



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003156

First-tier Tribunal No: PA/60088/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of October 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

AS
(ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr Khan, Kings Law Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Field House on 10 October 2024

DECISION AND REASONS

Introduction and Background

1. The appellant, an Iraqi national, appeals against the decision of First-tier Tribunal Judge Clarkson promulgated on 17 May 2024 ("the decision"). By the decision, the Judge dismissed the appellant's appeal against the respondent's decision dated 30 October 2023, refusing his claim for asylum/protection, alongside also refusing his human rights claim.

The Grounds

2. The grounds raised challenging the decision were that the FtT's decision was flawed in law, the appellant's claim had not been properly and/or adequately addressed and that weight had not been given to the appellant's evidence and his case.

3. Permission to appeal was granted by First-tier Tribunal Judge Dempster on 09 July 2024, in the following terms:

“1. The in time grounds complain that the judge erred in a number of material respects, in that they failed to attach appropriate weight to material matters, had failed to assess properly the appellant’s case and failed to provide adequate reasons. It is the appellant’s submission that these complaints apply equally to three distinct areas.

2. The first complaint concerns the judge’s approach to the issue of risk on return because of the appellant’s sexuality in that they failed to engage with the evidence before them. At [21]-[26] the judge provided clear and cogent reasons for their finding that the appellant was not credible including inconsistent details concerning his relationship with someone in Iraq, a lack of detail and inconsistencies concerning threats said to have been made to him and inconsistent evidence about his awareness of his sexuality. The grounds concerning this aspect of the decision amount to no more than a disagreement with the findings of the judge which were properly open to them on the evidence. This ground discloses no error of law.

3. The second ground concerns the judge’s findings in respect of his surplace activity concluding that the appellant would not be at risk on return. This was because of his limited participation at two demonstrations and because they attached little weight to the FaceBook evidence. Despite finding that the appellant had built up a large number of friends on Facebook and that he reposted articles critical to the regime, the judge at [34] found that he would not be at risk on return to Iran notwithstanding that they accepted it was possible that the authorities were aware of his postings. It is arguable that the judge in concluding as they did failed to provide adequate reasons for this finding and there is thus an arguable error of law and permission is granted on this ground.

4. The final complaint is that the judge erred in law by failing to provide adequate reasons for their finding that the appellant would not be at risk on return by the absence of any identity documentation. They concluded that the appellant did not have any identity documentation and to the relevant standard that he did not have family contact in Iraq [48]. Nevertheless the judge concluded that the appellant would be able to obtain a housing card which would enable him to obtain employment. It is arguable that the judge failed to address adequately the appellant’s position on return in the absence of identity documentation in line with country guidance and there is thus an arguable error of law. Permission is granted on this ground.”

4. A Rule 24 response was received from respondent dated 18 July 2024.
5. That is the basis on which this appeal came before the Upper Tribunal

Documents

6. I had before me a composite bundle containing all necessary documents. This also included the bundles relied upon by the parties in the First-tier Tribunal.

Hearing and Submissions

7. The hearing was conducted with myself sitting at Field House, whilst the representatives attended via Cloud Video Platform.

Discussion and Conclusions

8. Mr McVeety stated at the outset of the hearing that the respondent conceded the grounds of challenge and accepted the errors highlighted therein in relation particularly to the Judge's assessment on returnability in the light of the Country Guidance in **SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 (IAC)**. This was also acknowledged in the respondent's Rule 24 response in section 4, under the heading entitled 'Documentation' where the following was stated:

"4. Documentation

The First tier Tribunal judge made findings about the appellants circumstances and assessed his ability to obtain an INID against the background evidence

He found that the appellant would not be able to access support from his family, because his evidence is unreliable in relation to other matters.

Arguably the judge has erred by disbelieving one strand of evidence simply because he does not believe the appellant's evidence on these other matters.

The judge does not provide a clear explanation of how the appellant would be able to obtain a housing card [49] and how the appellant should be able to "... obtain the necessary documentation to enable him to access services and employment." [50]

These findings are opaque and do not assist the understanding of why he reached the conclusions he did.

9. There was also discussion on the Judge's findings at [34] in assessing the appellant's case on his surplace claim against **XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC)** when they state;

"I have to consider if the Appellant was a person of significant interest so that their Facebook posts would have come to the attention of the Iranian authorities before they could delete them for return to Iran or applying for an Emergency travel Document."**[My emphasis]**.

10. It could not be ruled out that this was more than just a typo, and that the Judge mistakenly assessed this part of the claim as though the appellant was an Iranian national, whereas only the general guidance in **XX (PJAK)** applied in his case as a person who was not an Iranian national who was not facing return to Iran.

11. In any event, I am nonetheless satisfied that in all the circumstances, Mr McVeety's concession was fairly and sensibly made. I informed the parties that I did not seek to go behind the respondent's concession, and I accept that there were material errors of law in the Judge's decision as argued in the grounds seeking permission and as stated at section 4 of the respondent's Rule 24 response.

12. I therefore set aside the decision of the Judge.

13. Applying **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)**, I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement. I consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process.

Notice of Decision

14. The decision of the First-tier Tribunal sent to the parties on 17 July 2024, involved the making of a material error of law. It is set aside in its entirety.

15. The appeal is remitted back to the First-tier Tribunal at Birmingham to be heard by any judge other than First-tier Tribunal Judge Clarkson.

Anonymity

16. The Anonymity Order made by the First-tier Tribunal is maintained.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 October 2024