



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004940

First-tier Tribunal Nos: PA/58723/2023
LP/06340/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of January 2025

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'BF' (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hill, Counsel, instructed by Wright Justice Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 2nd January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. The reason for this is because the appeal relates to a protection claim. 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 written reasons reflect the oral reasons which I gave to the parties at the end of the hearing.

Background

2. The background to the appeal is a protection claim brought by 'BF', an Iraqi citizen of Kurdish ethnic origin, who claims to have suffered adverse interest in Iraq from the 'PMF', as quasi-governmental militia, as a result of a dispute over land. It is accepted by both parties that the PMF has a complex relationship with the Iraqi government, being autonomous but also with overlapping powers and sometimes acting beyond the control of the government. The appellant claims that the PMF wished to build some form of military base in or around land owned by or connected to the appellant's family, and that he had a leading role in the demonstrations opposing the base. As a result of that opposition, he claimed that the PMF went to arrest him and shortly thereafter, he fled Iraq, for the first stage of his journey by plane and thereafter by land across from Turkey. A Judge of the First-tier Tribunal, Judge Abebrese, rejected the appellant's appeal against the respondent's refusal of the protection claim in a decision promulgated on 14th August 2024. The Judge considered the appellant's credibility at §§6 to 21. The Judge rejected the appellant's credibility specifically in findings at §§17 to 20, which comprised the entirety of the findings. The Judge found as follows:

- “17. ... The A [appellant] claims that the PMF are an organisation that works closely with the government and that they have power and influence in the country. The A claims that the PMF were interested in the A and that they were aware that it was the A who led the demonstrations. However, the A claims that he was able to leave the country using his own passport and visa without any difficulties. I do not find that the A would have been able to do this bearing in mind the fact that objective materials tends to support the claim that the PMF do indeed have a power base within the country and that they work close [sic] with the government.
18. The A also claims that the PMF visited the premises but he was not able to say how many times they visited his family home with any clarity, this information the A should have been able to provide with certainty. The A also claims that there was a search warrant for his arrest this in my view is inconsistent with the evidence that he was able to leave the country without any difficulties.
19. I do not accept the core facts of the A's claim that the PMF were interested in building on land that belonged to his father and that he led and organised a demonstration which led to a riot. I am of the view that the A has provided this evidence in order to bolster his claim. ... The A may return relocate internally in my view based on the evidence. I am also of the view that the A on return will not [sic] humanitarian protection or face a risk under Article 3 of ECHR.
20. I also do not find it credible that the A may not obtain an INID/CSID. The government after 2015 introduced a biometric system which on the facts would have been in place when the A left the country. The A claims that he was able to leave the country without any difficulties so it is likely that he would have complied with the biometrics system that was in place, which would have been necessary in order for him to obtain an INID. In any event the A may obtain a CSID because he has family in Iraq who may assist him in providing the relevant information to obtain the documents. I am not of the view that the A does not have the means to make contact with his family in Iraq and that he has lost contact completely. The A did not provide any information that he has

made attempts to contact his family through organisations such as the Red Cross”.

The grounds of appeal and grant of permission

3. The appellant raised grounds of appeal which I have numbered as grounds (1) to (4).
4. Ground (1) was in relation to the Judge’s finding at §17 where the Judge had held against the appellant that he had been able to leave Iraq without difficulties. This ground contends that the Judge had failed to consider the country evidence cited in the appellant’s skeleton argument and referred to in submissions, which noted that the PMF was a complex umbrella organisation of militias independent of the state ministry. The skeleton argument cited at §13 that the PMF had a close relationship with the government but retained autonomous control and influence and therefore government control over its militias was limited and the PMF often acted outside the state’s command. In particular, as Mr Hill emphasised in his oral submissions, where the appellant claimed to have left Iraq immediately after the demonstration and on becoming aware of potential adverse interest, the Judge had made a finding that did not take into account the backdrop of the country evidence of the potential disorganisation and the speed with which the PMF could act, notwithstanding their power base and the closeness of their relationship with the government, but in circumstances where they were nevertheless independent. Mr Hill however accepted that the appellant’s ability to leave Iraq had been raised in the respondent’s review (page [48] of the bundle before me, at §10).
5. Ground (2) was a challenge to the Judge’s criticism of the appellant’s credibility by reference to the fact that he ought to have been able to provide with certainty evidence of visits to his family home. This ignored the factual context that the appellant claimed to have left straight from the demonstration he had attended and had not returned home. Also the suggestion that the appellant should be able to recall something ‘with certainty’ was a flawed reasoning.
6. Ground (3) was that the Judge had erred in concluded at §19 that the appellant may return and relocate internally in Iraq, based on the evidence. That option had been ruled out because whilst the respondent did not accept that the appellant was at risk, she accepted that were he at risk as claimed, internal relocation would not be an option open to him. That had been expressly accepted at page [8] of the refusal letter, where it stated that: “Protection from persecution and internal relocation. There would not be sufficient protection from persecution in Iraq and you could not relocate within Iraq if the key material facts of your claim were accepted.... meaning that neither option would be available to you”.
7. The final ground, ground (4), challenged the Judge’s finding at §20 where, although there had been an introduction of a biometric ID system in Iraq, the Judge had failed to consider that the ‘INID’ system had been introduced by way of a phased rollout as set out in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC).
8. Permission was granted on all grounds.

The parties’ respective submissions

The appellant

9. In relation to ground (4), Mr Hill added that from the asylum interview record, question 9 in particular, it was apparent that the appellant was not even clear of the difference between a CSID and an INID card.
10. Mr Hill reiterated the grounds and added that there were in reality only two alleged inconsistencies. The first supposed inconsistency was the appellant's ability to leave Iraq, and the second was not knowing with certainty how many times those seeking him had visited the family home, at a time when he was not there. There was no inconsistency at all, as outlined in grounds (1) and (2). Internal relocation had never been taken as an issue.

The respondent

11. For the Secretary of State, Ms Everett accepted in relation to ground (3) that the question of internal relocation had not been in issue, but this was not material, provided grounds (1) and (2) were not made out.
12. In relation to ground (1), while some countries might welcome a political opponent leaving and so the fact of unhindered departure should not count against a claimant's credibility, in this case, the appellant claimed that an arrest warrant had been issued against him.
13. In relation to ground (2), while use of the word 'certainty' was potentially problematic, this had to be considered in the Judge's wider assessment of credibility.
14. In relation to ground (4) it was possibly not in the respondent's favour as to whether, by virtue of being able to leave on a passport, that would necessarily entitle the appellant to an INID, but nevertheless the Judge made clear findings that the appellant continued to be in contact with family in Iraq, findings there were open to the Judge to make.

Discussion and conclusions

15. I remind myself first, not to substitute my view of what I would have decided and second, not to focus unduly on particular phrases or words but to consider the Judge's findings as a whole. I also bear in mind that it can be perfectly appropriate for a Judge to make brief decisions. The practical difficulty in this case is that in the judgment, relating to a complex matter, the findings comprise four relatively brief paragraphs in their entirety. I do not encourage or suggest that the Judge ought to have recited the evidence in detail, but I am satisfied that the Judge erred in relation to the analysis on all grounds.
16. In relation to ground (1), I do not suggest that the Judge was perverse in reaching a finding that because the appellant was able to leave Iraq, which cast doubt on his credibility. However, I do accept the challenge that the appellant's skeleton argument at §13 referred to the fact that although closely linked with and part of the government, the PMF was a partially separate organisation. The difficulty with the Judge's reasoning as Mr Hill pointed out, is that the Judge referred to unidentified objective materials which tend to support the claim that the PMF have a power base, and they work closely with the government. That much is uncontroversial. However, there is no engagement with an argument

advanced that it did not follow that the appellant would be unable to leave Iraq, provided he did so swiftly, because of the nature of the PMF's organisational relationship with the state. The judgment does not explain why that proposition was rejected. This is notwithstanding Ms Everett's point that there was some kind of warrant which might militate against an argument that there are some authoritarian regimes who actively encourage or are willing to tolerate departures. I am satisfied although it was a nuanced assessment, the Judge needed to explain and engage with the nature of the PMF regime as a semi-independent organisation and to have explained why therefore the claim to be of adverse interest was inconsistent with an ability to leave Iraq.

17. I am also satisfied that the Judge erred in the analysis on credibility at §18 where there is a reference that the appellant should have been able to say with certainty how many times his family home had been visited, where on the appellant's narrative he had not returned home since he had fled following a demonstration. It may well be that on a more detailed analysis a Judge does conclude that an inability to recall this damages credibility but here, the obvious question which Mr Hill asks, is why credibility should be damaged because there was an inability to recall with certainty how many times the family home was visited. I also bear in mind that these are the two critical points in relation to credibility and the errors are, as a consequence, material.
18. In terms of ground (3), Ms Everett accepted that were I to find that grounds (1) or (2) were made out, the issue of an ability to internally relocate was never contested and therefore the Judge's reasons on this point are not safe and cannot stand.
19. In relation to ground (4), on the one hand there is no potential criticism of a finding in principle that somebody still has contact with family, although in this case that of course depends on the Judge's analysis of credibility and therefore the errors on grounds (1) and (2) similarly undermined the reasoning in relation to ground (4). There are two further points. First, the phased rollout of the INID system was not considered by the Judge. Second, INIDs cannot be obtained by proxy in Iraq. I am conscious that the position on an inability to obtain an INID in Iraq may be irrelevant in the not-too-distant future in light of recent trial arrangements said to have been started by the Iraqi Embassy in London, to issue INIDs from the UK. Nevertheless, on the evidence presented and analysed, I am satisfied that the judge's reasons on this ground too are not safe and cannot stand.

Notice of Decision

20. **The Judge's decision contained errors of law in his assessment of the appellant's credibility, such that his decision is not safe and cannot stand. I set aside the Judge's reasons in their entirety so that the Judge's decision will need to be considered de novo.**

Disposal

21. I canvassed with the representatives whether I should retain re-making in the Upper Tribunal or remit matters to the First-tier Tribunal. Bearing in mind that I have not preserved any of the Judge's findings, my preliminary view was that the matter would need to be remitted to a Judge in the First-tier Tribunal. Mr Hill agreed with that, and Ms Everett did not disagree. It seems to me that is the

only appropriate course, bearing in mind that the effect of at least one of the errors, ground (3), was to deprive the appellant of a fair hearing, and also bearing in mind the nature and extent of any fact-finding.

22. I therefore remit the matter back to the First-tier Tribunal to reconsider again, at Taylor House, by a Judge other than Judge Abebrese.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6th January 2025