



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001350

First-tier Tribunal No: PA/54132/2023
LP/03280/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28 June 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel, instructed by Parker Rhodes Hickmotts Solicitors.
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 19 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, a citizen of Iraq, appeals with permission a decision of First-tier Tribunal Judge Monaghan ('the Judge'), promulgated following a hearing at Bradford on 5 February 2024, in which the Judge dismissed his appeal against the refusal of his application for leave to remain in the United Kingdom on protection and human rights grounds.

2. The Judge sets out the issues in dispute at [5] and, having considered the documentary and oral evidence, her findings from [8]. These include the Judge setting out agreed factors, one of which at [8 (iv)] is that the Appellant had undergone a religious conversion to the Zoroastrian religion.
3. The Judge records some concerns regarding the Appellant's evidence before writing at [26 - 28]:
 26. The relevant question is whether I accept his account of his family's reaction to his conversion and whether they either threatened to kill him or held him against his will on finding out that he had been seen at the place of worship and later on viewing the video. I find that it is credible that as a devout Islamic family, they would not accept the conversion. It is also credible that they would threaten or detain him as has been described.
 27. I find therefore that he is at real risk of persecution from his family on the basis of his past persecution.
 28. I must therefore consider whether there is sufficiency of protection in Iraq if he is returned there and/ or whether there is an internal relocation option available to him which is reasonable in his circumstances.
4. The Judge refers to the expert report of Dr George and at [36] writes "*Whilst the expert considers that the Appellant would be at risk in the GOI of Iraq on account of his religion, he does not consider that there is the same risk in the KRG given the greater religious tolerance there and that there is no evidence that he will not be able to access sufficiency of protection, although enforcement of the laws protecting him are frequently ineffectual. Therefore, if he has not been targeted by his family he could return to the KRG*".
5. The Judge records being asked by Ms Patel, the Appellant's barrister, to consider that the issues the Appellant may face should be regarded as being on the honour spectrum as the Appellant has brought shame to his family by converting to Zoroastrianism. At [37] the Judge does not accept that even at its highest the factual matrix she was asked to consider is capable of amounting to an honour matter for the reasons stated.
6. At [40] the Judge draws together her thoughts where she writes:
 40. In summary he has not persuaded me, even to the lower standard that he is at risk on return from his family on account of his conversion due to the inconsistencies and lack of plausibility in his account as set out above. He is not persuaded me either that this would be treated as an honour-based matter. I therefore find that he is not at risk on return from his family or his wider family or tribe on account of his conversion and could return to his home area of Sulaymaniyah.
7. The Judge did not accept, whilst the Appellant may face discrimination in the IKR, it was sufficient to warrant a grant of international protection at [41-42].
8. In relation to documentation the Judge writes:
 43. The Appellant has been consistent in stating that he does not have his CSID card in his possession. He said that the document he was referring to in his interview was his INC. I find that he has been inconsistent in his evidence, stating in his SEF that his CSID card was taken from him in Turkey by the Agent and later that it was in Iraq. I do not accept his explanation that he was referring to his INC. I further find that he has been vague about the whereabouts of the CSID, stating only that it is in Iraq.
 44. I find therefore that it is reasonably likely that he has left it at home with his family for safekeeping and given that I do not accept that he is estranged from them, nor at risk from them, he could request them to send to the CSID card to him in the United Kingdom. He can then be returned to Baghdad and make the onward journey to the IKR safely or directly to the IKR. He can be assisted by his family to integrate

and use his own skills and qualifications to find work in due course. He can carry on the practice of his religion as he did before in Sulaymaniyah where he has links to the Zoroastrian community and the place of worship there.

9. The Appellant sought permission to appeal on four grounds, Ground 1 asserting the Judge had made unclear and contradictory findings, Ground 2 that the Judge had erred in her findings regarding the Appellant's lack of documentation, Ground 3 that the Judge failed to consider the background evidence, and, Ground 4, that the Judge failed to consider material matters, for the reasons more fully set out in Ms Patel's pleadings dated 21 February 2024.

10. Permission to appeal was granted by another judge of the First-tier Tribunal on 28 March 2024, the operative part of the grant being in the following terms:

2. Grounds one and two rely on the same challenge to argue that the reasons for the decision are legally flawed. I consider it to be arguable that paragraphs 26-27 of the decision include clear findings of fact that the appellant is at risk from his family on the basis of past persecution. This is very difficult to reconcile with the preceding analysis of the appellant's credibility which appeared to be moving to a conclusion that he was not at risk. These findings are also at odds with the overarching findings at paragraph 40 that he was not at risk from his family. It is arguable that this tension in the reasoning goes to the adverse findings which were reached about the appellant's ability to gather the necessary Iraqi documents from his family. I have carefully considered whether paragraphs 26- 27 were slips but the inconsistency which derives from paragraph 26 in particular is not a missing or misplaced word but a developed conclusion in which it is found that there is a credible risk from the appellant's family.
3. Grounds 3 and 4 suggest that the judge did not have full or proper regard to the background information and expert evidence. I do not regard these challenges to be arguable. The judge has plainly given consideration to broad country conditions from the available evidential sources and reached conclusions which were open to her on that evidence. The test is not whether more could have been said or whether particular strands of evidence could have been the subject of judicial comment, but whether the reasoning is clear and adequate. The reasons why the judge did not accept the submissions about broad, objective risk are clear from the reasons.
4. I consider grounds 1 and 2 to be arguable errors of law and grant permission. I do not consider grounds 3 and 4 to be arguable errors of law and refuse permission.

11. The application for permission to appeal in relation to the grounds on which permission was refused has not been renewed to the Upper Tribunal.

12. In his Rule 24 reply dated 12 June 2024 the Secretary of State representative wrote:

1. The respondent does not oppose the appellant's application for permission to appeal.
2. As per the grant of permission dated 28 March 2024, it is noted it is only a partial grant of permission on grounds one and two. Permission was refused on grounds three and four and as far as the Secretary of State is aware, no renewed application for permission to appeal on grounds three and four has been sought.
3. Upon review of grounds one and two, the Secretary of State accepts there is a material error of law established as per the reasons set out within ground one. Ground two arguably interlocks with ground one and therefore it is accepted there is a material error on ground two considering the acceptance in relation to ground one.
4. The FTTJ's findings at [26]-[27] are arguably contradictory to [40] or vice versa but are also contradictory to the earlier paragraphs leading up to [25]-[27]. Therefore, in light of the contradictory findings which do relate to the core of the appellant's account, the Secretary of State accepts there is a material error of law. The grounds of appeal do not address disposal. The Secretary of State would respectfully invite the Upper Tribunal to set the decision aside on the basis of the material error of law

established relates to the credibility assessment and therefore infects the other findings made regarding that assessment. The Secretary of State does not have a preference regarding whether the matter is remitted or retained in the Upper Tribunal. The Secretary of State does observe that as the material error of law relates to the assessment of credibility it would normally be appropriate to set the decision aside and remit to the FTT but the Secretary of State will leave that as a matter for the Upper Tribunal.

Discussion and analysis

13. In light of the concession contained in the Rule 24 response I find the Judge has erred in law in a manner material to the decision to dismiss the appeal and set the determination aside.

14. The findings not in dispute before the Judge were:

- i) Appellant's identity.
- ii) Appellant's nationality.
- iii) Appellant's ethnicity.
- iv) Appellant having undergone a religious conversion to the Zoroastrianism religion.

15. That remains the case.

16. In relation to the future proceedings, I have given proper consideration to the decision of the Upper Tribunal in Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) which found that under the Practice Direction and the Practice Statement, the general principle is that the UT will retain the case for the decision to be remade, subject to the exceptions in the practice direction.

17. Although I accept that not every finding concerning unfairness will require a remittal Ms Patel on behalf of the Appellant submitted that the error of law made by the Judge in relation to the credibility of the Appellant's claims affected all the findings that have been made, such that nothing could be preserved. It was submitted all matters needed to be considered afresh and that it would be unfair to preserve any findings in light of the accepted legal error.

18. On behalf of the Secretary of State, given the concession referred to Rule 24 response and the suggestion therein by the author that would ordinarily be the case that on the facts and appeal will be remitted., Mr Diwnycz did not disagree.

19. I accept the submission made by Ms Patel in relation to the impact of the accepted legal error in relation to the findings made and the fairness point. Extensive fact-finding will be required with no preserved findings.

20. I therefore find it is appropriate in light of the facts that the appeal must be remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Monaghan de novo.

Notice of Decision

21. The First-tier Tribunal Judge has materially erred in law. I set the decision of the Judge aside with no preserved findings.

22. I remit the appeal to the First-tier Tribunal Hearing Centre at Bradford to be heard de novo by a judge other than Judge Monaghan.

23. A Kurdish (Sorani) interpreter is required.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 June 2024