



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

Appeal Number: PA/02575/2018

THE IMMIGRATION ACTS

**Heard at Bradford
On 18 February 2019**

**Decision & Reasons Promulgated
On 12 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

[S K]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dixon, counsel, instructed by Duncan Lewis & Co
Solicitors (Harrow Office)

For the Respondent: Ms R Pettersen, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Iraq appealed against the Respondent's decision, dated 10 February 2018, to refuse an asylum/Humanitarian Protection claim made on 26 February 2014.
2. Permission to appeal was given by First-tier Tribunal Judge Scott-Baker on 26 July 2018.

3. The two principal complaints made against First-tier Tribunal Judge Buchanan whose decision was promulgated on 30 May 2018 were that the Judge had misunderstood and failed to properly address the circumstances in which the Appellant, recognised as a refugee by the State of Greece, had sought protection in the UK. Secondly the Judge had failed to address in the round the evidence or misunderstood the evidence as to the risks that the Appellant faced.
4. This brief summary of the grounds does not fully do justice to the elegant arguments raised by Mr Dixon who, having recently been instructed as had his solicitors, sought to amend the grounds to add additional grounds which iterate or to some extent seek to replace those previously advanced upon which permission was given.
5. His primary submission was that because the Appellant had been recognised as a refugee in Greece that should be determinative of the issue of his refugee status in the UK and that there were no material change in circumstances to justify a different view. Rather he said it was akin to the process of revocation or cessation of refugee status. Any justification for doing so required factors relied of material and sustained change so that a different position could be arrived at so as to diverge from the earlier decision made by the Greek State.
6. I rejected his request for an amendment to include new grounds along those lines because it seemed to me that as a matter of law the finding by another State of refugee status, just as a finding of refugee status by the UNHCR, was not decisive or determinative of the issue. Rather such a grant of status was a matter which may be given weight in the context which was fact-specific. There was no error of law by the Judge in dealing with this matter as he did. Rather it seemed to me Mr Dixon was entirely right in making the point as identified by the cases of IA [2014] UKSC 6 and KK [2005] UKIAT 54 that there needs to be clear and substantial grounds for coming to a different conclusion on refugee status. I concluded the Judge erred because he did not address it on that basis but

rather did so to see whether or not there were other matters which qualified the decision on refugee status.

7. It was not the case that the earlier determination was decisive but it was somewhat akin to the approach adopted by the Tribunal in Devaseelan when the earlier decision of a UK Tribunal was a starting point. I conclude the Judge's error was in seeking to rather sweep aside the claimed basis of risk and rather to consider, in the context as it had originally been advanced by the Secretary of State, that essentially the Appellant could return to Greece which of course was not what was then the Respondent's intention.
8. I concluded that the Judge did not apply what was apparently the correct test of whether there were those clear and substantive grounds for coming to a different conclusion on status. I do not seek to second guess what different decision might have been reached had the correct approach been followed but it was sufficient to say that there were uncertainties from the way the Judge approached the matter.
9. In considering whether or not there should be such clear and substantial grounds existing for coming to a different conclusion from the earlier grant of refugee status a consideration was, as was argued before the Judge, whether or not, since the Appellant had been suspected of involvement with groups or alleged to be involved with a group who were antipathetic towards a Kurdish State, whether that would generate from the Kurdish State to which he was returning an adverse interest and real risk.
10. It was clear that the Judge considered the evidence but looked at it rather from a different standpoint: Not how the Kurdish authorities would regard the Appellant per se but rather whether he was associated with and would pose a threat to the desires of an independent Kurdish State.
11. In supporting that argument various news articles were provided relating to the issues of the Appellant's arrest, detention, the attempt to extradite him and the attitude of the Italian State. Those articles said that the men,

including the Appellant at one time, who were arrested were allegedly plotting kidnappings of Norwegian and British diplomats abroad to secure an exchange release of Najmuddin Fara Ahmad: Ahmad had been sentenced to some eighteen months for praising the killing of Charlie Hebdo a French cartoonist. In addition it was said that Ahmad was identified as the leader of a group known as Rawti Shax Didi Nwe and affiliated with the Ansar-al-Islam group listed as a proscribed organisation and a terrorist organisation by the UN. The primary objective of that group was the overthrow of the Iraqi Kurdish Government and its replacement with a caliphate governed by Sharia law.

12. Finally there was an article published from the Guardian which clearly identified the Appellant and indicated that the case against him had been dropped by the Italian prosecutor's review for no known reason.
13. In other words it was feared the authorities in the KRI were taking an interest in those who had objectives against their own and who would wish to bring down the KRI authorities. It was said the Judge did not look at the evidence from the correct approach. I have to say on the face of it on a plain reading of the decision I rather agree with that submission. There are other points taken that I do not need to address because quite simply it is clear that unfortunately though as the Judge had been in trying to deal with the issues raised, by force of circumstances he somewhat got lost in the arguments: With the almost inevitable concentration on credibility and failed to see larger aspects of the claim.
14. There was of course no disputing the fact that the Appellant must have been known for it to be alleged he was involved in those matters and extradition sought. It does not seem to me likely that this matter could have completely escaped the attention of the authorities. Thus there was that inevitable concern of an adverse interest through the processing of his return and thereafter.
15. For these reasons, I conclude, notwithstanding the adverse findings which the Judge made, partly driven from the absence of direct evidence from

Iraq, that the Judge failed to assess whether the evidence truly showed there had been that change in circumstances or if there was clear and substantial evidence to show why the Appellant as a refugee recognised by the State of Greece, should not have that status continued. It was not said that his claim as to the risk he faced was materially different from that which he had made to the Greek authorities and to the UK authorities. In those circumstances although I do not try and second guess the outcome of the appeal it seemed to me that there is a reasonable basis for arguing a material error of law by the Original Tribunal.

NOTICE OF DECISION

The Original Tribunal's decision cannot stand.

The matter will have to be remade in the First-tier Tribunal.

List for hearing two and a half hours. Not before First-tier Tribunal Judge Buchanan.

No anonymity direction is made.

Signed

Date 3 March 2019

Deputy Upper Tribunal Judge Davey