



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

Appeal Number: PA/08340/2016

THE IMMIGRATION ACTS

Heard at Glasgow

On 9th May 2017

**Decision & Reasons
Promulgated
On 14th June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**RAWAND AZAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Loughran, Loughran & Co Solicitors, Glasgow

For the Respondent: Mr Matthews, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq of Kurdish ethnicity. He appealed against the decision of the Respondent dated 22nd July 2016 refusing to grant him asylum or humanitarian protection and refusing his claim on human rights issues. The appeal was heard by Judge of the First-tier Tribunal Green on 24th January 2017. The appeal was dismissed in a decision promulgated on 31st January 2017.
2. An application for permission to appeal was lodged and permission was refused on 2nd March 2017 by Judge of the First-tier Tribunal Dineen. Further grounds were lodged and permission was granted by Upper Tribunal Judge Coker on 4th April 2017. The grounds state that the First-tier Tribunal Judge impermissibly sought corroborative evidence. The judge refers to the lack of documentation produced in support of the

appellant's assertion that he bought and sold cars but he also refers to the lack of evidence about the appellant's claimed adulterous relationship and it is this latter issue on which permission has been granted. The permission goes on to state that the Appellant must be aware that his credibility is undermined for the other reasons given by the judge, so the error may not be material.

3. A Rule 24 response was lodged. This states that the First-tier Tribunal directed itself appropriately. It states that the First-tier Judge appreciated the standard of proof as recorded at paragraph 7 of the decision. Reference is made to the case of **TK (Burundi) [2009] EWCA Civ 40**. This states that independent supporting evidence should be provided wherever possible and the Immigration Judge should adopt a cautious approach where supporting evidence which was readily available was not provided and held that where a judge in assessing credibility relies on the fact that there is no independent supporting evidence where there should be supporting evidence and there is no credible account for its absence, the judge commits no error of law when he relies on that fact for rejecting the account of an Appellant. The response states that in this case there has been no explanation for the lack of supporting evidence as considered at paragraph 10 of the decision.

The Hearing

4. The applicant's representative submitted that with regard to the corroborative evidence it is not contested that it would have been reasonable to provide evidence about the Appellant's car business in Iran. She submitted however that with regard to the adulterous relationship an error has been made by the First-tier Tribunal Judge when he sought corroborative evidence about this and she submitted that he used too high a standard of proof.
5. She referred to paragraph 10 of the decision in which the judge states that the Appellant's statement is coherent but finds that it is implausible and fundamentally self-serving. She submitted that the judge has not made it clear why he finds the Appellant has not established the core of the claim. She submitted that if the judge was not satisfied with issues at the hearing he should have put his questions to the Appellant at that time.
6. The Presenting Officer submitted that evidence could have and should have been provided relating to the Appellant's car business in Iran.
7. With regard to the judge requiring corroborative evidence about the adulterous relationship, the Presenting Officer submitted that the Appellant's representative has misunderstood what the judge was doing and I was referred to paragraph 339L of the Immigration Rules. This states that it is the duty of the person to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence those

aspects will not need confirmation when all of the following conditions are met:

- (i) the person has made a genuine effort to substantiate his claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim;
 - (ii) all material factors at the person's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant material has been given;
 - (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
 - (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time unless the person can demonstrate good reason for not having done so; and
- (5) the general credibility of the person has been established.

8. The Presenting Officer submitted that documentation does not require to be provided if the above conditions are met. The judge finds that they have not been met. At paragraph 10 of the decision he refers to the appellant's statement being implausible and states that his general credibility has not been established. He also points out that Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 applies, which goes against his credibility. This Appellant could have claimed asylum in Germany or France on his way to the United Kingdom but did not do so.
9. The Presenting Officer submitted that although the judge appears to be asking for corroborative evidence about the adultery when Rule 339L is visited the judge has to decide whether to give the Appellant the benefit of the doubt and in this case the judge found that he could not give him the benefit of the doubt. I was referred to the case of **HA and TD [2010] CSIH 28**. He submitted that our Appellant, based on the refusal letter, knew his credibility was in issue and the burden was on him to make out his case. He could have provided evidence but he did not do so and he submitted that there is no error of law. He submitted that this is not a **Koca** [2005] SC487 case and the judge was right to dismiss the appeal.
10. The Appellant's representative referred to paragraph 339L of the Immigration Rules and submitted that the general Rule in asylum cases is that corroboration is not required and this stands regardless of paragraph 339L. She submitted that what the judge in this case was doing at paragraph 10 of his decision was looking for documentary evidence which would corroborate the appellant's claim. She submitted that a request to provide supporting documents relating to the Appellant's adultery is

impermissible and unreasonable. (The judge also refers to the fact that there are no police reports and states that the Appellant has not established the core facts of the claim.)

11. I was again referred to the said case of **HA and TD**, in particular paragraph 14, which states that circumstances can arise in which the Tribunal cannot fairly adopt the passive role which a judge would normally adopt. She referred to the said case of **Koca** where the judge rejected the credibility of an aspect of the Appellant's account on the basis of what she considered to be discrepancies between the evidence given by the Appellant at the hearing and his earlier statements. In that case the reasoning was found to be inadequate and obiter remarks were made relating to procedural fairness. In that case the Respondent was not represented, as in this case. The case of **HA and TD** refers to circumstances where the Tribunal cannot fairly adopt a passive role. She submitted that that is the case here and that this is a **Koca** case. She submitted that the judge should have questioned the Appellant relating to the issues he was not satisfied with and I was asked to allow the appeal.
12. The issue in this case is whether the judge used too high standard of proof when he sought corroboration of the claimed adulterous relationship. I have to decide if this placed an impermissible burden on the Appellant. I have to decide if this is a **Koca** case.
13. The relevant paragraph of the decision is paragraph 10. In this paragraph the judge mentions the absence of cross-examination, and states that because the Appellant was not represented it would be tempting to conclude that the appeal should stand. Hethen refers to the witness statement being implausible and self-serving. He refers to paragraph 339L of the Immigration Rules. It has been accepted by both parties that evidence could have been produced and should have been produced relating to the Appellant's car business in Iran. The judge goes on however, to state that the Appellant has not provided any supporting evidence of his alleged adulterous relationship or the threats made against him. The judge refers to the only evidence produced relating to this aspect of the case being what the appellant states in his witness statement and the scar on his back. He states that as there is no medical evidence the provenance of the scar is not clear. As the only other evidence he has of the adultery and the threats is the Appellant's own evidence he finds that the appellant has not established that he is entitled to humanitarian protection or leave to remain based on his human rights.
14. The Appellant in his evidence made reference to police reports and text messages between him and Mina relating to their relationship. It seems as if evidence could have been produced about his adulterous relationship and the threats. It could be considered that the judge by seeking this has made an error but it is not a material error when the other credibility issues are considered.

15. The judge has considered all the evidence in the round. He finds the Appellant's evidence to be lacking in credibility. He refers to Section 8 of the 2004 Act and states that he does not find the Appellant generally to be credible. He has clearly weighed up the evidence for and against the appellant when making his credibility findings and he has explained properly why he finds the Appellant has not established the core facts of his claim.
16. This is a case where paragraph 339L applies. Although there was no Presenting Officer at the hearing the Appellant was represented and his representative could have questioned the appellant about any matters which she felt were not being clarified because of the lack of a Presenting Officer. This is not a **Koca** case.
17. The judge has referred to the case of **BA Iraq [2017] UKUT 00018 (IAC)** and finds that the Appellant does not fall into any of the risk categories mentioned in this case. He also finds that based on the case of **AA [2015] UKUT 544 (IAC)** there is no 15(c) risk to him on return.

Notice of Decision

I find that there is no material error of law in the First-tier Judge's decision and that First-tier Tribunal Judge Green's decision promulgated on 31st January 2017 must stand. This Appellant's appeal is dismissed on all grounds.

No anonymity direction is made.

Signed

Date 13 June 2017

Deputy Upper Tribunal Judge I A M Murray