



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004041

First-tier Tribunal No: PA/57569/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21st of November 2024

Before

UPPER TRIBUNAL JUDGE HIRST

Between

BA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bundock, counsel instructed by Elder Rahimi Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

Heard at Field House on 19 November 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 appeals the decision of First Tier Tribunal Judge Cary dated 27 July 2024, dismissing his appeal on protection and human rights grounds.

Background

2. The Appellant is an Iraqi Kurd from the Iraqi Kurdistan Region ('IKR') who claimed asylum on 11 November 2021. His asylum claim was based on his imputed political opinion, having been accused of disseminating photographs and videos of a party thrown by an MP at which the Appellant had worked at as a caterer, and which showed compromising behaviour by prominent individuals including drug taking and prostitutes; and further on his *sur place* political activities in the UK. The Appellant's asylum claim was refused on 19 September 2023 and the Appellant's appeal came before the First Tier Tribunal at a hearing on 27 July 2024.
3. The First Tier Tribunal dismissed the appeal. The Appellant sought permission to appeal on four grounds:
 - i. There had been material errors in the judge's analysis of the Appellant's evidence;
 - ii. The judge had erred by rejecting corroborative evidence which was before him;
 - iii. The judge had erred in his assessment of the feasibility of return to Iraq in light of the Appellant's lack of an identity document;
 - iv. The judge had erred in his assessment of risk arising from *sur place* activity.
4. Permission to appeal was granted on 17 September 2024 by Upper Tribunal Judge Kamara. The appeal came before me at an error of law hearing on 19 November 2024.

Submissions

5. On behalf of the Appellant, Mr Bundock addressed Grounds 1 and 2 together. The judge had failed to take into account relevant evidence before him; many of the reasons given by the judge for rejecting the Appellant's credibility had not been taken in the refusal letter and were not put to the Appellant during the hearing. In particular, the judge had failed at paragraphs 24 and 26 of the determination to take into account the Appellant's evidence with regards to the timing of the release of the videos on social media and the evidence from the Appellant's friend Hemen Husein. At paragraph 28, the judge had failed to give anxious scrutiny to the evidence of threats made to the Appellant in the UK, including those which referred specifically to the video. At paragraph 25, it was incumbent on the judge to consider the Appellant's evidence as a whole: he had given clear and consistent answers in his statement and in his asylum interview. The judge was not bound to accept the Appellant's evidence, but he was required to engage with it and to give reasons if he rejected it.
6. Ground 3 stood or fell with the credibility findings; if the judge had erred in his assessment of credibility, then his finding that the Appellant's family would supply his identity card was flawed and would require reassessment. On Ground 4, Mr Bundock relied on *WAS (Pakistan) v SSHD* [2023] EWCA Civ 894; the judge had erred at paragraphs 39 and 41 by relying on the absence of evidence of monitoring of dissident activity when there was ample material before him indicating that the Iraqi authorities were hostile to opposition in the IKR. It had

been clear that the Appellant's Facebook account was public and the evidence before the judge included 145 pages of posts over a significant time; there was also evidence of abusive and threatening messages referring to the Appellant's attendance at demos in the UK. The judge had not engaged with or analysed this material. The judge had misdirected himself as to *XX (P/IAK, sur place activities, Facebook) Iran (CG)* [2022] UKUT 23 (IAC); it was always for the Tribunal to assess the evidence before it and in this case the Appellant had supplied significant evidence from his Facebook account. The judge had erred at paragraph 42 by comparing the situation of activists in the IKR with *sur place* activities in the UK.

7. On behalf of the Respondent, Mr Tufan submitted that there was no error of law in the Tribunal's decision. The judge was entitled to rely on the discrepancies in the Appellant's asylum interview; even if the judge had looked at the evidence relating to Hemen Husein, it was clearly self-serving and would not have made a difference to the decision. Anxious scrutiny was a basic tenet of asylum law and the judge would have been aware of his duty to apply it. The judge had given careful scrutiny to the Appellant's *sur place* activities and had considered them at length. There was no reason why *WAS (Pakistan)* should apply to the IKR, an autonomous region of Iraq. The judge had correctly directed himself by reference to *BA (Demonstrators in Britain - risk on return) Iran CG*[2011] UKUT 36 (IAC). There were no errors in the judge's application of *XX*. The Appellant would be returned to Erbil and *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 110 (IAC) did not indicate risk on return.
8. The parties were agreed that if I found an error of law, the appropriate course would be to remit the case to the First Tier Tribunal for a *de novo* hearing with no findings reserved. I reserved my decision.

Decision

9. I remind myself that judicial caution is appropriate when considering whether to set aside the decision of a specialist tribunal of fact, and that in particular an appellate court should not assume that the first instance judge has misdirected himself unless it is quite clear that he has done so. The Upper Tribunal should be slow to infer that the First Tier Tribunal judge has misdirected himself or failed to take a point into account: *HA (Iraq) v SSHD* [2022] UKSC 22 at [72]. I also bear in mind that a first instance determination should not be 'picked over' or subjected to detailed textual analysis.
10. In relation to Grounds 1 and 2, the judge properly directed himself [§19] that he should make his decision by reference to all the evidence, and [§20] of the need to consider the case with anxious scrutiny. However, considering the decision as a whole, it does seem to me that on several issues material to credibility the judge failed to engage with the Appellant's evidence:
 - i. The judge gave detailed consideration at paragraph 24 to the Appellant's answers in his asylum interview in relation to the timing of the release of the video on social media, which was an issue raised in the Respondent's refusal letter. The judge's conclusion that he had "no explanation" as to the apparent 2 month delay in publication strongly indicates that he had not given any consideration to the explanation in the Appellant's witness statement;

- ii. Similar concerns arise from the judge's approach in paragraph 26, where he again referred to the Appellant's asylum interview and stated that there was "nothing" from the Appellant or his friend Hemen Husein to confirm that Hemen had warned the Appellant. The evidence before the judge included a message from Hemen warning the Appellant and asking the Appellant not to contact him;
 - iii. At paragraph 28, the judge referred to the Appellant's evidence of threats made to him in the UK, stating that the threats were vague and "make no reference to what the Appellant is said to have done". In fact, the evidence of threats included specific reference to the video which the Appellant was said to have uploaded.
11. The judge was of course not bound to accept the Appellant's evidence, but he was required to consider it in the round and to give reasons for rejecting it. Taken as a whole, those passages indicate that whilst the judge gave very detailed scrutiny to the Appellant's asylum interview, he did not consider sufficiently or at all other key parts of the evidence before him. The judge's conclusions on credibility were materially flawed.
 12. On Ground 3, the judge concluded that the Appellant would not be at risk due to lack of identity documentation on return because his family would supply them to him. The Appellant's evidence was that his family would not assist in redocumenting him. I can see some force in Mr Tufan's submission, that the Appellant would in any event not be at risk because he would be returned direct to Erbil or Sulaymaniyah airport in the IKR; it is however unclear from the determination whether that argument was pursued before the judge. I consider that given the flaws in the judge's approach to the Appellant's credibility, the issue of documentation on return is one which requires reassessment by the Tribunal.
 13. On Ground 4 (risk arising from *sur place* activity), I consider on balance that the judge did fall into the error identified in *WAS (Pakistan)* by relying [paragraphs 39, 41, 42] on the absence of evidence which showed that the Iraqi/IKR authorities were monitoring opposition political activity or social media accounts. It is unclear what evidence the Appellant could have provided in this respect: *WAS* at [84]. I also consider that the judge did not properly engage with the evidence which was before him, which included a large quantity of the Appellant's Facebook posts; whilst the judge was entitled to take into account the lack of 'download your information' disclosure, he was still required to consider and engage with the evidence which was before him.
 14. I consider that the above errors were material to the outcome of the appeal, since it cannot be said that the First Tier Tribunal would inevitably have reached the same conclusion absent the errors.

Notice of Decision

The decision of the First Tier Tribunal involved the making of a material error of law and is set aside. The appeal is remitted to the First Tier Tribunal for a *de novo* hearing with no findings preserved.

L Hirst

**Judge of the Upper Tribunal
Immigration and Asylum Chamber**

20 November 2024