



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

Appeal Number: PA/10074/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 7 February 2018**

**Decision & Reasons Promulgated  
On 4 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**S H  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Patel, Lei, Dat & Baig Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Iraq, born on 15.3.96. He is a Sunni Kurd, from Kala, Suleymaniya in the IKR. The Appellant arrived in the United Kingdom and claimed asylum on 26 October 2017, on the basis that he had a relationship with a Shia woman whose father was involved with Shia militia, whilst the Appellant was working in Jalawla, Diyala province, which is a contested area. The Appellant asserted that his former partner, W, had been subjected to an honour killing as

a consequence of their relationship and he too feared being killed if returned.

2. His asylum application was refused in a decision dated 31 August 2008 and the Appellant appealed against this decision. His appeal came before First tier Tribunal Judge Shergill for hearing on 26 September 2018. In a decision and reasons promulgated on 17 October 2018, the Judge dismissed the appeal, finding the Appellant not to be credible, owing to discrepancies in his account of who he feared, stating in his screening interview that he feared Daesh but in a preliminary information form, which the Appellant claimed was completed by a Kurdish woman who was a lay person, which explanation the Judge rejected, that he was also assaulted by Daesh, but did not rely on this aspect of the claim at all in his substantive interview; discrepancies in his account as to his relationship; that a copy arrest warrant was not reliable and that he had previously fled to Sweden in 2015 where he put forward a different asylum claim based on a blood feud. Thus the Judge found that the Appellant could return to the IKR.

3. An application for permission to appeal was made to the Upper Tribunal by the Appellant himself, out of time, on the basis that there had been a mistake because he had always referred to a fear of Hasht Al Shaabi and that his girlfriend's family were involved with them; that the Judge had made errors in his assessment of the arrest warrant and that he now had photographs of his girlfriend on his phone, which had been broken but was now fixed.

4. In a decision dated 30 November 2018, permission to appeal to the Upper Tribunal was granted by Designated Judge Shaerf, who also extended time, noting as follows:

*"It is clear from the interview record (Q.10ff) that he referred to Hashd Al-Shaabi. The Appellant dealt with this at paras.22ff of his witness statement and it is arguable the Judge's treatment of this at paras. 16 and 17 of his decision is inaccurate.*

*At para 27 the Judge placed considerable weight on apparent dating errors in letters at page D20 of the Respondent's bundle and page 23 in the Appellant's bundle. Both these letters which he considers are in identical form are from the Appellant's solicitors. First, they are not in identical form. The earlier letter at page D20 encloses a copy of an arrest warrant and the later letter at encloses the original arrest warrant. The Judge arguably erred in placing reliance on this apparent but not actual inconsistency and in any event the relevant evidence is the arrest warrant not the solicitors' letters referring to it.*

*These are arguable errors of fact finding sufficient to amount to an arguable error of law. However, whether those errors are sufficient to make the Judge's overall adverse credibility unsafe in light of the other findings will be for the Upper Tribunal to determine."*

### Hearing

5. At the hearing before the Upper Tribunal, Ms Patel sought to rely on the grounds of appeal and drew my attention to [16]-[17] of the decision of the First tier Tribunal and [4] of the grant of permission. The Judge found inconsistencies between the screening interview, the substantive interview and the PIF, however, the Appellant recognized there were errors and at C18 submitted a letter to the Respondent. The Judge failed to take this into consideration in any substantive or significant detail. She submitted this is an error of law. She submitted that the Judge granting permission to appeal does recognize that the Appellant defined his fear of persecution as being of Hashd A-Shaabi. The Judge's treatment of the arrest warrants is at [27] which seems to be a lengthy observation of certain inconsistencies. These are included in the Respondent's bundle at D20 - which is a copy of the arrest warrant and translation sent on 27.7.18 with a recorded delivery slip (page 23 of the Appellant's bundle). The Judge looks at the dates of when the documents were served but did not engage with the documents themselves, which she submitted is a material error.

6. In his submissions, Mr McVeety stated that he was somewhat puzzled by the grant of permission. Whilst what it states in the grant of permission is that there are errors it is not apparent that the Judge granting permission considered what the Appellant stated about inconsistencies. The First tier Tribunal Judge says at [17]-[19] that he has considered everything put forward by the Appellant and he found inconsistencies and he did not believe the Appellant. Credibility is a matter for the judge, he found no plausible explanation and there is nothing he did not consider. The letter referred to at C18 simply says he has a fear of being killed because of a girl.

7. Mr McVeety submitted that there is a huge amount of this decision and reasons which has not challenged, particularly that relating to the core of the Appellant's account. At [23] putting aside the inconsistencies, the Judge stated he was not persuaded by the core of the claim: see findings at [23]-[25]. The Judge focused solely on how the document came to be rather than content: see [27] but also see [28] where the Judge does consider the evidence. He submitted that it was entirely open to the Judge to make findings he did on the evidence.

8. Mr McVeety stated that he had not seen the original arrest warrant which had been served on the Home Office but having

checked the file, confirmed that it was on the file, albeit from the minute compiled by the Presenting Officer, it was not available at the hearing.

9. In reply, Ms Patel submitted with respect to [16]-[17] of the Judge's decision, that the Judge failed to consider that the Kurdish woman described is a British citizen, not a legal representative nor an interpreter.

### *Findings and reasons*

10. I reserved my decision, which I now give with my reasons. Whilst the Judge has made adverse findings in respect of the Appellant's credibility, I have concluded that the Judge also made material errors of fact which undermine the safety of his conclusions.

11. At [11]-[17] the Judge focused on discrepancies as to who the Appellant feared, however, as pointed out by Judge Shaerf in the grant of permission to appeal, the Appellant referred to a fear of Hashd Al-Shaabi in his interview record and witness statement, as it was members of this militia who accompanied his girlfriend's male relatives to the Appellant's family home. The Judge refers to the Shia militia at [17] but takes a different point, ie the fact that the Appellant's account of a fear of this militia is inconsistent with his previous accounts, as set out in his screening interview and preliminary information form. However, he fails to engage with the consistency between the Appellant's account in his witness statement and substantive asylum interview. Whilst I find that the Judge was entitled to place some weight on the screening interview, I find in this particular case that he attached undue weight, given that the screening interview is precisely that and is not intended to set out a detailed basis of claim. I am also concerned at the readiness with which at [12] and [13] the Judge disregarded the Appellant's explanation for the repetition of the erroneous account of a fear of persecution from Daesh on the basis that the person who assisted him in completing the preliminary information form [PIF] was a British Kurdish woman, who was not a legal representative. It also does not appear to have occurred to the Judge, because he makes no mention of it, that the reason why the PIF was consistent with the screening interview is because the woman assisting the Appellant took the information from the screening interview.

12. Thus I find any reliance on discrepancies between the Appellant's accounts as to the (partial) basis of his fear of persecution given at different times, in respect of which he also provided an explanation, are not sustainable in light of this error of fact, which amounts to a

failure to take account of a material consideration and is thus a material error of law.

13. I further find that the Judge erred at [27] and [28] in that he failed to apprehend that the Appellant's representatives sent a copy of the arrest warrant to the Respondent on 28 June 2018 and then, when they subsequently received the original, they also forwarded that to the Respondent on 27 July 2018. Contrary to the Judge's finding, this is not an indication that there is clearly something amiss. In the absence of the original document, the Judge then went on to find that the arrest warrant is not reliable and in so doing appeared to place weight on its absence, which was in no way the fault of the Appellant. I find that the Judge erred in his treatment of the arrest warrant and failed to properly analyse the arrest warrant and give reasons for his findings.

14. Whilst the Presenting Officer's minute of the hearing indicates that he was not in possession of the original document, when requested Mr McVeety searched the Home Office file and found it. Thus it is now available for inspection.

15. Whilst the Judge made further adverse findings against the Appellant, I find that those findings are infected by the errors of law in the two key areas set out above.

*Decision*

16. I find material errors of law in the decision of First tier Tribunal Judge Shergill. I set aside that decision and remit the appeal for a hearing *de novo* before the First tier Tribunal.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

28 February 2019