Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2024-002301
(PA/55731/2023)

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 26th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

DSM
(ANONYMITY ORDERED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel instructed by Elder Rahimi Solicitors
For the Respondent: Ms H Gilmore, Senior Home Office Presenting Officer

Heard at Field House on the 18th September 2024

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Iraq. The respondent refused his protection claim on the 17th August 2023 and his appeal against that refusal was dismissed by First-tier Tribunal Judge S L Farmer on the 16th October 2023. The appellant was granted permission to appeal against Judge Farmer's decision, and hence the matter came before me.

Background

2. The appellant's case before the First-tier Tribunal was that (1) he was tortured in Iraq by members of the Popular Mobilization Forces (PMF) in an attempt to persuade him to spy for them, (2) he has a well-founded fear that such ill-treatment would be repeated should he return to Iraq, (3) there is a real risk that his political activities in the UK (attending demonstrations and posting on social media) will have led to him being identified and to his social media being monitored by the Iraqi authorities, (4) he no longer has an Iraqi identity card (CSID), which is a necessary attribute for survival in Iraq, and (5) he has no means of re-documenting himself because he has lost touch with his family.

Findings of the First-tier Tribunal

3. In summary, the First-tier Tribunal Judge found that the appellant's account of his claimed torture at the hands of the PMF contained numerous internal inconsistencies and implausibilities, and thus concluded that the appellant had failed to substantiate, "even to the lower standard", his claim either to have been tortured by members of the PMF or to have lost contact with his parents [19 to 24]. So far as the appellant's political activities in the UK are concerned, the judge found that these were limited, and that there was, "nothing to show", that he was a person of interest to the Iraqi authorities [26]. Finally, the judge found that contrary to his claim, the appellant continued to be in touch with his family and that they would be able to assist in his redocumentation.

The grounds of appeal.

4. The grounds of appeal can be conveniently summarized as follows:

   (1) There was no evidence to support the judge's finding that -
   (a) the appellant had given an inconsistent and/or implausible account of his history at the hands of the PMF, and/or
   (b) it was implausible for the appellant to be able to leave Iraq on his own passport if he was the subject of adverse interest from the PMF [PDFp13, paras 22 and 23]

(2) Given that there was no evidence to suggest that the appellant's professed anti-regime opinion was other than genuinely held, the judge ought to have considered whether the appellant (the exercise of discretion apart) would be at risk of state persecution on return to Iraq by reason of that opinion.

(3) The judge erred in failing to consider the feasibility of the appellant's return to Iraq without a CSID.

5. Although the Upper Tribunal Judge who granted permission to appeal did so on all three grounds, he expressed doubts concerning the merits of the third ground. Whilst Mr Spurling submitted that there could be circumstances in which there was a risk of persecution even where return was not feasible, he accepted that such circumstances did not appertain in the present appeal. Accordingly, he did not (as he put it) "push this ground".

Analysis

6. Dealing the with the first part of the first ground, Mr Spurling submitted that the judge had misunderstood the evidence in making the following findings at paragraph 22 of the Decision -

> In his interview his account was that he was abducted for a day and tortured and then released after he promised he would act as a spy. He then claimed that he was taken again, with his parents and they were tortured and threatened. It is not consistent that the appellant and his family would be taken a second time when he had already agreed to act as a spy for them. His account of this is at AIR 120-125. In his witness statement the appellant attempts to correct this inconsistency to say that he was only taken once and there has been a misunderstanding. Having carefully read his interview record I find that he was quite clear that he was taken twice and even when this was put to him in interview he maintained his account. The appellant was at pains to correct the chronology in his oral evidence. He stated that he was held and beaten for 1 night on the first occasion. However the appellant has said that the PMF men who took him on the first occasion from his home took him to an unknown location and beat him up. He was told he would be killed if he did not cooperate. However, he now says that he did refuse to cooperate on this occasion and this is why they came back 6 days later and took him and his parents. I find it not plausible that he would be told he would be killed if he did not cooperate and was beaten up and yet he still refused, and he was not killed, but returned home after 1 night. I find that this is a significant and material inconsistency.

To make good his submission, Mr Spurling took me to paragraph 7 of the appellant's witness statement, dated the 14th December 2023 -

> About a week after they had taken and beaten me, PMF fighters came to my home <u>again</u>. This time they took me and my parents. We were taken to what looked like a detention centre. They made me watch as they physically and mentally abused my parents. They threatened to rape my mother and started to remove her clothes. I begged them to stop. I told them that I would cooperate

> with them in any way they wanted. They proceeded to film me agreeing to act as a spy for them. I was told that if I left and went to the Kurdish area, the video recording of me agreeing to spy for them would be sent to the Kurdish authorities. [Emphasis added]

Then, at paragraph 27 of the statement, the appellant said this -

> As I have clarified in this statement, I had <u>not</u> agreed to spy for the PMF before they abducted me and my parents. When they abducted me the first time, they beat me up and warned that they would kill me. However, I didn't agree to spy for them. They assumed that I would spy for them, but I didn't. That was why they abducted me and my parents [emphasis added].

The appellant was thus making it clear in his statement that he had not agreed to spy for the PMF on the first occasion that they had abducted him alone, and that he had only agreed to do so when he was abducted for a second time alongside his parents. Mr Spurling thus submitted that the judge was wrong to say that he had modified his account as to the number of occasions upon which he had been abducted by the PMF

7. The above submission is correct insofar as it goes. The appellant had indeed been consistent in saying that he had been abducted on two occasions rather than one, and the judge was accordingly wrong to suggest otherwise. However, it is clear from reading paragraph 22 of the Decision as a whole that the judge was seeking to make a different point altogether; namely, why would the PMF have abducted him for a second time if he had already agreed to spy for them when they abducted him on the first occasion? It was in respect of *this* apparent anomaly, rather than the number of occasions upon which he had been abducted, that the appellant was seeking (as he put it) 'to clarify' the earlier account he had given in his asylum interview. That he felt the need to do so arose from his answers to questions 104, 121, and 124 of his asylum interview. It was clear from his answers to those questions that the appellant was saying that he <u>had</u> agreed to spy for the PMF on the first occasion that he was abducted. Thus, in answer question 104 regarding the first occasion (Why did you not agree to spy for them and then just not give information to them?) he replied: "But that's what I did following being taken by them and beaten up, I agreed to a system and just to rescue myself and this is why I was left to go". Then, in answer to question 121 regarding the second occasion (Why did they [the PMF] take you all [the appellant and his parents]) he replied: "To put me under <u>extra</u> pressure by beating and insulting my parents in front of my eyes so I would yield to them" [emphasis added]. Finally, the appellant was asked the following at question 124 -

> Why do you think the PMF felt they had to put you under pressure, you had agreed to help hadn't you?

Rather than challenge the premise of question (that he had already agreed to help them) the appellant accepted it and went on to speculate upon a possible explanation: -

> I don't know to be honest, perhaps they wanted to make sure that I knew they were serious and they wanted to show me that they could harm my parents if I would not fully co-operate with them.

I am thus satisfied that the evidence justified the judge's finding in the first four sentences of paragraph 22, that (a) the appellant had changed his account from saying that he had agreed to spy for the PMF following the first abduction to saying that he had not done so, and (b) he had made that change by way of a purported 'clarification' in his witness statement of the replies that he had made in his earlier asylum interview. I am also satisfied that it was also reasonably open for the judge to find - based upon the appellant's modified account that he had not agreed to spy for the PMF on the first occasion - that it was implausible for the PMF in those circumstances not to have carried out their threat to kill him.

8. Turning to the second part of the first ground (the claimed lack of evidence concerning the PMF having influence and/or control over who leaves Iraq) the judge made express reference to the fact that this was a point that the Respondent had raised in the letter detailing the reasons for refusing the Appellant's protection claim. The relevant part of that letter reads as follows -

> You claim that the PMF maintain an adverse interest in you (AIR 136 – 139). You were able to leave Iraq on your passport using a visa (AIR 55 – 56) which is inconsistent with your claim that the PMF have an adverse interest in you as, given the hybrid nature of their relationship with the Iraqi government.

The evidence relied upon in support of the "hybrid" nature of the PMF is contained within paragraph 4.2 of the 'Country Policy Information Note (CPIN) Iraq: Actors of protection Version 1.0 December 2020', which includes the following passage -

> The PMU is officially part of the state, receiving salaries from the government under a 2016 law. PMU fighters ultimately answer not to a government commission but to their militia leaders

Thus, whilst the evidence did not demonstrate that PMU members necessarily had direct influence over border checks for those exiting Iraq, there was some evidence to show that they formed part of the state apparatus from which control in specific instances could reasonably be inferred. Accordingly, whilst not perhaps the strongest strand of the judge's reasoning, I am satisfied that it was a matter to which she was entitled to place a degree of weight alongside the other reasons that she gave for not finding the appellant's account credible.

9. I have therefore concluded that to the limited extent the judge's reasoning does not bear scrutiny, this does not affect the overall safety of her credibility findings. I now turn to consider the second ground, about which the judge who granted permission to appeal expressed some concern.

10. It will be recalled that the second ground criticises the judge for failing to consider the risk to the appellant should he wish to continue expressing anti-government sentiments on return to Iraq. Such consideration would necessarily have involved the judge in assessing the genuineness or otherwise of the appellant's motivation in undertaking his sur place activities in the United Kingdom. The Respondent's answer to this, as set out in her Rule 24 Notice and developed by Ms Gilmore in her submissions, is that the Appellant had simply not raised this issue before the judge; whether in his asylum interview and witness statements, in the issues identified in his Appeal Skeleton Argument, or in the submissions made on his behalf at the hearing of his appeal. Mr Spurling's rejoinder was that it was 'a Robinson-obvious point' given that the appellant had specifically claimed protection by reason of his political opinion. I disagree. The judge correctly stated, at paragraph 25 of the Decision, that it was the appellant's case that, "he is at risk on return based on his sur place activities of attending demonstrations and posting on social media". That issue fell to be determined by the judge irrespective of (a) her finding that the appellant was not a credible witness of truth, and (b) whether those activities were genuine or contrived. By contrast, the question of whether the political opinions expressed by the appellant in the United Kingdom were genuinely held, and whether he would therefore wish to continue expressing them on return to Iraq, was a discrete issue that turned upon the appellant's overall credibility as a witness of truth. Whilst this ground is predicated upon there not having been any challenge to the sincerity with which he professed those views, this was only because the appellant had never advanced his claim upon this basis. Had he done so, it would have been necessary (amongst other things) for the Appellant to be questioned about it, with a view to affording him an opportunity to explain such matters as to why he had not shown any interest in politics prior to coming to the UK, why his political activities in the UK had been (as the judge found) limited, why he had not raised this fear in either his screening or asylum interview, and so forth. Moreover, the fact that the Appellant's own legal representatives did not think fit to raise it at the hearing of itself demonstrates that this was an issue that was far from, "obvious", and that it is only now being raised due to the Appellant's failure to substantiate the original bases of his protection claim.

11. Mr Spurling did not seek to persuade me that the third ground of appeal should be upheld, and I cannot in any event see that there is any basis for doing so.

Notice of Decision

12. The appeal is dismissed, and the decision of the First-tier Tribunal therefore stands

Judge David Kelly Date: 23rd September 2024

Deputy Judge of the Upper Tribunal