



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08023/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7th September 2018

Decision & Reasons Promulgated
On 20 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[N M]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert of Counsel, J D Spicer Zeb Solicitors

For the Respondent: Miss Z Kiss, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 3rd January 2017. The Appellant applied for asylum in the United Kingdom claiming to have a well-founded fear of persecution in Iraq on the basis of the non-Convention reason that he received threats to his life from a prisoner he had helped to capture. That application was refused by Notice of Refusal dated 3rd August 2017.
2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Roopnarine-Davies sitting at Taylor House on 16th March 2018. In a decision and

reasons promulgated on 27th March 2018 the Appellant's appeal was dismissed on all grounds.

3. Grounds of Appeal were lodged to the Upper Tribunal. Permission to appeal was refused by First-tier Tribunal Judge Lever on 8th May 2018 whereby Judge Lever concluded that there were safe findings and that the grounds were merely disagreement.
4. On 1st June 2018 renewed Grounds of Appeal were lodged to the Upper Tribunal. On 17th July 2018 Upper Tribunal Lindsley granted permission to appeal. At paragraph 3 of her grant of permission Judge Lindsley set out the basic arguments to be found within the Grounds of Appeal and concluded that all grounds were arguable.
5. It is on this basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Gilbert. The Secretary of State appears by her Home Office Presenting Officer Miss Kiss.

Submissions/Discussion

6. Mr Gilbert takes me to the facts of this case, namely that the Appellant is a 37 year old Iraqi of Kurdish ethnicity who moved when he was 19 years old with his family to Sulaimaneyah in the Iraqi Kurdish region. Thereafter he had worked in the prison service for many years and whilst working in the prison service he was involved in the recapture of an escaped prisoner. He points out that that prisoner proceeded to develop a personal vendetta against the Appellant making threats and attempting to harm him whilst in custody and that the prisoner came from a powerful family. In late 2015 the prisoner, having been released made further threats to harm the Appellant, which led to the Appellant fleeing the country in December 2015.
7. Mr Gilbert takes me to the First-tier Tribunal Judge's decision pointing out that there are throughout the decision numerous findings of fact made by the judge which he considered are either inadequately reasoned or are unclear or have been made without explanation. His starting point is at paragraph 13 where it is recited that the Appellant had paid USD\$20,000 to leave Iraq but had claimed that he was forced to give his passport to an agent. The judge found that that was not credible and it is submitted that no reasons had been given for this and that it is implicit that judges do give reasons. Thereafter he takes me to paragraph 19 of the decision where it was held that the alleged attack on the Appellant's brother in Khanaqin was not credible. Here Mr Gilbert contends that if there are reasons they are unclear or inadequate and that there was a requirement on the judge to consider why the brother would have been in Khanaqin. Thereafter he takes me to paragraphs 20 and 21 where there is consideration by the judge of the Appellant's claim that he had made a statement to the police about threats made and that the judge had failed to make findings at paragraph 21 where the Appellant had claimed that he was in fear of his life from Shahab and that the judge had found that the claims lacked credulity and were inconsistent.

8. Mr Gilbert thereafter takes me to the other Grounds of Appeal, namely Ground 2, that the First-tier Tribunal had repeatedly failed to take material evidence into account and he refers me to evidence from the Appellant's witness statements and seeks to argue that within the witness statements evidence that is produced and the oral testimony that there are reasons given, for example at paragraph 23, as to why the Appellant and the fact that the Appellant had changed his jobs within the prison service over a nine year period. He submits that it is appropriate to give further consideration to comments made in the Appellant's witness statement as to evidence that he suggests has not been properly considered by the judge when giving his decision. Finally, he looks at the other outstanding Ground of Appeal, namely that the contention that the First-tier Tribunal had given otherwise unlawful or irrational reasons, in particular he notes that the judge had commented that there would be scant evidence that the Appellant would not be able to access a CSID to obtain services such as health, education etc in the light of having acquired these documents and submits that such reasoning is irrational in that it did not describe the Appellant having acquired any documents and that there has been a failure to exercise anxious scrutiny. He asked me to look carefully at paragraphs 23 and 24 and having given due consideration to those paragraphs to find that the First-tier Tribunal Judge's reasoning was irrational. On all those bases he asked me to find that there are a substantial number of errors of law in the decision of the First-tier Tribunal Judge and he asked me to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing.
9. Miss Kiss in response on behalf of the Secretary of States submits that all is attempted here is to reargue the case. She reminds me that this is a case based on a claim outside the Convention and that there is little evidence to show that there are threats to the Appellant from powerful connections. She acknowledges that the conclusion that the judge has reached at paragraph 13 may be a bit speculative but submits that such a finding is not sufficient as to challenge other findings that have been made. Thereafter she looks at paragraphs 19, 20, 21 and 22 and points out that the judge has given due and full consideration to the issues that are before me. In further re-examination Mr Gilbert takes me yet again to paragraphs 21 and 23 and gives further submission as to why the judge has erred in law in his opinion.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable

as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. This is an appeal where the First-tier Tribunal Judge having heard the evidence has made a substantial number of findings of adverse credibility. I remind myself that a proper approach to credibility will require an assessment of the evidence and of the general claim and that in asylum claims such as this relevant factors would include the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. It is, I acknowledge, theoretically correct that a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility. In nearly every case, external information against which the claim can be checked would be available.
13. Looking at this instant case, I accept the initial criticism made by Mr Gilbert, namely that at paragraph 13 of the judge's decision the judge has made a finding of adverse credibility against the Appellant without giving explanation as to how he has made that decision, with regard to the Appellant, alleging that he was forced to give his passport to an agent. That I accept is an error in law.
14. However, Mr Gilbert then goes on in some very considerable detail and following the Grounds of Appeal to set out arguments as to attack the other findings that are made in some detail throughout the determination at paragraphs 20 through to 24 where the judge has given reasons as to why he has made his findings. I have given due and full consideration to the submissions that they are irrational and inconsistent and I have read and looked at all the paragraphs particularly within the witness statements that it is contended by Mr Gilbert, have been ignored. With the greatest of respect to Mr Gilbert having given such consideration, I agree with the submission made by Miss Kiss that all that has been done here is an attempt to re-argue the case. In all these other paragraphs the judge has not only made a finding of adverse credibility but has given reasons upon which he has reached those findings. It is wrong, I find, to conclude for example that at paragraph 19 the judge's findings are either inadequate or irrational. The judge has given due consideration as to how he has reached his decision and has explained it fully and thereafter set it out. As Miss Kiss points out, not only does this now become an attempt to reargue the case but to go against findings that have been made by the judge when they were open for him to do so.

15. In such circumstances, whilst acknowledging that there may be an error of law at paragraph 13 I have to look at this matter in the round and I am satisfied that overall the judge's findings of credibility are ones that the judge was entitled to make and are sustainable and that there are no submissions hereinafter that lead me to the conclusion that those findings were not ones that the judge, who heard this appeal, was entitled to make. In such circumstances I conclude that Miss Kiss is correct in arguing that this is little more than attempt to reargue this case and that the First-tier Tribunal Judge has done sufficient in setting out his findings of adverse credibility to the extent that no material error of law is disclosed in his decision.
16. In such circumstances, the appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No application is made for anonymity and no order is made.

Signed

Date 20 September 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

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

Signed

Date

Deputy Upper Tribunal Judge D N Harris