have on the appellant in light of his mental health [see Dr Rastogi's report and conclusions].
 3. Permission is granted.
15. There is no Rule 24 response from the Secretary of State, but the appeal was opposed by Mr Thompson.

Discussion and analysis

16. The Judge agreed to treat the appellant as a vulnerable witness in light of the mental health needs identified in the report of Dr Rastogi dated 19 December 2023.
17. Dr Rastogi is a Consultant Psychiatrist in General Adult Psychiatry working in the East Community Intervention Pathway, Telford in the Midlands Partnership NHS Foundation Trust. The Judge does not cast any doubt upon Dr Rastogi's qualifications or suitability as an expert witness.
18. The terms of reference for the report are set out in the following terms:
 - 2.1 I was instructed to prepare a psychiatric report for A1 as below:
 - 2.1.1 To assess A1's current mental state, and comment on his diagnosis
 - 2.1.2 To comment on A1's risk of suicide/self harm if forced to return to Iraq
 - 2.1.3 To comment on the impact of mental health of being returned to Iraq without the support he receives in the UK.
 - 2.1.4 To comment on any special measures that court may adopt to assist him if he is fit to give evidence.
 - 2.1.5 To comment on memory/recollection of events
 - 2.1.6 Any other information that I may deem important to bring to the attention of the Tribunal when deciding his claim
19. Having undertaken an assessment Dr Rastogi states A1 presents with comorbid depressive symptoms characterised by low mood, reduced energy levels, poor appetite, difficulties with concentration, reduced enjoyment with hobbies and interests and thoughts of life not worth living, which is stated to be in keeping with a diagnosis of Post Traumatic Stress Disorder (PTSD) [13.1].
20. It is stated A1 has reported continuing to having intermittent suicidal thoughts and that if forced to return to Iraqi there is a high possibility of further deterioration in his mental health, that removal of current support structures

will negatively impact on his risk, and that it is likely there could be an increase in his suicidal thoughts and risk of attempting and completing suicide [13.2].

21. The appellant argues that as a vulnerable individual, and in light of the background evidence as to prison conditions were he to be arrested set out in the CPIN on Opposition to the Government in the Kurdish Regions of Iraq, 2023, even a short period of imprisonment, would amount to persecution as defined by section 31 Nationality and Borders Act 2022. That provision reads:

31 Article 1(A)(2): persecution

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention, persecution can be committed by any of the following (referred to in this Part as “actors of persecution”)—
 - (a) the State,
 - (b) any party or organisation controlling the State or a substantial part of the territory of the State, or
 - (c) any non-State actor, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide reasonable protection against persecution.
- (2) For the purposes of that Article, the persecution must be—
 - (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Human Rights Convention, or
 - (b) an accumulation of various measures, including a violation of a human right, which is sufficiently severe as to affect an individual in a similar manner as specified in paragraph (a).
- (3) The persecution may, for example, take the form of—
 - (a) an act of physical or mental violence, including an act of sexual violence;
 - (b) a legal, administrative, police or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
 - (c) prosecution or punishment which is disproportionate or discriminatory;
 - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts as described in Article 1(F) of the Refugee Convention (on which, see section 36).

22. Mr Brown asserts even short-term detention might amount to an “act of physical or mental violence” under section 31.

23. The grant of permission refers to paragraphs [20], [23] and [26] of the determination in these the Judge writes:

20. The respondent has accepted that the appellant has a genuine political opinion and that he has engaged in political activities in the UK as claimed.

...

23. The respondent has accepted that the appellant’s political opinion is genuine. The appellant’s oral evidence was that he would not continue his political activities in Iraq because of the risk of ill treatment that he would face as a result. This was not challenged by the respondent. I found the appellant’s evidence on this point to be clear and credible.

...

26. Part 14 of the CPIN includes numerous reports of arbitrary arrests and detentions of protestors, most of whom were released after a short period without charge. Those who were detained longer were usually journalists, activists or people accused of organising the demonstration. I find that there is a reasonable likelihood that the appellant would be arrested and detained for a short period if he attended demonstrations against the KRG in Iraq. The appellant has not adduced evidence to support a finding that a short period of detention in these circumstances would amount to persecution. He has not asserted that the CPIN does support that conclusion. He has asserted that he has undertaken more than low level activities. For the reasons given, I do not accept this. Therefore if he continued his political activities in Iraq he would be an opponent of and would play a low level part in protests against the KRG. I find that paragraph 3.1.2 is consistent with the further detail in particular in part 14 of the CPIN and I place weight on it.

(My emphasis)

24. Mr Brown in his pleadings writes:

9. The Judge simply does not assess this background evidence in assessing whether even a short period of time in such conditions., given the A’s accepted vulnerability [including risk of suicide given the A’s intermittent suicidal thoughts- para 36 of the decision]] without would or does not amount to persecution. This omission is a material error in the assessment of risk to the A on return.

10. Given the A’s vulnerability his short term detention might arguably amount to an “act an act of physical or mental violence” under the NABA 2022.

25. The Judge was alive to this issue, as she notes the issues in dispute at [7] and writes at [26]: *“The appellant has not produced evidence to support a finding that a short period of detention in the circumstances would amount to persecution”.*

26. At [28] the Judge writes: *“Considering the above matters in the round, I find that the appellant has not shown on the balance of probabilities that he does in fact fear persecution in Iraq as a result of his political opinion and has not shown that there is a reasonable likelihood that he would be persecuted for his political opinion on return.”*

27. It is also important to consider the Judge’s finding at [36] where she writes:

36. The Report includes that ‘If forced to return to Iraq, there is a high possibility of further deterioration in his mental health. This along with fear of persecution and removal of current support structures will negatively impact on his risk and it is likely that there could be an increase in his suicidal thoughts and risk of attempting and completing suicide.’ I have taken this into account and note that Mr Brown did not focus submissions on this. I find that this part of the Report does not lead to a conclusion, when matters are considered holistically, that there would be very significant obstacles to the appellant’s integration into Iraq. This is because, as set out above, the appellant is functioning well. The Report does not give an opinion on the extent of any deterioration in the appellant’s mental health. Whilst the Report says that there could be an increase in suicidal thoughts and associated risk, it does not opine on the level of that risk. The Report records that the appellant reported having intermittent suicidal thoughts, 1-2 times a month and has had thoughts of jumping off heights in the past and that the appellant denied any current intent to attempt suicide. The Report does not give an opinion regarding the appellant’s current risk of suicide and this makes what is said about an increase in risk not to be helpful to the appellant in proving any very significant obstacles to integration.

28. The Judge’s findings therefore indicate the issues she was asked to consider did not include the specific point on which Mr Brown relies in his grounds seeking permission to appeal, that the evidence did not show that even if the appellant continued his political activities in Iraq that he would face a real risk of harm or persecution as a result of his lack of profile, and that, in any event, the medical evidence did not support what was being claimed in relation to the impact upon him.

29. I also note the Judge’s observation that although the medical report talked about a further deterioration in the appellant’s mental health the appellant’s advocate before the Judge did not focus any submissions on this point.

30. The analysis of the medical evidence and country information is of some importance. The act of persecution complained of is an act of physical or mental violence, including an act of sexual violence. There is no suggestion of sexual violence.

31. It is accepted physical abuse can be defined as nonaccidental harm to the body of which there is some evidence that the same occurs within detention centres or police stations within the IKR to some in custody, although there was insufficient evidence before the Judge to show this occurred in all such places, or there was a failure to provide an individual with adequate care or support, causing them unjustified discomfort.

32. Psychological or emotional abuse is any action which has an adverse effect on an individual’s mental well-being.

33. Even if an act of persecution was shown to exist that is not sufficient. Section 31 specifically states that the active persecution must be:

- (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Human Rights Convention, or

- (b) an accumulation of various measures, including a violation of a human right, which is sufficiently severe as to affect an individual in a similar manner as specified in paragraph (a).
34. The Judge's finding, that the evidence when considered as a whole did not show that any of the matters complained about were sufficient to satisfy the definition of persecution, has not been shown to be a finding outside the range of those reasonably open to the Judge on the evidence. There is no country guidance that shows prison conditions in the IKR are sufficient to breach international standards per se. The only medical evidence before the Judge did not support an argument that if the appellant was detained, even for a short period, the impact upon him would be sufficient to amount persecution or entitle him to a right to remain on any other basis.
35. The Judge considered the appellant's claim that he would not continue his political activities in Iraq as a result of his fear of ill-treatment, which was found to be subjectively credible, but found the risk feared was not objectively made out on the evidence.
36. Article 3 ECHR was not raised before the Judge, but this states that States have to ensure that detainees are held in conditions which are compatible with respect for their human dignity, that the manner and method of the execution of the measures do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, detainees health and well-being are adequately secured.
37. Although there are examples of a number of issues in relation to detention in the IKR, the evidence before the Judge did not show that a person taken into detention, particularly imprisonment, will be denied access to a doctor for the purposes of a medical examination if required, including a psychologist. It was not shown that such would be unable to meet the appellant's needs if required. The Judge makes a specific finding the appellant will be able to access any medical treatment he needs in Iraq, and it was not made out before the Judge that if he was detained, he would not have access to relevant medical staff.
38. The Judge could only deal with the appeal on the basis of the evidence. The point on which permission to appeal was sought and granted does not appear in the schedule of matters identified by the Judge that she was required to consider. When this point was discussed with Mr Brown, he indicated that it would form part of the insurmountable obstacles the appellant was claiming prevented his return to Iraq argument, but I have not been referred to anything, such as a transcript or record of proceedings, that shows this point was specifically raised before the Judge.
39. It is of particular importance the Judge refers to the lack of assistance provided by the medical evidence, which is a justified comment.
40. On the basis of the matters the Judge was asked to consider, and the evidence made available in the appeal, I find the Judge's finding that there is no persecutory risk on return and that the appellant could continue his low-level activities if he wished without facing a real risk of ill-treatment or persecution, or for any other reason, is a finding within the range of those reasonably open to the Judge on the evidence.
41. I find the appellant has failed to establish legal error material to the decision to dismiss the appeal.

Notice of Decision

42.No legal error material to the decision to dismiss the appeal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 June 2024