Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11843/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 14th December 2017	**On 22nd January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[K H]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Karnik, Counsel
For the Respondent: Miss Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 26th April 1984. The Appellant left Iraq by plane and flew to Turkey using his own passport before making his way thereafter by air to the UK arriving on 10th April 2016 whereupon he claimed asylum. The Appellant's claim for asylum was refused by Notice of Refusal dated 12th October 2016. The Secretary of State had noted therein that the Appellant's claim was based upon a fear that if returned to Iraq he would face mistreatment due to his political opinion due to attending protests and conducting surveys regarding Kurdish rights.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Turnock sitting at Bradford on 30th March 2017. A decision and reasons promulgated on 17th April 2017 the Appellant's appeal was dismissed on all grounds.

3. On 3rd May 2017 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds asserted that

   (i) that there as an erroneous finding of inconsistency in respect of the screening interview because an incomplete part of the answer from the interview was cited by the judge;

   (ii) that it was not open to the judge to make the findings made in respect of the surveys that the Appellant claimed to have undertaken;

   (iii) that there was a failure to reach proper conclusions in respect of the Appellant's level of political activity and engagement and consequent future risk to him and

   (iv) the Appellant had submitted substantial background country material to show that it was not only high profile individuals who were at risk on return but also activists like him especially when upon return he would continue to engage in such activities.

4. On 6th September 2017 First-tier Tribunal Judge Mahmood granted permission to appeal. He considered that in respect of Ground 1 it was arguable that if the judge had considered the whole of the answer in the screening interview then an adverse finding may not have been made. Similarly in respect of Ground 2 the Appellant's background as a claimed activist the reliance by him on extensive background material arguably required specific findings. Whilst he did not restrict the grant of permission he considered the remainder of the grounds did not appear to be as strong.

5. On 11th October 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Respondent submitted that the Judge of the First-tier Tribunal directed himself appropriately and that it would be argued that although the judge had potentially erred in not considering the whole of the answer in the screening interview, when the determination of the judge is considered as a whole the findings are properly reasoned and sufficient to show that the Appellant is not at risk in the IKR.

6. It is on that 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 Karnik. Mr Karnik is very familiar with this matter. He appeared before the First-tier Tribunal. He is also the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Miss Petterson.

Submissions/Discussion

7. Mr Karnik contends there are errors in paragraphs 40 and 41 of the judge's findings and as such the findings on credibility made by the First-tier Tribunal Judge are flawed. Mr Karnik relies on the authority of *AJ (Angola) v Secretary of State for the Home Department [2014] EWCA Civ 1639* and submits that significant weight must be attached to the public interest, and proportionality and exceptional circumstances have to be assessed through the lens of the Immigration Rules emphasising the burden is on the Secretary of State. He relies on paragraph 49.

> "There are two categories of case in which an identified error of law by the First-tier Tribunal or the Upper Tribunal might be said to be immaterial: if it is clear that on the materials before the Tribunal any rational Tribunal must have come to the same conclusion or if it is clear that, despite its failure to refer to the relevant legal instruments, the Tribunal has in fact applied the test which it was supposed to apply according to those instruments."

8. Mr Karnik submits that the conclusions of the First-tier Tribunal Judge cannot be taken from the evidence that was before the Tribunal and that the judge has failed to give proper and due consideration to the Appellant's asylum interview. He contends that that similarly applies to the findings at paragraph 41 of the decision regarding the anonymity of the surveys. Further he takes me to paragraph 48 that the judge has said

> "The country information provided by the Appellant has established that there are risks in IKR but these appear to be primarily faced by those in the media or who have a high profile."

Mr Karnik points out that this is not the Appellant's case. His case was that he was an activist not just one who attended meetings but a "prime mover."

9. In response Miss Petterson indicates that what is being submitted is essentially a disagreement and that the judge had given full reasons and she refers me to paragraphs 24 onwards of the decision. She points out that the judge made findings but did not accept that the Appellant was the organiser or a person of high profile and that the findings he made at paragraph 42 were ones that he was entitled to make.

10. She further points out that the survey answers are anonymous and that by themselves they are not a risk factor. She submits the judge has considered the basis of the whole of the claim and was entitled to conclude in his findings that the Appellant had exaggerated his case and that he was not the main organiser.

The Law

11. 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.

12. 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

13. A proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claims relevant factors are firstly the internal consistency of the claim, secondly the inherent plausibility of the claim and thirdly the consistency of the claim with external factors of the sought typically found in country guidance. It is 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 and in nearly every case external information against which the claim can be checked will be available.

14. Those factors appear to have been completely mirrored in this case. It is the contention by Mr Karnik that the judge has erroneously found an inconsistency between the screening interview and his account. I accept that there are inconsistencies here that may constitute an error but the question arises as to whether that error is material to the overall finding of the judge. I am satisfied that it is not. The decision has to be considered not just on the whole of the answer of the screening interview but on the whole of the findings and they are well set out and properly reasoned. The judge has gone on to consider all of the evidence. He has made findings that he was entitled to.

15. If as seems to be the case here on the materials before the Tribunal the judge was entitled to come to the conclusions that he did then submissions made by the Appellant amount to no more than disagreement. Consequently it is necessary to look at the decision. Part of the submissions made by Mr Karnik are that the judge erred in his finding that the Appellant was an organiser of the protests. The judge has analysed evidence that was before him. The judge made findings he found undermined the Appellant's credibility due to their inconsistency. The judge heard the evidence. These were findings he was entitled to

make. Mr Karnik submits that the judge's findings at paragraphs 40 and 41 are flawed. I am satisfied that they are not and whether a different judge would have come to a different conclusion is not the issue that is before me. The issue is whether or not the judge has materially erred in law and I am satisfied that in this instance he has not that he has made findings that he was entitled to make. In such circumstances the submissions amount to little more than disagreement.

16. For all the above reasons I am satisfied that there is no material error of law disclosed in the decision of the First-tier Tribunal Judge. The appeal is consequently dismissed.

Notice of Decision

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

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris