



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

Appeal ref: PA/09579/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 14 February 2019

Decision & Reasons Promulgated
On 19 February 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

IMAD JALAL OTHMAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by DGF Solicitors,
Glasgow

For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant has permission to appeal against the decision of FtT Judge Green, promulgated on 14 March 2018, dismissing his protection appeal.
2. The grounds are these:
 - “... the judge erred in law at [17] and [20] for the following reasons:
 - (i) By failing to provide any or sufficient reasons when finding that the appellant’s account is not credible or plausible regarding the appellant’s fear of his maternal uncle ... The judge holds on the lower

standard of proof that he accepts that the appellant and his family fled Iraq because of the Isis threat however the judge states that the appellant's evidence regarding his maternal uncle's position and influence are "*essentially bare assertions*" ... the judge erred in law by placing a high burden of proof on this aspect of the appellant's claim.

(ii) The determination does not identify any proper basis on which the judge could properly have come to the conclusion that "*he has not established the threats from his uncle [or] his uncle's power and influence, I cannot see why he will be at risk from him.*" ... care must be taken in concluding an account is incredible without looking at the issue through the evidence of the country information. The determination does not disclose any reliance on such evidence and thus the findings on credibility are inadequately reasoned ... If the judge had looked the appellant's account through the evidence of the country information, he would not have reached the findings quoted from [20] above."

3. The main further points which I noted from Mr Winter's submissions were these:

- (i) The judge accepted at [15] that the appellant is from Dibis, in the Kirkuk Governorate, and at [16] that he fled from Isis. The last sentence of [17], "*These are essentially bare assertions*", was then key. That was not an adequate reason, and perhaps only a statement of a conclusion.
- (ii) There is no requirement of corroboration. (Mr Winter accepted my observation that an appellant must do what he reasonably can to support his case.)
- (iii) This is not a case where an appellant has been found generally not credible, and an adverse finding might extend to other minor aspects, even if not expressly stated.
- (iv) The judge set out the respondent's reasons for doubting credibility at [3], but did not say what he made of those reasons.
- (v) The error was material, because if there was a real risk from the appellant's maternal uncle, the extent of his reach impacted on ability to relocate.

4. Mr Govan made these points:

- (i) The grounds now focused on the appellant's fear of his maternal uncle, but that had been a wholly subsidiary part of the case he put to the respondent and in the FtT.
- (ii) The appellant's witness statement in the FtT (inventory II, item 1, pp 1 - 9) mentioned his uncle only briefly, at paragraphs 2 and 59-60.
- (iii) The matter was mentioned at interview Q/A 81 - 85, 106 and 107, but that made clear that the appellant's maternal uncle lived in Howler, an hour and 15 - 20 minutes by car from where the appellant lived in Erbil.

- (iv) At highest, this was a risk which did not reach even the appellant's home location.
 - (v) The evidence was so scanty that it was sufficient to say it was a "mere assertion".
 - (vi) The judge might have said what was made of the respondent's doubts about the evidence, but any omission was immaterial.
5. In reply, Mr Winter said:
- (i) There was further evidence in an inventory forwarded on 12 February 2019. These are items designed to show the power of the appellant's maternal uncle. Although more obviously admissible if error of law was found, they might go to the materiality of any error.
 - (ii) There were other references to the matter in the appellant's witness statement, at paragraphs 10, 46-49, and 60. The statement was not as detailed as it might have been on the subject, but it was enough to show the inadequacy of the judge's reasoning on the issue.
6. I reserved my decision.
7. It might have been useful if the judge, having recorded the respondent's credibility doubts, had said what was made of those, even in absence of a risk from Isis, and if he had explained further why the appellant's assertions about his maternal uncle were not accepted. However, no decision is exempt from all criticism. The grounds and submissions do not show that the making of the decision involved the making of an error on a point of law; and even if the shortcomings did amount to error of that nature, they are not such as to require the decision to be set aside.
8. It is significant that nothing was drawn to attention in support of ground (ii). There was no evidence before the FtT, beyond the appellant's assertion, to show that his uncle was a man of power.
9. The interview was mainly about other matters, but it was thorough. The passages referred to above show that it was difficult to derive much sense about the persistence of ill-feeling from the appellant's maternal uncle. The gist is that the risk was local, might have dwindled away, and was not a reason for leaving the country. I further note the following:
- Q.111 Who do you believe would kill you?
- A. *I am scared of Daesh [Isis] mainly from Daesh even though I was safe from my uncle I was living away from him, my fear is Daesh they are doing it for their own interests.*
10. There are some references in the appellant's statement, but they do not describe a risk extending even to where he lived:
- paragraph 45, *"I was only safe from my uncle when I was living away from him."*

paragraph 49, *“We decided to move and live elsewhere and not to make a huge problem within the tribe”*.

11. The grounds seek to elevate a minor issue, in hindsight, now that flight from Isis does not ground an ongoing claim.

12. There may well have been ill-feeling in the family, and even in the extended family or tribe, over the appellant's marriage. However, there was no evidence by which that might sensibly have been found to be a reason for his departure from Iraq and his travel to the UK, or to be a matter qualifying him for protection against return.
13. The decision of the First-tier Tribunal shall stand.
14. No anonymity direction has been requested or made.

A handwritten signature in black ink, appearing to read "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

14 February 2019
UT Judge Macleman