Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11401/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th May 2019	**On 3rd June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

HMK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs H Masih (of Counsel), IMK Solicitors
For the Respondent: Ms S Jones, Senior HOPO

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge E. M. M. Smith, promulgated on 28th February 2019, following a hearing at Birmingham on 20th February 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 29th September 2002. He appealed against the decision of the Respondent dated 14th March 2018, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he was born in the village of Abu Sabah. From there he moved to live in Tuz Khurmatu, where he lived until he left Iraq. He lived with his parents, his younger sister and older brother. He is a Sunni Muslim. He is also of Kurdish ethnicity. His father and brother were members of the Peshmerga. In October 2017 the Appellant claims that his father and brother left for work but never returned back. The following day members of the Hashd al-Shaabi attacked the Appellant's home and took his mother away as well. The Appellant telephoned his uncle who lived in Kirkuk. The uncle arranged for the Appellant to leave Iraq. The Appellant arrived in the UK on 25th November 2017. He had spent a month travelling. He was a minor and therefore he was granted discretionary leave to remain.

The Judge's Findings

4. The judge, having reviewed the evidence, concluded that the Appellant had no reason to fear return to his uncle's home in Kirkuk, or indeed to his parents' home, given that the judge had rejected the account given by the Appellant that both his parents were abducted. The Appellant had explained in his SEF interview (questions 12 to question 16) that he knows that the CSID is a Teskara. The judge observed that from the answer given by the Appellant at question 13, "it appears he had one". In those circumstances, "The appellant's uncle will be in a position to assist him upon his return as he did when assisting him to leave. The uncle will be in a position as and when this appellant returns to Iraq, which will not be until he is 18, to assist him …" (paragraph 31).

Grounds of Application

5. The grounds of application state that in rejecting the Appellant's appeal, the judge had referred to questions and answers within the asylum interview, which have not been in the papers before him. The judge had also stated that the Appellant had not taken issue with the Respondent's evaluation in the light of the Appellant's answers, which was not true. The judge had been concerned that the record of the answers was incomplete. It was therefore incumbent upon him to consider adjourning the hearing. Or, at the very least, the matter should have raised in court. In his second witness statement, the Appellant had actually taken issue with the Respondent's interpretation of his account.

6. Second, the judge had failed to assess the expert evidence. The expert's view was that the questions put to the Appellant had not been formulated carefully enough to allow him to make a clear assessment of his true home town. The judge had made no reference to this. Therefore, the judge could not use this as a basis to reject the claim.

7. Third, the judge stated that the Appellant had no reason for fearing return to his uncle's home in Kirkuk or his parents' home. However, he had not considered whether Kirkuk remained in the contested area.

8. Fourth, the judge failed to engage with the risks of the Appellant being a lone, unattended minor. The judge also had not looked at the imputed political opinion issue, given the family's membership of the Peshmerga, and the risks as a Sunni Muslim which would apply to the Appellant.

9. On 5th April 2019 permission to appeal was granted.

10. On 10th May 2019, a Rule 24 response was filed by the Respondent. At the hearing before me on 13th May 2019, neither Ms Jones for the Home Office, nor Mrs Masih for the Appellant, had a copy of this. I handed up my own copy for them to read and to use during the course of their submissions. The Rule 24 response makes it clear that the judge took a holistic approach to the evidence and observed that "whilst there are discrepancies or vagueness in his answers, I must assess his account taking into account his evidence in the round" (paragraph 28). This showed that the judge was alive to all the issues. Moreover, the judge had stated (at paragraph 27) that the Peshmerga and the Hashd al-Shaabi were in an alliance with a common enemy. This being so, it was not credible that the fragile relationship between these two factions would be fractured by the abduction of the Appellant's father and brother and then the mother. Finally, with respect to the expert report of Dr Alan George, the judge had given anxious scrutiny to this evidence (at paragraphs 25 to 29) and the challenge to their decision was simply a disagreement with the decision.

Submissions

11. At the hearing before me on 13th May 2019. Mrs Masih, appearing on behalf of the Appellant, relied upon the detailed grounds of application, through which she took the Tribunal meticulously, as well as placing a reliance on the skeleton argument, which was before the First-tier Tribunal. In essence, Mrs Masih had the following submissions.

12. First, that there was a procedural impropriety in the judge referring to missing parts of the SEF interview (at paragraph 28 of the decision), but failing to either invite comment from the representatives, before detailing the appeal, or adjourning the hearing. The fact was, submitted Mrs Masih, that she herself had the remaining questions, after question 40 of the SEF interview. A full copy of the SEF interview was indeed placed in the Appellant's bundle itself (see pages 12 to 41). Given that the judge had to

give "anxious scrutiny" to the evidence, before rejecting that the Appellant was not from Tuz Khurmatu, as the Appellant claimed, all the questions had to be looked at. The relevant questions, were in any event, not from question 40 of the refusal letter, but from paragraphs 32 to 35 of the refusal letter.

13. Second, the judge had failed to consider the material evidence and to give adequate reasons, when observing (at paragraph 28) that the Appellant did not take issue with the Respondent's view of the answers he had provided, because the Appellant had done exactly that at paragraphs 2 and paragraphs 5 to 8 of his second statement of 4th January 2019 (at the Appellant's bundle in pages 7 to 11). He had maintained there that he was from Tuz Khurmatu. It was not open to the judge to reject the Appellant's account of the Appellant having grown up in Tuz Khurmatu (at paragraph 29). Moreover, the judge had accepted Dr Alan George's report as credible (paragraph 25) and yet failed to accept the Appellant's origins and the credibility of his claim.

14. Third, there was a failure to consider material evidence (at paragraph 27), because even if the Appellant was mistaken as to the identity of the perpetrators responsible for the disappearance of his father and brother, the indiscriminate attacks and the ethnic tension on the grounds support the occurrence of such events and the risk to the Appellant from Hashd al-Shaabi, on account of his Kurdish ethnicity, and his Sunni identity in Tuz Khurmatu (see paragraphs 126 to 130 of the expert report in the Appellant's bundle at pages 92 to 94, and the Amnesty International Report in the Appellant's bundle at page 134).

15. Fourth, the judge materially misdirected himself in-law in failing to apply the country guidance here. The judge observed (at paragraph 31) that the Appellant had no reason to fear returning to his uncle's home in Kirkuk. However, this overlooked the fact that Kirkuk was a contested area, and the judge failed to engage with the expert's report about the conditions on the ground there, and also misunderstood the central importance that the CSID card plays in Iraq, and failed to adequately assess the Appellant's ability to obtain identification documents.

16. In any event, the Appellant was a member of a particular social group, in that he was a lone unattended minor, who had lost contact with his family members. Finally, all these errors made a material difference to the outcome of the appeal and this being so, this appeal should be allowed and the matter should be remitted back to the First-tier Tribunal with a gap of at least six weeks from now, to enable fresh evidence material to be obtained by those representing the Appellant

17. For her part, Ms Jones submitted that there was no error of law. This is because the judge had fundamentally accepted the Appellant as not being a witness of truth. He had said that his problems started in October 2017. This was not true. There was no point in relying upon the expert report of Dr George in this regard, because he had quite properly made it clear that,

"I should like to stress that I make a clear distinction between plausibility– whether an account could be true– and credibility–whether it is" (see paragraph 26 of the determination), and so credibility remained entirely a matter for the judge to determine here. This being so, one had to look at the eventual conclusion of Dr George. When addressing the question whether the Appellant was indeed from Tuz Khurmatu as he claimed, and in considering whether the Appellant had given sufficient answers to the evidence for an expert opinion to be formed on this, what Dr George had said was indicative. He explained (paragraph 234 at page 90 of his report) that,

> "In my view the questions put to [the Appellant] by the Home Office concerning his origins were not formulated sufficiently or carefully to permit any clear indication of his origins. In order for me to provide a clear opinion as to his likely origins I would need to conduct an in depth investigation, including an interview with [the Appellant]. I have discussed this with his legal representatives who advised that such an investigation was beyond the scope of my present report".

18. Given that, in the end, Dr George was unable to pinpoint clearly that the Appellant was indeed from Tuz Khurmatu, the judge was entitled to conclude in the manner that he did, after having looked at all the evidence in its entirety.

19. In reply, Mrs Masih submitted that if it was the case that the Home Office had not formulated sufficiently carefully questions to be put to the Appellant (as stated by Dr George towards the end of his report at paragraph 234), then this was hardly the fault of the Appellant himself.

No Error of Law

20. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.

21. First, this is a case where the judge has found the Appellant to be lacking in credibility as a general matter. In what is comprehensive determination, whereby the judge shows mastery of the facts raised before him, he makes it clear that "there are two incidents complained by the appellant as to why he fled Iraq", the first was his father and brother and going to work and the second on the following day his mother was taken" (paragraph 21). In looking at this allegation, the judge considers the screening interview, where the Appellant was asked how he travelled to and entered the UK, and he had replied *"I don't remember the exact date when I left Iraq but it took less than a month to arrive here"* (paragraph 22).

22. The Appellant then himself provided the dates of having fled Iraq at the end of October, and having entered the UK on 26th November 2017 (paragraph 22). After this was done, the Presenting Officer, at the

hearing, put it to the Appellant that these dates could not be correct bearing in mind that "he was fingerprinted in Greece at the beginning of September".

23. In reply the Appellant said that his culture does not give significance to dates. When it was put to him that he had provided the dates he, replied that he was then "very tired and in a bad condition" (paragraph 22). The judge's view of this part of the hearing was that the dates relied upon by the appellant were provided by him and confirmed by him 10 months later yet as soon as he was confronted with the fact that he had been fingerprinted nearly two months before he left Iraq the appellant's reply was that "he could not remember anything".

24. The judge went on to say that even if the Appellant's age was factored in

> "he was untruthful in his witness statement and in his screening interview. The lie that he left in October or November 2017 was repeated by him in the SEF interview. I do not accept that dates are not significant in his culture, much because he is the one who volunteered the dates." (Paragraph 24).

There is no reason why the judge's conclusion with respect to the Appellant's credibility in this respect is flawed. It is well-reasoned and it is based entirely on the facts before the Tribunal.

25. Second, the judge considers the report of Dr Alan George (paragraph 25) and makes it quite clear that "I will afford his report the appropriate weight". He observes Dr George's report where he states that "if the Hashd al-Shaabi had targeted his father and brother it would not have been because they were in the Peshmerga", and the judge's view was that "I am satisfied that if they had disappeared it was unlikely to be because they were in the Peshmerga" (paragraph 25). This too, was a conclusion open to the judge to make.

26. Third, the judge observed how the Peshmerga and the Hashd al-Shaabi were allies with a common enemy, and he was not satisfied that the fragile relationship between the two of them would be fractured by the abduction of the Appellant's father and brother and their mother. He observes that "Even if the appellant's father and brother were abducted it simply makes no sense to return and abduct the appellant's mother" (paragraph 27). This again, was a finding that the judge could properly make on the evidence before him.

27. Fourth, that left the question of whether the Appellant came from Tuz Khurmatu as he alleged. He observed that the refusal letter (at paragraph 40) had made no reference to the questions and answers within the SEF interview which were not within the papers before me. Mrs Masih submits that this is a material error. I find that even if it is an error it is not a material one. It is true that the judge comes to the conclusion that the second Appellant's witness statement did not take issue with the Respondent's view of the answers provided, and Mrs Masih contends that

this cannot be right. However, ultimately, if the issue was that the Appellant was from Tuz Khurmatu, the judge was entitled to conclude that the Appellant was not from this place for the reasons that he went on to give at paragraph 29. These were that the Appellant had not provided a true account of the experiences and reasons for claiming asylum. The incidents that occurred in October or November 2017 could not be true given that he had been fingerprinted in Greece in September. The judge was entitled to conclude that he was satisfied "that the appellant's account of having grown up in Tuz Khurmatu is also not credible" (paragraph 29). This is not least because Dr Alan George himself states (at paragraph 234) that, "in order for me to provide a clear opinion as to his likely origins I would need to conduct an in depth investigation, including an interview …", which he had not been able to do.

28. That left the question as to whether the Appellant could be returned to Iraq. The judge was entitled to state that the Appellant had demonstrated a knowledge in his SEF interview of this year's ID, which he described as a "Tescara" and that his answer to question 13 showed that "it appears he had one". This being so, he could return to his uncle's home in Kirkuk and he could be assisted in getting the necessary documentation (paragraph 31). These conclusions were open to the judge to come to. There is, in short, no error of law. The challenge amounts to a disagreement only.

Notice of Decision

29. The decision of the First-tier Tribunal did not involve the making of an error on a point of law such that it falls to be set aside. The decision shall stand.

30. An anonymity order is made.

31. This appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge Juss 29th May 2019