



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001340
First-tier Tribunal No:
PA/01641/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 July 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AMR
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Sepulveda, instructed by Fountains Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 16 July 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal which dismissed his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant was born on 3 October 1997 and is a national of Iraq of Kurdish ethnicity, from Hajiawa, Suleymaniyah. He arrived in the UK on 17 September 2021, having travelled through Turkey and overland to France and then on to the UK by boat. He was encountered on arrival and served with illegal entry papers and he claimed asylum the same day. He attended an initial screening interview on 9 October 2021 and completed an asylum questionnaire on 11 July 2023. He was then

interviewed about his claim on 12 October 2023. His claim was refused on 23 October 2023. He appealed against that decision.

3. The appellant's claim was made on the basis of problems arising through his work as a volunteer nurse at Hajiawa General Hospital, on 20 July 2021, when he was threatened with death after D, the nephew of Commander HG of the KDP, was admitted to the hospital and died. It was the appellant's claim that when D was brought to the hospital suffering from coronavirus, HG insisted that they use a breathing apparatus that was being used by another patient and when he and his colleague objected HG threatened them with his gun, so they moved D to the breathing apparatus. However D's condition deteriorated and he died, and HG blamed them for removing the oxygen tank after he had left and accused them of neglecting D. HG got angry and took out his gun and the appellant and his colleague tried to escape through the window. The appellant's colleague was shot but the appellant managed to escape and he took a taxi to a friend's house. The doctor who had been responsible for D's care, DR S, was shot and killed by HG. HG and six gunmen came to his house and then to his uncle's house looking for him and he therefore fled the country the day after the incident, on 21 July 2021.

4. The respondent, in refusing the appellant's claim, accepted that he was a nurse in Iraq but did not otherwise accept his account as credible. The respondent considered the appellant's account to be inconsistent and lacking in detail. The respondent noted the lack of any evidence online about the incident at the hospital which was considered to cast doubt on the account, given the prominence of the person involved. The respondent did not consider that the appellant was of any adverse interest from the state and did not accept that he was at risk on return to Iraq. The respondent considered the appellant's claim in regard to his political activity in the UK and accepted that he had attended demonstrations here, but did not accept that his activity was genuinely motivated and did not accept that it would put him at any risk on return to Iraq. The respondent considered that the appellant could obtain his identity documents from his family in Iraq.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Sarwar on 26 January 2024. Judge Sarwar considered that the appellant's account was inconsistent and lacking in credibility. He considered that there was inconsistent evidence about how D was given another patient's breathing apparatus; that the appellant was unable explain how Commander HG managed to enter the hospital with a gun when there was a security guard there; that the appellant had failed initially to mention that a doctor, Dr S, was also shot and killed; that the appellant's explanation as to why he was not in contact with his family was inconsistent with his public Facebook profile and postings; that the appellant's claim not to be in contact with his family was inconsistent with the fact that he had managed to obtain a copy of his passport and photographs from Iraq; and that the appellant's account of not having taken his CSID to work was inconsistent with the background country evidence. The judge did not, therefore, accept the appellant's core claim and did not accept that he was involved in the death of the Commander's nephew and that the commander was seeking retribution against him. As for the appellant's *sur place* activities in the UK, namely Facebook postings and attending demonstrations, the judge noted that the appellant had failed to submitted the downloaded information about his account, as required in XX (P)AK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23. He did not accept that the principles in HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 applied in the appellant's case as it was not based on sexual orientation. He found that the appellant's political views were not widely influential and that he had only a low level profile even if his views were genuinely

held. As such the judge did not accept that the appellant would have attracted the adverse attention of the Iraqi authorities or the KDP or PUK. The judge did not accept the appellant's claim to have lost contact with his family in Iraq and considered that he could obtain his identity documents from his family. The judge dismissed the appellant's appeal in a decision promulgated on 16 February 2024.

6. The appellant sought permission to appeal to the Upper Tribunal against Judge Sarwar's decision on two grounds. Firstly, that the judge had provided inadequate reasons for not accepting his account and the risk to him on return to Iraq and had failed to make any findings on whether he accepted the explanations he had provided to address the respondent's concerns; and secondly, that the judge had misdirected himself on the application of HJ (Iran) and had made inconsistent findings to whether he held genuine political beliefs for the purposes of the guidance in HJ (Iran), and had incorrectly recorded that he was from Kirkuk rather than from the IKR.

7. Permission was granted in the First-tier Tribunal on all grounds. The respondent filed a rule 24 response opposing the appeal.

8. The matter then came before me for a hearing and both parties made submissions.

Hearing and Submissions

9. Ms Sepulveda submitted that the judge misdirected himself with regard to the appellant's place of origin, referring to him as coming from Kirkuk whereas he was from Suleymaniyah. She submitted that that was a material error given that Kirkuk was not in the IKR but Suleymaniyah was, and considering the significance of the area of origin, as made clear in SMO and KSP (Civil status documentation, article 15) (CG)) Iraq [2022] UKUT 110 and preceding country guidance for Iraq. Ms Sepulveda submitted that that error infected the judge's plausibility findings since it was relevant to the country information upon which he relied as seen at [23] of his decision and since the judge would have assessed the appellant's case on a consideration of the actions of the authorities of the wrong government and he would have assessed the appellant's credibility in the wrong context. Ms Sepulveda submitted further that the judge had made inconsistent findings about the genuineness of the appellant's political views, seemingly accepting at [44] that he held genuine political views, but yet at [45] proceeding on the basis that he did not hold genuine political views. She submitted that that was relevant in the context of the guidance in HJ (Iran) where consideration had to be given to the risk posed on return to Iraq as a result of genuine political views being held, and which again was relevant in the context of his place of origin.

10. Mr Tan submitted that the error as to the appellant's place of origin was not material as it was not an integral part of the judge's decision. The judge set out a number of reasons for finding the appellant's claim to be lacking in credibility, none of which were to do with the location of the events or the identity of the authorities or the appellant's documentation. Dealing with the first of the grounds as originally stated, Mr Tan submitted that the judge gave reasons as to why he rejected the appellant's account, identifying clear inconsistencies in the appellant's evidence. As for the challenge to the judge's observation at [33] about the appellant being in receipt of a copy of his passport and photographs from Iraq, nothing material turned on that when considering the findings made about contact with his family. The primary focus of those findings was at [32]. With regard to the appellant's Facebook material, the judge considered the guidance in XX and noted that the 'download your information' referred to in that case had not provided by the appellant. The judge was

entitled to place limited weight on the appellant's Facebook evidence. Mr Tan submitted that, contrary to the appellant's assertion, there was no inconsistency between the judge's findings at [44] and [45] in relation to the genuineness of the appellant's political views. The judge had regard to the risk profiles in the CPIN report and background information and properly found that the appellant's profile would not put him at risk.

11. In response, Ms Sepulveda reiterated that the error in the appellant's place of origin was material to the credibility findings made by the judge. She maintained that the judge failed to consider the appellant's explanation for matters of concern raised by the respondent, and further that the appellant had supplied his 'download your information' for his Facebook account, although it was not clear from the guidance what that information was.

Analysis

12. Ms Sepulveda's submissions focussed on the judge's error in regard to the appellant's place of origin which she said was material to the judge's credibility findings. However I agree with Mr Tan that nothing material arises out of this, given that the judge clearly determined the appellant's appeal on the basis that he was from the IKR. It was the appellant's fear of persecution from HG and the KDP which the judge specifically considered. His findings were made against the country information relevant to the IKR, in particular the 'Country Policy Information Note: Opposition to the government in the Kurdish Region of Iraq, July 2023', to which he referred at [21(xii)] and [41]. As Mr Tan submitted, there was nothing in the judge's adverse credibility findings, or his findings on risk on return, which arose from an erroneous reference to Kirkuk as the appellant's place of origin. That was clearly not an integral part of his findings and conclusions and, as such, any error was not significant or material to the outcome of the appeal.

13. Turning to the grounds as originally pleaded, it is the appellant's case in the first ground that the judge provided inadequate reasons for rejecting his account and failed to consider his various explanations which addressed the respondent's concerns. I do not accept that that ground is made out. The judge made it clear at [28] that he did not find the appellant's account to be a credible one because of the inconsistencies in his evidence. He went on, at [29] and thereafter, to provide details of those inconsistencies. At [29] he noted inconsistencies in the appellant's account of the incident at the hospital when HG's nephew was brought in. At the end of [29] he specifically considered, and impliedly rejected, the appellant's response in his statement to the discrepancy arising from the account. Likewise at [30], the judge made it clear that the concern about the appellant's account of HG being able to enter the hospital with a gun was put to the appellant, and the judge noted that he was unable to provide a satisfactory response. At [31] the judge referred to the appellant's failure to refer to the shooting of Dr S in his earlier accounts and he specifically considered, and gave reasons for rejecting, his explanation.

14. The grounds at [14], when addressing the judge's findings at [33] on the question of contact with family in Iraq, challenge the judge's reliance on the appellant's account of having received a copy of his passport and photographs from Iraq, asserting that that was not his evidence. However the judge's record of the appellant's submissions at [23(xvi)] suggests that that was the account given. Furthermore, it is clear from [33] that that was a matter put to the appellant and for which he had been unable to provide a satisfactory explanation. The judge's rejection of the appellant's claim to have lost contact with his family in Iraq is challenged at [17] and [18] of the grounds

on the basis of a lack of reasons provided at [49]. However reasons were indeed provided for the judge's findings in that regard at [32] and [33], whereby at [32], the judge properly found the appellant's explanation for not being in contact with his family, namely to avoid putting them at risk, was at odds with his account of his public Facebook activities. As for the assertion at [21] of the grounds that the judge was wrong at [39] to have found that the appellant had not provided the required 'download your information', it was Mr Tan's submission that the information he had provided was not of the type referred to at [7] of the headnote to XX, but was rather a stream of posts. Ms Sepulveda's response was that it was not clear from the guidance in XX what information was required by way of the 'download your information' function of Facebook. It does seem to me that Mr Tan is right in his submission that the information provided was not what XX envisaged. In any event, the judge went on to give cogent reasons at [40] to [42], with reference to the country information before him, as to why the appellant's Facebook posts, as presented in the evidence, would not have attracted adverse attention.

15. Clearly, therefore, the judge's findings were fully and properly reasoned and I reject the assertion in the first ground to the contrary.

16. As for the second ground, whilst it is the case that the judge wrongly excluded 'political opinion' from the principles set out in HJ (Iran), I agree with Mr Tan that nothing material arises from that. It is not the case, as asserted in the grounds, that the judge contradicted himself at [44] and [45] in relation to his findings on the question of whether the appellant had genuine political beliefs. It is clear from a reading of [37] to [45] that the judge did not accept that the appellant's activities in the UK were based on genuine political beliefs. At [45] he went on to consider the matter in the alternative, finding that in any event, any profile that the appellant could be said to have on the basis of his limited activities was not such as to lead to an adverse interest in him on return to the IKR. That was a finding which was entirely consistent with the background information relied upon and was fully and properly open to the judge.

17. For all these reasons I do not find the grounds to be made out. The judge did not find the appellant to be a reliable witness and did not accept his account of events in Iraq nor his claim to have brought himself to the adverse attention of the authorities in the IKR or to be identifiable to the authorities on return as a person of interest owing to activities in the UK. The judge provided full and proper reasons for making the adverse findings that he did. He was entitled to conclude as he did and his decision is accordingly upheld.

Notice of Decision

18. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Anonymity Order

The Anonymity Order previously made is continued.

Signed: S Kebede

Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 July 2024