Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06135/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 20 December 2019	**On 28 January 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

I A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Wood, instructed by Immigration Advice Service
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. *Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity direction. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.*

2. This is the appellant's appeal against the decision of First-tier Tribunal Judge Herwald promulgated on 20 August 2019 dismissing on all grounds his appeal against the decision of the Secretary of State dated 14 June 2019 to refuse his protection claim made on 22 December 2018. On 24 September Designated First-tier

Tribunal Judge Woodcraft refused permission to appeal to the Upper Tribunal. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Grubb granted permission on 31 October 2019.

Error of Law

3. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal sufficient to require it to be set aside and remade.

4. The appellant is an Iraqi Kurd from the IKR born in Sulaymaniyah. The protection claim asserts that he is at risk on return to Iraq on the basis of a family land dispute between his mother and his maternal uncle, alleged to be either a high ranking regional government official and/or a captain in the Peshmerga force acting as a bodyguard for a Mahmoud Sangawi said to be a high ranking official in the Patriotic Union of Kurdistan Party (PUK). In addition, his family rejected the suggestion of his uncle to resolve the dispute between the families on the basis that his sister marry the uncle's son the appellant's cousin Abdullah.

5. There was no issue of feasibility of return or documentation necessary to enable the appellant to return to Iraq.

6. Judge Herwald found inconsistencies in the appellant's account and ultimately rejected the account of a land dispute with a powerful uncle. Neither was the judge persuaded as to the veracity of the claim of a potential forced marriage between the appellant's sister and his cousin allegedly giving rise to a further strand of risk on return. In the alternative, the judge also found internal relocation would not be unduly harsh. In summary, the grounds assert:

   (a) that the judge made a material misdirection in law in asserting that there was no evidence to support various parts of the appellant's factual claim and implicitly required corroboration. It is pointed out the appellant gave evidence himself as to the matters in dispute which obviously is 'evidence' and that there was also a letter from a consultant advocate in Iraq setting out details of the land dispute;

   (b) that the judge failed to resolve a conflict of fact or opinion on a material matter in relation to who had signed the land transfer document between May and August of 2018, whether his grandmother or himself using a power of attorney. It is also suggested in the grounds that the judge at 14(q) has completed two different documents within the decision;

   (c) that the judge made a mistake of fact on a material matter with regard to the appellant's uncle's employment, suggesting that the claims that the uncle is both a high ranking regional government official and a captain in the Peshmerga acting as a bodyguard are irreconcilable, when the fact is that the background country information indicates that the PUK has both a political and military role.

7. In relation to the first ground, given the comments made in the grant of permission, Mr Wood does not pursue the issue about the judge requiring corroboration and I am satisfied in any event the judge was not requiring such corroboration and was entitled to point out the absence of supporting evidence in relation to various aspects of the appellant's claim. Obviously the judge would be aware that the appellant's claim rested in part on the appellant's own account in evidence, in the interview and in his witness statement. I am satisfied that in making those observations the judge did not ignore the appellant's evidence. In relation to the judge failing to take account of the letter from the consultant advocate which in theory was a letter supporting the account, the judge has addressed this at 14(u) of the decision, where the document from the advocate is noted and in fact the judge set out the whole of that letter at paragraph 39(k) of the decision. The judge stated it was consistent with the appellant's account but can be said to be self-serving. The judge also noted that the area of land referred to in the letter was different from the documents submitted to the estates registry office. In relation to that last point about the size of the land, it is not clear to me whether there was a discrepancy in the size. Certainly some of the documents, including that on page 62, as translated referred to the square meterage as 150. It is not entirely clear which document the judge is referring to. He referred to a document submitted to the estate registry office.

8. Part of the difficulty for this Tribunal is it transpired during the course of submissions to me that one of the two bundles supplied to the First-tier Tribunal, including land documents between pages 59 to 79, is different to the bundle both in pagination and in content to the bundle that Mr Wood was referring me to. In particular, one of the documents he wanted me to look at does not appear at all in the bundle supplied to the judge and it appears that the pagination may also have gone awry. Whilst simply saying a document is self-serving it is insufficient to dismiss or give little weight to such a document, an examination of the letter from the consultant advocate does not suggest that that person has had any role whatsoever in the land transfer or any part of the appellant's history. He appears to be simply stating what he must have been told by others and does not suggest in any way that he has any direct or personal knowledge. It follows that whilst it is obviously self-serving, the letter even taken at its highest can have little material weight in the overall assessment of the evidence. The fact that it comes from a consultant advocate is a mere cloak of respectability and an attempt to give the contents some greater weight than the facts justify. With no disrespect to the consultant advocate, he is simply stating what he has been told. In those circumstances it is in that sense self-serving and does not improve the appellant's case to any material extent.

9. The second ground complaining the judge failed to resolve the conflict about who signed the land transfer documents is again difficult to resolve because of the discrepancy between the documents Mr Wood relied on and those actually submitted to the judge. It is not clear why there are so many different documents, submitted in a peculiarly confusing order, but I am satisfied having considered the matter that the judge did resolve the conflict as to who transferred the land in the sense that he found the appellant's claim about the dispute arising from the land transfer to be incredible. In reality, whether his grandmother did it herself or

whether he had done so acting on her power of attorney is not necessarily material. The judge found that whoever had been involved in the land transfer the documents themselves did not actually support the claim of there being a land dispute.

10. I accept that, in a general sense only, the documents support the appellant's account in confirming that there was a transfer of land. But equally, and perhaps more significantly, the documents are inconsistent with the appellant's account, including in interview. At question 12 he said that using a power of attorney he transferred the land to his mother. At question 17 he said when asked about what he feared on return to Iraq he said, the problem is because I switched the name of the land owner from my grandmother to my mother legally my uncle was not happy about it. We do not need to go into why he did so, but at question 19 he was asked to explain how the fear of return was linked to the land dispute and said, I switched the land to my mother's name and my uncle and cousins came to my house on 20 July 2017 and beat me up. That is impossible to sensibly reconcile because the documents themselves relating to the land transfer appear to be dated between May and August of 2018; which the judge pointed out. It is difficult to see how the appellant could be under attack for having made this transfer when it did not take place for almost a year later. His account in the interview was that the first attack on him was in 2017. The judge rightly pointed out that there are photographs of the grandmother on some of the documents, but the judge was also entitled to conclude that the documents disclose nothing more than a simple transfer of land, in fact a sale of land, between his grandmother and mother. It was open to the judge to conclude that on the evidence, considering the appellant's account and these documents, as well as the consultant advocate's document, that there was no credible evidence of the land dispute.

11. Mr Bates raised the point that the appellant's representative had submitted a letter purporting to make amendments to the record of interview, stating on the appellant's instructions that there was an error of translation. However, although the record was audio recorded, the appellant has produced no verified record or any record in fact suggesting that there was any inaccuracy. Mr Wood suggests that it was for the respondent to prove that document. I entirely disagree. It is the appellant who is asserting that there was an error. He either had access to the audio recording, or could have had done so if he wanted, and he could have demonstrated beyond doubt that there was an error, if there was an error. He has failed to do that and a simple assertion there was an error takes his case nowhere.

12. Turning to the third substantive ground of appeal, I was fully satisfied the judge was entitled to find an inconsistency in the appellant's descriptions of the role of his uncle. Even if PUK is both a political and a military organisation, it is difficult to understand how the uncle could be himself a high-ranking government official and a bodyguard to a high-ranking official. There is an obvious discrepancy between those two descriptions which is not resolved or satisfied by the background material referred to by Mr Wood. In the circumstances, it was entirely open to the judge to point out an inconsistency which undermined the appellant's credibility.

13. In all of the circumstances whilst there may have been some factual errors on the part of the judge, I am not satisfied that any or all of them, either individually or taken

together, are material to the outcome of the appeal. I am satisfied that on the difficult task to assess documents that were and remain difficult to understand, the judge was entitled to conclude that they did not demonstrate a land dispute, merely a sale of land. I note the appellant has said at some stage that the actual sale was a ruse to justify the transfer but that no money actually had changed hands, but that is immaterial. Whether he did made the transfer, or whether his grandmother was present and did it herself, matters not and is not material.

14. In all the circumstances and for the reasons outlined above, I find no material error of law in the decision of the First-tier Tribunal. It follows that the appeal to the Upper Tribunal must be dismissed.

Decision

15. The making of the decision in the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

I do not set aside the decision.

The decision in the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Upper Tribunal Judge Pickup

Dated 20 December 2019

To the Respondent
Fee Award

I make no fee award as the appeal has been dismissed.

Signed

Upper Tribunal Judge Pickup

Dated 20 December 2019