



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA060052016

THE IMMIGRATION ACTS

Heard at Glasgow
on 3 May 2017

Determination issued
on 5 May 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[O N]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Martin, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Kurdish citizen of Iraq, from Erbil, born on [] 1995.
2. The appellant says that his family is devoutly Muslim. His father is a senior member of the KDP and his brother works for the party as a policeman. They were enraged by the appellant's loss of faith in Islam, which led to a series of incidents, in the last of which the appellant's brother tried to shoot him, so he fled from Iraq to the UK.
3. The respondent refused the appellant's protection claim by decision dated 2 June 2016. His account of abandoning Islam, his father's power within the KDP, and of abuse by and risk from his family, was found not credible (pp.6-9). Alternatively, he could relocate (pp.9-11, under reference to AA Iraq CG [2015] UKUT 00544). The claim was refused also by reference to sufficiency of protection, humanitarian protection, articles 2 and 3 of the ECHR, and private and family life, and absence of exceptional circumstances.

4. FtT Judge Paul dismissed the appellant's appeal by decision promulgated on 13 December 2016.
5. The appellant applied to the FtT for permission to appeal to the UT, on 2 grounds.
6. Ground 1 avers inadequacy of reasoning; contradictions among the findings at ¶24, evidence given in a clear manner and at ¶26, account not reliable but grain of truth in difficulties with family; no explanation why unbelievable that lapse in faith might result in family seeking to execute him; this failed to engage with evidence from appellant that his father was an imam; "in these circumstances it is entirely feasible the problems faced by the appellant would have flowed from his actions"; the judge's findings cannot be sustained.
7. Ground 2 says that the judge failed to follow AA; his task was not limited to whether return to Baghdad involved a risk under article 3; AA indicated that the appellant would be returned to Erbil; the judge was satisfied the appellant gave an entirely false account of how he came to the UK; the conclusion that he had ties with family and would be able to contact them was "entirely irrational as the appellant's family reside in an entirely different jurisdiction".
8. On 4 January 2017 FtT Judge Nightingale refused permission, on the view that the judge gave sustainable reasons and reached no arguably conflicting conclusions; and that as the appellant established no risk if returned to the IKR, of which he was a resident, consideration of return via Baghdad was irrelevant.
9. The appellant renewed his application to the UT, maintaining his grounds and submitting that Judge Nightingale had compounded the errors.
10. On 23 February 2017 UT Judge Allen granted permission, with the observation, "Whether there is any materiality to the challenge in light of the possibility of internal relocation is a matter which may need to be raised at the next hearing".
11. Mr Martin made submissions along the lines of the grounds. He accepted that ground 1 was crucial, and that if the appellant failed to displace the credibility findings, his case was defeated by the fact that he is from the IKR, which is virtually free of violence.
12. Mr Matthews submitted that ground 1 showed no inconsistency of findings, and no failure to put the account in context. The judge set out the claim that the appellant's father was an imam and his brother a policeman. There was nothing to suggest that he forgot about that when reaching his findings. Those findings were open to the judge, and rationally explained. Ground 2 might disclose incidental error, but nothing which might produce a different outcome.
13. I reserved my decision.
14. The judge took the view that the appellant gave his evidence clearly, and that there might be some grain of truth regarding family conflict. That does not conflict with or

dictate a finding that everything he said had to be accepted. Almost every adverse finding involves the drawing of a line between what is proved to the necessary standard and what is not.

15. The judge took evident care over the correct approach (¶23-26) and in drawing that line (¶26-29). He was entitled to find it too extreme for belief that the appellant's family would seek to deal with a wayward teenager by executing him. He further noted that an attempt at public execution by his brother was hard to reconcile with the appellant thereupon being in possession of a passport and funds and able to purchase a ticket to leave Iraq.
16. Ground 1 discloses no more than insistence and disagreement. It does not show that the decision is self-contradictory or inadequately reasoned.
17. Even if ground 1 had succeeded, the case was one which failed on internal relocation.
18. The determination of the First-tier Tribunal shall stand.
19. No anonymity direction has been requested or made.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

4 May 2017
Upper Tribunal Judge Macleman