



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003392

First-tier Tribunal No: PA/51809/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12th of November 2024

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

O A
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr J Thompson, Senior Home Office Presenting Officer

For the Respondent: Ms M Bhachu, instructed by Primus Solicitors

Heard by CVP at Field House on 4 November 2024

Although this is an appeal by the Secretary of State, I shall refer to the parties as in the First-tier Tribunal

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 is an Iraqi national of Kurdish ethnicity born in 1982. His appeal against the refusal to revoke a deportation order was allowed by First-tier Tribunal Judge Dieu ('the judge') on 20 June 2024 on asylum grounds. The Secretary of State appealed.
2. The appellant entered the UK on 27 February 2002 and claimed asylum. His claim was refused but he was granted exceptional leave to remain. In 2005, he was convicted of supplying drugs and sentenced to 21 months' imprisonment. His application for settlement in 2006 was refused. In March 2007, the appellant was informed of his liability to deportation and on 11 June 2007 a decision to deport was made. The appellant's appeal was dismissed in August 2007. In May 2008, the appellant applied to remain in the UK under the Legacy Programme. In November 2010, he was convicted of possessing a false document and sentenced to 6 months' imprisonment. In 2011, his application under the Legacy Programme was refused and a deportation order was signed against him. His application for the deportation order to be revoked was refused in August 2012 and his appeal was dismissed in February 2013.
3. The appellant made a further application to revoke the deportation order in November 2020 on the basis he is at risk in Iraq because of his political activities in the UK and also because he is undocumented. He also provided evidence that he is in a relationship with a British citizen and he has a daughter in the UK. The refusal of this application is the subject of this appeal.

Grounds of appeal

4. The respondent appealed on the grounds the judge failed to properly assess the risk that the appellant faces based on the evidence, relevant country guidance and case law. The respondent submitted the judge's findings were inadequately reasoned and the decision to allow the appeal amounted to a material misdirection of law.
5. The respondent challenges the judge's findings at [33-37], that even low-level individuals are at risk of online monitoring and persecution due to their political opinions, on the grounds they were speculative and not supported by the evidence. The appellant did not hold a position of authority and only attended demonstrations. The judge relied on isolated examples from the CPIN which failed to establish any systematic targeting by the Iraqi Kurdish authorities or their ability to monitor and identify individuals, such as the appellant who was unknown to them.
6. The judge's finding at [32] that the appellant's motivation to become politically active came after the ISIS invasion in 2017 was factually incorrect and the judge failed to address the appellant's unexplained political inaction between the referendum in 2017 and when he commenced his sur place political activities in 2019. The judge's finding that the appellant's political opinion was genuine was inadequately reasoned.

Submissions

7. Mr Thompson relied on the grounds and submitted the judge's conclusions on risk on return were inadequately reasoned. The judge made a material error of

fact in assessing whether the appellant's political opinion was genuinely held. There was a lack of objective evidence to show the authorities had the capability to monitor the appellant's activity. The judge's conclusions were contrary to the evidence before him.

8. Ms Bachu relied on Volpi v Volpi [2022] EWCA Civ 464 and submitted I should be slow to interfere with the judge's decision. The appellant's evidence was that he gradually became politically active over a number of years. He had attended numerous demonstrations and provided an activity log of his online posts. The alleged factual error could be a typographical error but was not a material error when the decision was read as a whole. The judge considered all the evidence in the round and found the appellant to be credible. The judge gave adequate reasons for why he departed from the previous decisions and the appellant fell into one of the enhanced risk categories.
9. Ms Bachu submitted the judge took into account all the background material and whether a low level supported would be at risk depended on the merits of the case. The judge's findings were consistent with SMO and KSP (Civil status documentation, article 15) CG (Iraq) [2022] UKUT 110 (IAC) and the CPIN's. His conclusion that the appellant's political opinion was genuine was open to him on the evidence before him. The judge then went on to consider risk on return. The respondent's grounds were disagreements with the judge's findings and there was no material error of law in the decision.

Conclusions and reasons

10. The judge summarised the appellant's case and rejected the respondent's criticism of the reliability of the appellant's Facebook posts at [31]:
"The Appellant's case is that since 2019 he has attended upon eight demonstrations, protesting against the Iraqi and Kurdish authorities. He does not assert any greater role than as an attendee. He started posting on Facebook since 2019. He has provided some screenshots with translations. These show him to have had 4.9k friends, followed by 1,023 people and activity going back to at least 2020. I am satisfied that the nature of his posts are highly political. That is evident from the translations and nature and feel of the photos. The Respondent criticises the reliability of the evidence by reference to XX (PJAK), sur place activities, Facebook) Iran (CG) [2022] UKUT 23 and the absence of the 'download your information' data. I do not agree that such criticism can be made in this case, however. The Appellant has provided the hyperlink to his profile and in evidence referred to more posts accessible through his phone. He has also made available the profile page of his account with his name and details. I am satisfied therefore that the Appellant has reasonably made his full profile available for inspection. Furthermore, he has provided the 'activity log' which shows his 'posts, check-ins, photos and videos' that go back a number of years."
11. I am not persuaded that reference to the ISIS invasion in 2017 at [32] was a material error of fact. It could be a typographical error but in any event it was apparent on reading the decision as a whole that the judge took into account the appellant's oral and written evidence for why he became politically active in the UK in 2019. The judge found the appellant's evidence was consistent and supported by the documentary evidence. There was no challenge to the judge's credibility findings. His finding that the appellant was genuine about his sur place activities was open to the judge on the evidence before him and he gave adequate reasons for coming to this conclusion.

12. At [33-37] the judge considered the respondent's submission that low level supporters, such as the appellant, are not at risk on return. He considered the evidence in the CPIN's; the inspection report referenced in the appellant's skeleton argument; judicial order no. (711/Office 2021) which established a new committee tasked with the monitoring of online activity; and other background material in the court bundle. The judge quoted extensively from the 2023 CPIN giving examples to support his conclusions at [36] and [37]:
- "36. I am satisfied therefore that the targeting of political opposition is not confined to high profile individuals only. There is ample evidence of low-level participants coming to harm. I am also satisfied that the response by the authorities is widespread and coordinated, in other words, systematic.
37. I find that should the Appellant continue to practice his political belief in the way that he has been, as he is fully entitled to do, it is reasonably likely that he would come to the attention of the authorities and be exposed to a real risk of significant harm."
13. I find the judge's conclusions were supported by the background material and consistent with country guidance. The judge acknowledged that the respondent did not challenge the existence of a new committee tasked with monitoring online activity. The judge's finding that the appellant was at risk on return was open to him on the evidence before him and his reasons were adequate.
14. In coming to my conclusions set out above, I have considered and applied Volpi v Volpi and HA (Iraq) v SSHD [2022] UKSC 22 in which the Supreme Court held at [72]
- It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:
- (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialised field the tribunal will have got it right. Appellate courts should not rush to find misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently.
 - (ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account.
 - (iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out."
15. The judge's findings are brief but he adequately explains why he rejected the respondent's submissions and allowed the appellant's appeal. Accordingly, I find there was no material error of law in the decision dated 20 June 2024 and I dismiss the Secretary of State's appeal.

Notice of Decision

Appeal dismissed

J Frances

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2024