



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04988/2017

THE IMMIGRATION ACTS

Heard at Civil Justice Centre, Manchester
On 17th July 2018

Determination Promulgated
On 27 July 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

MH
(Anonymity order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Burns, Samuel Ross solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, an Iraqi national, arrived in the UK on 13th November 2016 and claimed asylum that day. It is accepted by the respondent that he is Yezidi both by ethnicity and religion. His claim for asylum was refused by the respondent for reasons set out in a decision dated 12th May 2017. His appeal was dismissed by First-tier Tribunal judge O'Hagan for reasons set out in a decision promulgated don 18th July 2017. The First-tier Tribunal Judge disbelieved his account of having been arrested and detained. The judge recorded in the decision the appellant's evidence that the appellant had been subjected to "difficulties" in France and

found that the reasons he had given for not claiming asylum there were explicable and his failure to claim was not held against him.

2. Permission to appeal was sought and granted because the judge arguably failed to make adequate findings on the background material before him, given that it was accepted that he was Yezidi.
3. Mr Burns submitted that the judge had failed to have adequate regard to the case of *BA (returns to Baghdad) Iraq CG* [2017] UKUT 00018 (IAC) in that there had been a failure to assess possible future risk to the appellant as a Yezidi and that he would be unable to access sufficiency of protection. He drew upon the events in Calais to support the contention that the appellant had been unable to access protection in Calais from Iraqi Kurds and this would be the case in Iraq.
4. Although Mr Burns referred to *BA (Iraq)* he was unable to provide me with information about the evidence that had been before the First-tier Tribunal which had not been considered such that the level of animosity and discrimination between religious and ethnic groups in Iraq amounted either to establishing a real risk of persecution or an inability to access sufficiency of protection or that would make internal relocation unduly harsh. *BA(Iraq)* refers to the need to assess the individual characteristics of an asylum seeker but there is a need for at least something to indicate that Yezidi with no political or religious profile who have not come to the adverse attention of the authorities are at risk whether it be on relocation or otherwise. Failing that, a failure on the part of a judge to go through a formalistic process of assessment of evidence that is not there, cannot be a material error of law.
5. In this case, the appellant attended university in the IKR where he has family members living and working. Although Mr Burns submitted that his presence in the IKR had been temporary, the evidence was that he had been there for several years and his family lived there without difficulties. The First-tier Tribunal Judge considered the background material that was relied upon by the Appellant including a full copy of the respondent's guidance rather than the selective extracts relied upon by the appellant. The judge gave cogent reasons for placing little weight on documents produced by the appellant and reached findings that were plainly open to him with regards to not only the lack of risk of being persecuted but also to return to the IKR and access to sufficiency of protection.
6. The judge referred to the distressing incidents that had occurred to the appellant in Calais and made a finding that they were irrelevant to the appellant's claim. This finding is not unlawful. The issue is not whether the French provided an adequacy of protection or whether individuals attacked the appellant but whether such matters would arise in Iraq/IKR and if so the response of the authorities. The evidence before the First-tier Tribunal judge was that there is no general risk to Yezidis in the IKR; there is no history of persecution of the Yezidi in the IKR and that whilst there are individual acts of violence, as in Calais, these do not amount to persecution.
7. For all these reasons, there is no material error of law in the decision by the First-tier Tribunal to dismiss the appellant's appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

The decision of the First-tier Tribunal stands.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make an order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008; although the appellant's asylum claim has been refused, it is appropriate in the circumstances for an anonymity order to be made.



Date 20th July 2018

Upper Tribunal Judge Coker