IAC-AH-LR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08447/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd July 2017	**On 11th July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR S H I
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M Harris instructed by Elder Rahimi Solicitors
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iraq, appealed to the First-tier Tribunal against the decision made by the Respondent on 31st July 2016 to refuse his application for asylum. First-tier Tribunal Judge James dismissed the Appellant's appeal. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Brunnen on 16th May 2016.

2. Permission to appeal was granted on the basis that the grounds, which contend that there is a lack of care in the preparation of the judge's

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decision, that the judge failed to take account of material evidence, that the judge incorrectly relied on a lack of corroboration and failed to take into account the Appellant's explanation for his lack of sur place activity, are arguable.

The Background

3. The Appellant claims that he worked as a freelance writer whilst a student and started a blog in 2010. He claims that the content was political and that he criticised KDP policies. He says that he wrote articles for various media and newspaper outlets. He claims that in 2015 he received threats from the KDP by letter and text threatening that he would be killed and warning him to stop his journalistic activities. He says that his home was visited by suspected KDP officers in December 2015 and that he then sold his vehicle and left home 12 days later. He left via Sulemaniya using his own passport and had no problems leaving through the airport.

4. The First-tier Tribunal Judge considered that a number of the documents submitted by the Appellant were not reliable. The judge concluded that the cumulative effect of the concerns she had in relation to the evidence submitted led her to conclude that the Appellant had failed to submit satisfactory evidence to establish that his account is true. The judge found that the Appellant's entire account was not credible.

Error of law

5. At paragraph 29 of her decision the judge referred to an internet search. Ms Harris submitted that it is not clear whether this reference was taken directly from the reasons for refusal letter or whether the judge undertook her own internet research. At paragraph 29 judge said; *"The Respondent raised the fact that although a card entitled Standard institution for Media was held by the Appellant, that there was no evidence of this organisation when an Internet search was undertaken"*. This does not indicate that the judge undertook any internet research in relation to this issue; it is simply rehearsing and acknowledging the fact that the Respondent was unable to find any evidence of this organisation when an internet search was undertaken.

6. Ms Harris submitted that the judge further erred at paragraph 29 in her treatment of the letter from Mr Massoud Abdul Khaliq of the Standard Institute for Media. The judge firstly noted that the Appellant submitted a faxed photocopy of a document with the word 'Standard' on it dated 23rd March 2017. The judge noted that this document was faxed less than 32 hours prior to the hearing and was not properly served on the Tribunal or the Presenting Officer and was served in breach of the directions. Ms Harris submitted that the judge could have granted an adjournment for the Presenting Officer to deal with this issue but had failed to do so. However this is not a material issue as the judge went on to consider the actual document.

7. The judge noted that the original document was not before her and considered that this affected the weight to be given to the document. It is complained in the Grounds of Appeal that this document was e-mailed therefore there was no original. However the judge was aware of this as she also considered the issue at paragraph 39 where she recorded the Appellant's oral evidence and noted "No e-mail sending the letter from the Standard to the Appellant was adduced in evidence. Thus the source of this letter remains of concern".

8. The judge further noted that the translation provided leaves some of the contents of the original document out of the translation such as the logo. The judge noted that the contents of the letter are *"so highly generic without reference to a single date of the Appellant's claimed activities, or articles, or publication dates, or titles of such articles, or the date of closure of the organisation, that it fails to support the Appellant's claim"*. It is also noted the letter writer did not provide an address and that the website address was not translated.

9. Ms Harris submitted that the judge erroneously said that the website address given on the untranslated version was apparently in Arabic and Ms Harris submitted that the document is in Kurdish Sorani and that the fact that the judge referred to it as Arabic was further evidence of the complaint that the judge did not fully appreciate that the Appellant's issue and fear was in relation to the KDP and not the Iraqi authorities. However I do not accept that reference to Arabic reflects this at all. It is clearly the case that the judge misunderstood the language but that does not evidence any misunderstanding of the case in light of the entirety of the decision.

10. Ms Harris submitted that this letter is not generic as it confirms the Appellant's name and the fact that he has fled Iraq. She accepted that it does not detail every article he has ever written but submitted that it does not need to.

11. In his submission Mr Kandola submitted that it was open to the judge to take adverse inferences from the fact that the letter was submitted late. In his submission it was open to the judge to conclude that the letter was generic as it does not refer to very specific matters relating to the Appellant.

12. In my view the judge made clear a number of concerns about the letter from Standard. It is clear that these concerns about the e-mail and the circumstances in which it was submitted to the Tribunal led the judge to conclude that the document was not reliable. This conclusion was open to the judge on the basis of her findings.

13. At paragraph 30 the judge considered evidence of text messages said to have been sent to the Appellant. She highlighted a number of concerns about the text messages which rendered them unreliable including the fact that no telephone bill was submitted to confirm that the number is

linked to the Appellant and that the contents of some of the texts had not been translated. The judge also referred to the Appellant's oral evidence in relation to these texts at paragraph 39 noting that the Appellant;

> "... gave a garbled narrative that he had lost his mobile phone but then contacted a friend from Iraq to obtain the previous texts but again no witness statement from this alleged friend is produced to confirm that the Appellant forwarded these texts to his friends whilst he was in Iraq as claimed, although easily undertaken and accessible. Upon the representatives reviewing the Appellant's mobile phone he now had in his possession, it was confirmed that the year of receipt of these messages were not identifiable and the messages were sent directly from a [HK], although his whereabouts could not be ascertain (sic) via the texts alone".

14. Ms Harris submitted that the judge's conclusions at paragraph 30 failed to take account of the fact that it is more likely that the Appellant had a *pay as you* go phone and failed to take account of the fact that the Appellant's name is in the translation of the text message at page 27 of the Appellant's additional bundle. She submitted that this is sufficient to show that these text messages were in fact connected to the Appellant. Mr Kandola submitted that the judge made valid criticisms of the text messages which were open to her. I agree that reading the contents of paragraphs 30 and 39 it was open to the judge to conclude that the evidence submitted in relation to the text messages was unreliable.

15. At paragraph 30 the judge also dealt with a number of copies of what were claimed to be TV programme screenshots. The judge noted that the pages before her were simply black because they were poorly copied and that there were no originals or decipherable copies and that no DVDs or CDs were submitted. At paragraph 8 of the grounds it is argued that there was no need to provide a DVD copy of the programme as the screenshots are self-explanatory as the Appellant was identifiable as involved in a television discussion programme. Ms Harris did not develop this argument before me and Mr Kandola submitted that it was open to the judge in light of the poor quality of the screenshots to conclude as she did. I agree that the copies of the screenshots submitted are extremely dark and there is no translated link for these therefore it was open to the judge to conclude as she did.

16. At paragraph 31 the judge noted that, despite his claim to be wanted by the KDP and authorities of the regime in Iraq, the Appellant's national identity card was issued on 21st July 2012 during the adverse events complained of. The judge considered that this, together with registering the sale of his vehicle with the local government and using his own passport to leave Iraq, is an indication that he was not of adverse interest by the regime or authorities. Ms Harris submitted that this is a material error as the problems started in 2015 as set out in the Appellant's interviews and witness statement and that there was a real concern that the judge fundamentally misunderstood the basis of the Appellant's claim. On the other hand Mr Kandola submitted that the Appellant's case was that as early as 2011 his Facebook page was being hacked. He referred to

paragraph 7 of the decision in which the judge set out a number of matters raised by the Respondent in the reasons for refusal letter. Ms Harris submitted that this was wrong, that in fact the Appellant had never claimed that his Facebook account was hacked by the KDP and that he had consistently claimed that his problems began in 2013.

17. However I note that the Appellant said at paragraph 3 of his witness statement that he had written articles critical of the ruling parties in the Kurdish region *"for years"*. At paragraph 15 of his witness statement the Appellant said that he had never stated that the authorities hacked his Facebook in 2011, he does not know who hacked it but he said that he was identified from his Facebook posts and that the authorities in Iraq have spies operating everywhere. However in answer to question 33 in his asylum interview the Appellant said that he might have been observed and monitored in 2011 when he changed his Facebook account. I further note that there is no challenge to the other findings in relation to the sale of his vehicle with the local government and using his own passport to leave Iraq being an indication that he was not of interest to the authorities. On the basis of this evidence the judge was entitled to conclude that these matters indicated that the Appellant was not of adverse interest to the authorities.

18. At paragraph 32 of the decision the judge referred to the fact that the Appellant provided seven URL addresses during interview. At paragraph 20 of the decision the judge noted that neither legal representative had checked the website addresses listed on the web shot printouts provided by the Appellant and that they had both confirmed that it was acceptable for the judge to check those website addresses to confirm that the articles were indeed on the internet. The judge said at paragraph 32 that she checked these websites but was redirected to a list of articles in English and not the article already originally found and that the Appellant's representatives had failed to provide any translations of these pages. The judge noted at paragraph 39 that the Appellant said that he inserted the website addresses on the untranslated articles and failed to take a screenshot of the web pages with the relevant website addresses and that no reason for this was given. At paragraph 33 the judge talked about a number of articles claimed to have been written by the Appellant and notes that the website address provided does not marry up with the one claimed to be the source of the article produced. The judge concluded that this was an unreliable document and did not accept that the translation provided links to the original website document as suggested. The judge made the same conclusion at paragraph 34 in relation to further articles.

19. Ms Harris submitted that she herself had searched the internet with the web addresses given and had been taken to the home page because the individual articles are no longer there. She submitted that the judge failed to take this into account and failed to consider whether the articles had been there before.

20. Mr Kandola submitted that the judge was given permission by the parties to look at the website addresses as given and the assertion that links disappear after a period of time is something that cannot be proved as evidenced by the fact that Ms Harris' search had led to different evidence to that before the judge. He submitted that the Appellant would have to show in an objectively verifiable way the judge had made a mistake of fact in relation to this issue. He submitted that, having permitted the judge to embark upon her own research, it is not fair to now complain about her conclusions.

21. I agree with Mr Kandola's submissions on this issue. It is clear from paragraph 20 that the representatives had not themselves checked the website addresses provided by the Appellant. The judge was unable to find the same articles as those presented to her. Further, it appears from the judge's note of the Appellant's oral evidence that he said that he put website addresses on untranslated articles and failed to take a screenshot of the web pages of the relevant website addresses [39]. In these circumstances and in the absence of evidence as to what exactly the judge would have found on conducting her research as set out at paragraphs 32, 33 and 34, the Appellant has not established that the judge made any mistake of fact in relation to the outcome of her internet research conducted after the hearing.

22. Ms Harris submitted that the judge made an error at paragraph 40 in concluding that the Appellant's sur place activities were minimal. She submitted that, even if they were, this would not be a matter to go against the Appellant as he had not put a case based on sur place activities. I do not accept that submission. I note that the judge said that that the Appellant's sur place activities failed to reflect any firm political opinions let alone support his views to be a politician or a journalist and concluded at paragraph 40; *"It is the dearth of evidence before (sic) that is of material concern, considering the Appellant claims to be a journalist and politician or to have political views which are anathema to the regime in Iraq or the KDP".* This was a conclusion open to the judge on the evidence before her.

23. Ms Harris submitted that the judge set out the reasons put forward by the Respondent for refusing the asylum claim including reasons which were no longer relevant to the Appellant's case. However I do not accept that the judge is open to criticism on this basis. She was clearly entitled to set out the reasons for refusal letter as long as she acknowledged that that is what she has done. The set out the matters raised in the reasons for refusal letter in bullet points at paragraph 24 and concluded at paragraph 25 "*In summary it is not accepted that the Appellant was a journalist in Iraq or that he published political articles, or that he was sought by the KDP in Iraq or was of adverse interest to the authorities"*. It is very clear that the judge was referring to the reasons for refusal letter and was not adopting these reasons as her own.

24. At paragraph 25 as in other places throughout the decision it is clear that the judge clearly understood the nature of the case put forward by the Appellant contrary to the assertion in the Grounds of Appeal.

25. For the reasons set out above I do not accept the submissions put forward on behalf of the Appellant that the judge erred in her approach to the documentary evidence. The judge reached conclusions open to her on the basis of all of the evidence. I do not accept Ms Harris' submission that there is an impression of lack of anxious scrutiny. The judge considered all of the evidence before her and reached conclusions on those. I accept Mr Kandola's submission that complaints made by the Appellant in this case are simply a disagreement with the conclusions reached by the judge.

26. In these circumstances I reach the conclusion that there is no material error of law in this decision.

Notice of Decision

The decision of the First-tier Tribunal does not contain an error of law.

The decision of the first tier Tribunal shall stand.

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: 7th July 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

The appeal has been dismissed and therefore there can be no fee award.

Signed Date: 7th July 2017

Deputy Upper Tribunal Judge Grimes