



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/06459/2014

THE IMMIGRATION ACTS

**Heard at Birmingham
On 15 July 2016**

**Sent to parties on:
On 29 July 2016**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

MR AHMED MOHAMMED ARIF

(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lane (Counsel)
For the Respondent: Mr D Mills (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appellant's appeal to the Upper Tribunal, brought with the permission of a Deputy Judge of the Upper Tribunal, against a decision of the First-tier Tribunal (Judge Juss hereinafter "the Judge") dismissing his appeal against the Secretary of State's decision of 15 August 2014 refusing to grant him asylum or any other form of international protection.

2. By way of background, the appellant, who is a national of Iraq and was born on 1 January 1952, had come to the UK for temporary purposes. He is, it is accepted, Kurdish. He says that he is from Kirkuk. He also says that he had, along with his business partner, been the owner of a car company in Kirkuk.

3. The appellant says that whilst he was lawfully in the UK he received a telephone call on 25 December 2012 from one Abu Hamza, a man based in Iraq, demanding money. He says that he contacted his business partner who said he did not know anything about it. However, on 1 January 2013 his home was raided and money, some possessions and some papers were taken. He asked his business partner to report the incident to the police on his behalf. There followed a raid upon the car company and a further telephone call from Abu Hamza demanding further money and making threats. The business was then destroyed and his business partner fled. A neighbour subsequently informed him that men had come to his home seeking him out. The appellant claims that the persons who have been seeking him out, stealing his property and threatening him are Shia militants who have targeted him, in part, because he is a business man and they believe him to be wealthy. He says that his business partner has now been killed.

4. The asylum claim was refused because the Secretary of State, whilst accepting that the appellant is an Iraqi national of Kurdish ethnicity, did not accept anything else of substance concerning the account underpinning the claim. The appellant appealed but his account of the claimed events did not find favour with the Judge either. In saying why he was disbelieving the appellant the Judge said this:

“ 14. First, this is a case where the appellant and his wife came to the UK on the basis of an expressly stated intention to visit family members in this country and then to return. They purported at the time to put themselves forward as a couple of some substance who had no difficulty whatsoever in Iraq. Subsequently, it is being said that the facts on the grounds have changed. The facts on the ground, however, as they apply to these appellants bear consideration.

15. Second, the facts that are being prayed in aid do not make sense. The appellant, who was never targeted in Iraq, is suddenly now approached by a man called Abu Hamza in the United Kingdom. This was the evidence. It is the evidence in his witness statement. The way he is approached, is not just by letters, which have been produced at the hearing before us, but by ‘a phone call from Abu Hamza’ (see paragraph 10). It was never explained in evidence how this man was able to telephone the appellant at his home in the United Kingdom. This evidence is wholly lacking in credibility. Similarly lacking in credibility, is the evidence that, if the appellant was a Kurdish Muslim in Iraq, who stood to be targeted, but was not targeted in Iraq, is now being targeted by way of letters being sent to him, which had been sent after he arrived in the country by Alminted Company.

16. Third, the appellant’s evidence was that his partner, Abu Bakir Khalaf was spared, only because he was an Arab, and was not therefore at risk otherwise he would have been targeted. Yet the witness statement then goes on to say (see paragraph 24) ‘that my business partner has been killed’. The evidence is totally convoluted and is presented in whichever way suits the purposes of the appellant.

17. Fourth, the reason why the appellant himself is allegedly targeted is also lacking in credibility. In his witness statement he first states that, ‘Abu Hamza was just prepared to get whatever money he could with his threats, regardless of what I did’ (see paragraph 12). Yet, later on he goes on to say that, ‘I would like to emphasise that the issue of my business and the money were

never the driving factor in why I have been targeted by Abu Hamza ... I have been targeted because I am a Kurdish Muslim' (see paragraph 23).

18. Finally, there is the witness statement of Tariq Arif, who did not attend to give evidence and who states that, 'I confirm that when my father came to visit he had intentions of returning to Iraq' (paragraph 6). Yet, he also now states that, 'he had never experienced any problems from the Shia militia whilst he was in Iraq' (paragraph 7). If the appellant did not experience any problems from the Shia militia, which were still active at the time that the appellant set out to come to the UK, then it does not make sense why he would be targeted now. It certainly is not credible that he would be telephoned at home by a man called Abu Hamza. The witness statement of Tariq Arif also goes on to refer to 'this whole issue is really affecting my father's health' (paragraph 4) and gives details in the way that the appellant himself did not, and in the way that his advocate himself did not emphasise. All in all, I conclude that the asylum claim is a complete fabrication."

5. The Judge then went on to consider whether or not the appellant might be entitled to a grant of humanitarian protection. He was required to do that because it was being contended on behalf of the appellant, amongst other things, that he would be at risk at least in his claimed home area of Iraq as a result of there being an internal armed conflict in the country or, at least, in that part of the country. It was also contended that he would not be able to safely internally relocate. As to such matters the Judge said this:

" 19. As I found that the appellant is not a refugee, I must also consider whether he qualifies for humanitarian protection. I found that the background country information evidence does not indicate that such a person would be at risk of persecution or serious ill-treatment of any kind. I have taken into account the 22 August 2014 Country Information Report. Having found that the appellant is not a refugee because he has not established a well-founded fear of persecution, by analogy, I find that the appellant could not qualify for humanitarian protection either."

6. Permission to appeal to the Upper Tribunal was sought and was initially refused by a judge of the First-tier Tribunal. However, the application was renewed on the basis that the Judge had failed to explain why the appellant would not be at risk on the basis of indiscriminate violence resulting from an internal armed conflict and had (as I understand the grounds) made contradictory or irrational findings. Permission was granted by a Deputy Judge of the Upper Tribunal and the salient part of that ground reads as follows:

"The grounds assert that the Judge erred materially in law in failing to consider material matters viz. that the determination has not assessment (sic) of the 'level of indiscriminate violence that substantial grounds exist for believing that an applicant would, solely by being present there, face a real risk which threatens his life or person' [6]. Reference is also made to the increased levels of indiscriminate violence and worsening of the armed conflict in Kirkuk City and Province [10]. Whilst Judge Juss touched upon the issue of humanitarian protection at 19 it is arguable that he did not engage with the Article 15(c) test or provide adequate reasons for finding that the appellant did not qualify for humanitarian protection."

7. The grant of permission was not limited. Permission having been granted the matter came before me for an oral hearing. Representation was as stated above and I am grateful to both representatives for their oral submissions. I am also grateful to Mr Lane for providing me with a skeleton argument in which it was contended that the Judge had indeed erred in failing to consider the general security situation in the appellant's home area when considering the humanitarian protection aspect and that, further, his assessment as to credibility had been inadequate. I did wonder whether the second point might have strayed beyond the grounds as drafted but I think what

is said therein is wide enough to cover such a contention and Mr Mills did not seek to suggest otherwise.

8. Mr Lane, in his oral submissions, contended that, for particular reasons, all of the paragraphs of the determination explaining the negative credibility assessment were unsafe. He also maintained the contention in the grounds and in his skeleton argument regarding what was said to have been an inadequate assessment as to the humanitarian protection issue. Mr Mills, with respect to the credibility side of things, took a conciliatory stance and acknowledged that Mr Lane had put forward sound arguments. He did not seek to dissuade me from Mr Lane's contention that the credibility assessment was flawed. As to humanitarian protection, he accepted that that aspect had not been dealt with "as well as it could have been" but he suggested that even if there had been an internal armed conflict in Kirkuk as at the date of the hearing before the Judge, any error in not so finding was not material because it was obvious, on the facts, that the appellant could take advantage of an internal flight alternative. As I understand it, though, Mr Mills did not actively oppose the contention that the determination ought to be set aside on the basis of the adverse credibility finding having been inadequate. Both representatives indicated that they thought, in the event of my setting the decision aside, remittal to the First-tier Tribunal would be the most appropriate course of action.

9. I have decided to set aside the determination of the Judge. As to the credibility assessment, the Judge stated, in effect, at paragraph 15 of his determination that it had never been explained how Abu Hamza had been able to telephone the appellant at his address in the United Kingdom. However, whether it was to be believed or not, the appellant had offered an explanation which was to the effect that Abu Hamza had obtained his UK telephone number from one of his employees in Iraq. That explanation is, in fact, referred to it at paragraph 11(c) and (d) of the reasons for refusal letter as Mr Lane points out. As to the Judge's comments and findings at paragraph 16 of the determination, the appellant's account appears to have been to the effect that he had been told that unless he paid money to Abu Hamza or his associates the business would be destroyed and his business partner killed and that, subsequently, that killing occurred. So, there does not appear to have been the inconsistency in the account which the Judge had thought he had identified. Further, whilst the Judge thought (paragraph 17 of the determination) that the appellant had been inconsistent as to why Abu Hamza had targeted him, his having suggested money was the motivation at one point and then his having suggested ethnicity was the motivation at another, that was to overlook what he had had to say at paragraph 11 of his witness statement which, in effect, tied the two together. So, it does seem to me that the Judge did err in failing to fully consider what the appellant had had to say before rejecting his account.

10. Mr Lane did make certain other points about the credibility assessment but it does not seem to me to be necessary to say anymore given the view I have already reached. I have decided that the decision should be set aside.

11. In light of the above it is not necessary for me to say anything about the other basis upon which the determination was attacked either. I would just observe, in passing, that since the Judge made his decision the Upper Tribunal has decided the case of **AA (Article 15(c)) Iraq CG (2015) UKUT 00544 (IAC)** which will no doubt be of interest to the parties and the First-tier Tribunal which will have to rehear this case.

12. I have decided, given what the representatives had to say before me about this, that the appropriate course is remittal. That is particularly so because given the conclusion I have reached as to the adverse credibility finding, an entirely fresh fact-finding exercise will have to be

undertaken and that is best done by the First-tier Tribunal as an expert fact-finding body. I have, below, set out some directions which I hope will be of assistance to the First-tier Tribunal when it comes to remake the decision.

Directions

- A. The decision of the First-tier Tribunal is set aside with nothing preserved. The appeal will have to be considered entirely afresh by a judge or panel of the First-tier Tribunal but should not involve the judge who made the decision now set aside.
- B. The appeal shall, if practicable, be listed at the Bradford Hearing Centre. The time estimate will be three hours. A Kurdish Sorani speaking interpreter will be required.
- C. There is contained within the Upper Tribunal file the various documents which were before the First-tier Tribunal and those which have been sent to the Upper Tribunal and received by it as at 15 July 2016. If either party wishes to rely upon any further documentary evidence, in whatever form, then that documentary evidence is to be sent to the First-tier Tribunal at Birmingham (with a copy being sent to the other party at the same time) in sufficient time for it to be received at least five working days prior to the date which will be fixed for the fresh rehearing. Any such documentation is to be in the form of an indexed and paginated bundle.
- D. Any additional or updating witness statements which are to be relied upon must also be filed and served within five working days of the date which shall be fixed for hearing.
- E. Any party filing documentation not in accordance with the above requirements should not assume that such documentation, whatever its content, will be admitted for consideration by the First-tier Tribunal.

Decision

The decision of the First-tier Tribunal involved the making of an error of law. Its decision is, therefore, set aside.

The appeal is remitted to the First-tier Tribunal.

I make no anonymity direction.

Signed:

Date: 29 July 2016

Upper Tribunal Judge Hemingway

**TO THE RESPONDENT
FEE AWARD**

I make no fee award.

Signed:

Date: 29 July 2016

Upper Tribunal Judge Hemingway