Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA063482016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 May 2017	**On 22 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

H H R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson of Counsel, Elder Rahimi Solicitors (London)
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

1. The appellant is a citizen of Iraq of Kurdish ethnicity. This appeal focuses on the Kurdish Region of Iraq. She appeals with the permission of the First-tier Tribunal against the decision of First-tier Tribunal Judge Jerromes promulgated on 12 December 2016 dismissing on all grounds her appeal against the decision of the respondent to refuse her protection and human rights claim.

2. In very brief summary, the appellant fears she will be killed or ill-treated on return to the KRI as a result of her previous political activities with the Communist Party of Kurdistan and as an activist supporting women's rights. She fears the main political parties in the KRI and also members of her own family who vehemently disapprove of her against whom she says she could receive no protection. The First-tier Tribunal Judge accepted the appellant had been a member of the Communist Party of Kurdistan and also that she had joined an organisation campaigning for women's rights. She accepted the appellant had been in an abusive marriage. However, the First-tier Tribunal Judge regarded certain matters as undermining the appellant's credibility, not least her delay claiming asylum.

3. In view of the country background information, the Judge accepted the appellant's evidence that her activities had drawn adverse attention from various factions for both political and religious reasons. However, she did not accept the appellant had received specific threats to her person from these factions because her account had been vague and it had not been supported by other evidence. She also rejected the appellant's claim that her younger brothers had threatened her and that one of them had assaulted her seriously. The judge concluded that the appellant's profile would not place her at a real risk on return for any of the reasons put forward.

4. The written grounds seeking permission to appeal can be summarised as follows:

   (1) The First-tier Tribunal Judge misdirected herself in law by misapplying paragraph 339L of the Immigration Rules. In particular, the judge had construed the Rules as if they were binding on her deliberations and had imposed a requirement for corroboration.

   (2) The Judge had further erred in stating that the appellant had not provided supporting evidence because she had in fact provided a letter from the Pishdar District Committee of the Communist Party of Kurdistan which mentioned that the appellant had received many death threats. Alternatively, the reason given by the judge for giving no weight to this evidence was spurious.

   (3) In assessing the risk on return, the Judge had failed to take full account of the appellant's profile given the background evidence concerning attacks by Sunni extremists on female journalists and politicians.

   (4) Finally, the grounds argued that the Judge's finding that the appellant could be protected by her elderly father was inadequate and unsafe. Equally the finding that the appellant could obtain protection from the authorities failed to engage with the background evidence to the contrary.

5. The respondent filed a Rule 24 response opposing the appeal.

6. I heard oral submissions from the representatives. Mr Hodson, expanding on the written grounds, argued the judge had placed herself, to borrow a phrase, in a forensic straightjacket by requiring supporting evidence, thereby misapplying paragraph 339L of the Rules. He argued this error had had a material effect on the outcome of the appeal.

7. More generally he sought to argue the Judge's findings were not sound. The Judge accepted the appellant's profile and even that she would receive adverse attention as a result of it but his finding that she was not at a real risk ignored background evidence showing attacks on people of similar profiles.

8. In reply Mr Kandola agreed the Judge had perhaps misapplied paragraph 339L but said her findings were not infected by any error and were sustainable. Alternatively, the Judge had looked at the case at its highest and was entitled to reach the conclusion she reached.

9. In response to those submissions, Mr Hodson took me to certain background evidence on attacks on journalists in the KRI, specifically that found in the US State Department Report of 2016. This can be found at page A17 of the appellant's appeal bundle.

10. I have carefully taken account of the submissions made to me but I have decided the decision of the First-tier Tribunal does not contain a material error of law and I dismiss the appellant's appeal. My reasons are as follows.

11. Overall it is clear that the First-tier Tribunal Judge gave very thorough and careful consideration to the evidence and submissions made to her at the hearing. She correctly directed herself as to the relevant date, burden and standard of proof in paragraph 12. She carefully set out the appellant's claim and noted all matters which were accepted by the respondent. In her list of the documents which she had taken into account she set out, among other things, the letter from the Communist Party of Kurdistan dated 13 November 2016. She set out the part of it referring to the appellant being the target of fundamentalist Islamic parties and receiving many death threats.

12. At paragraph 37.2 the Judge noted the delay in the appellant claiming asylum and gave cogent reasons for regarding this as something which undermined the appellant's general credibility. No arguments had been made against that finding.

13. In the following paragraph she said this:

> "In accordance with paragraph 339MA applications for asylum shall neither be rejected nor excluded from examination on the sole ground that they have not been made as soon as possible. Nevertheless, in view of the delay, not all of the conditions in 339L are met and

> therefore aspects of her claim not supported by documentary or other evidence require confirmation."

14. In making findings on the threats which the appellant claimed had been made to her the Judge said this at paragraph 39.5.

> "In view of the country background information, I accept her evidence that her activities drew adverse attention from various factions (for both political and religious reasons) but I am not persuaded even to the lower standard of proof that she received any specific threats to her person from these factions as she is vague in her account and has not produced any supporting evidence. Whilst corroboration is not required in an asylum claim, in view of her delay in claiming asylum, aspects of her claim not supported by documentary or other evidence require confirmation and there is none in this case. I believe that such evidence is ordinarily available in the form of a supporting statement from her father who has been a fellow activist and her stalwart supporter."

15. Of course, Mr Hodson has argued that the reference there to the failure of the appellant to claim asylum at the earliest possible time shows that the judge misdirected herself by regarding paragraph 339L as imposing a requirement for corroboration. I agree with him that paragraph 339L does not constrain the Tribunal to require corroborating evidence in the circumstances that any of the conditions numbered (i) to (v) are shown to be met. Paragraph 339L simply transposes into domestic law Article 4 or 5 of the Qualification Directive. It is directed at the practice of member states.

16. The judge may have misunderstood this. However, I do not regard the Judge's decision properly understood as demonstrating that she fell into the error of misdirecting herself in the manner suggested in a material way. In the passage from paragraph 39.5 set out above the Judge expressly reminded herself that corroboration is not required.

17. Furthermore, she directed herself correctly at paragraph 38 as follows:

> "Having concluded that aspects of her claim not supported by documentary evidence require confirmation, I have proceeded to make specific findings of fact on the matters in dispute. Throughout my consideration of the facts I have reminded myself that great care must be taken before making adverse findings of credibility and should only be made where justified in the circumstances of the case. Taking into account all the evidence and considering it in the round and having reminded myself that the standard of proof is the lower standard, I find the following."

18. Even if it were shown that the First-tier Tribunal Judge had misapplied 339L in the sense that corroboration was required, it cannot seriously be maintained that the decision shows she disregarded the letter from the

party. As said, she described it in paragraph 34(1)(ii) and, at paragraph 42.3, she stated she could place no weight on it because the author was unidentified. If she was entitled to place no weight on the letter any error of the kind argued by Mr Hodson would not be material in any event.

19. Having looked at the letter in question, it is fair to say that its contents are not clear in as much as the document does not provide specific examples and instances of the threats referred to. The First-tier Tribunal Judge was perfectly entitled to find the fact the author of the letter had not identified him or herself was a matter undermining its reliability. A document purporting to provide confirmation of an asylum seeker's account emanating from a legal political organisation can safely be expected to contain minimum requirements failing which its usefulness will be significantly undermined. Identifying the author of the document is one such minimum requirement.

20. I see no material error in the First-tier Tribunal's Judge's approach. She considered the evidence in the round, directed herself correctly in law and reached a conclusion regarding the claim to have been threatened which she was entitled to reach. That disposes of the first two grounds.

21. The third ground is, in essence, a disagreement with the decision of the First-tier Tribunal Judge regarding the risk on return to people with a similar profile to this appellant. I have looked at the references to documents in the appellant's bundle and also the US State Department Report as mentioned. It does appear that most of the references are to attacks on female journalists, politicians and activists in other areas of Iraq with the exception of the US State Department Report. The Judge states she has had regard to all the background evidence and her failure to note one entry in one report cannot render her entire decision erroneous.

22. The fourth ground was not mentioned in the grant of permission to appeal. I have proceeded on the assumption that the intention was to grant permission on all grounds. However, this ground is also in my judgment no more than mere disagreement with the First-tier Tribunal's Judge's findings.

23. The appellant gave evidence that she had been protected by her father who is still alive. The First-tier Tribunal Judge did not believe that the appellant had lost touch with him. She noted in paragraph 39.6 that the appellant had said her father was still farming and the head of the household. He had not provided a letter confirming the risk from his sons and the Judge was entitled to regard this risk as not being made out.

24. Regarding the possibility of protection from the authorities the First-tier Tribunal Judge noted that the appellant had called the police in 2014 and they had responded. This indicated to the Judge that the authorities took complaints seriously and the appellant did have some trust in the police.

25. The First-tier Tribunal Judge made an anonymity direction which is continued.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law and shall stand. The appellant's appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 12 May 2017

Deputy Upper Tribunal Judge Froom

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 12 May 2017

Deputy Upper Tribunal Judge Froom