Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13681/2018

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 26 February 2020	**On 18 March 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

GY
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms M. Cleghorn, instructed on behalf of the Appellant
For the Respondent: Ms Petterson, Senior Presenting Officer

DECISION AND DIRECTIONS

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The Appellant with permission, appeals against the decision of the First-tier Tribunal (Judge Bircher) (hereinafter referred to as the "FtTJ") who, in a

determination promulgated on the 5 May 2019, dismissed his claim for protection.

The factual background:

3. The background to the Appellant's protection claim is set out in the determination of the FtTJ at paragraphs 10-14 and in the decision letter of the Secretary of State issued on 23 November 2018.

4. The Appellant is a national of Iraq. He claims to have entered the United Kingdom on 6 November 2017 and made an application for asylum and/or humanitarian protection on the 8th November 2017. The basis of his claim was that he was a national of Iraq and of Kurdish ethnicity having been born in xx in the IKR. In April 2015 he claimed to have been working for the Peshmerga as a driver and that his job was to drive them to and from a changing point in a 21-seater bus. He stated that they were on duty for one to 2 weeks at a time and therefore he drove them to their base and collected other peshmerga from the base back to their home. He was paid approximately 575,000 dinars for driving them two days in every month. The base was in a remote area.

5. The appellant also stated that his father was also a Peshmerga and that he had found the job of driver for the appellant and forced him to accept that job. His father had been in the Peshmerga for 20 years and held the rank of captain.

6. The appellant did not have a rank whilst working as a driver and did not wear uniform or carry a weapon. Nor did he have any specific training for his role. He was not the subject of any security checks because of the position his father held.

7. It was said that on one day the appellant's father woke him and asked him to drive to work. He needed to attend an urgent meeting which is why he asked the appellant to drive him. He dropped his father off at work and then slept in the car. Later that morning, the appellant's maternal uncle phoned him to say that his home had been ransacked and there was no sign of his mother and younger brother. The same maternal uncle asked the appellant to make enquiries of his father's work and see if he was still there. The appellant did ss but could not find him anywhere.

8. On 4 July 2017 the appellant's father phoned the appellant's maternal uncle and explained that he had forcibly removed the appellant's mother and younger brother and recruited them into Daesh along with himself. The appellant's father phoned the maternal uncle to tell him that the appellant was to join his father otherwise he would send people to kill him. The appellant's father disclosed to the maternal uncle that the reason why he wanted his son brought to him was to recruit him also.

9. The appellant and his maternal uncle then fled to xx where they stayed for one night before travelling on to Turkey.

10. The appellant claimed that an arrest warrant had been issued against him and whilst he had never seen the arrest warrant, he knew of its existence because friends who he had driven to work and transported back home had told him so.

11. The appellant and his maternal uncle could not stay in xxx because people they wanted to physically assault him because his father joined Daesh and had taken the appellant's mother and younger brother. The appellant lost contact with his maternal uncle because his mobile phone was broken.

12. The appellant left Iraq in September 2017 and travelled through several countries until his arrival in the United Kingdom.

13. The decision letter of the Secretary of State dated 23 November 2018 considered that he did not have a genuine subjective fear on return to Iraq. It was not accepted that the appellant had ever worked for the Peshmerga nor that he had been threatened by his father or from those Kurdish civilians or the government in the IKR and set out a number of issues of credibility and by reference to the country materials.

14. The respondent to set out the country materials and the CPIN and consideration was also to the country guidance decisions in AA (Article15 (c) Iraq CG [2015] KUT 544 as amended by the Court of Appeal in AA Iraq v SSHD[2017] EWCA Civ 944 and AAH (Iraqi Kurds-internal relocation) CG [2018] UKUT 0212. Specific consideration was given to documentation and feasibility of return. Taking into account the factors identified in the case law and country materials, it was noted that he had confirmed that he was from xxx in the IKR but that the objective information confirmed the security situation there did not engage Article15 (c) and that he could obtain documentation either through family members in Iraq (including his maternal uncle) or via the Iraqi embassy in the UK. His claim was refused on all grounds.

15. The appellant lodged grounds of appeal against that decision.

16. The appeal came before the First-tier Tribunal before FtTJ Bircher. In a decision promulgated on 5 May 2019, the FtTJ dismissed his appeal.

17. Permission to appeal that decision was sought and initially refused by FtTJ Pedro but was granted on the 10 June 2019 by UT Judge S. Smith for the following reasons:

> "It is arguable that the judge's plausibility -based findings were insufficiently supported by the background materials, for example in relation to the likelihood of the appellant's father revealing his role to him, or of the appellant carrying a gun.
>
> It is also arguable that the judge misapplied the country guidance cases. Having quoted extensively from AA (Iraq) v SSHD 2017 EW CA Civ 944 (including paragraph 1, which states there are no international flights to the IKR), the judge stated that the appellant could fly directly back to Erbil. It is

arguable that the judge failed properly to apply the country guidance concerning the method of return, and the documentation needed to facilitate such a return (for example, at [23], the judge did not specify which male relative could attend the "Iraqi consulate", nor in which country the consulate would be located, given such premises are usually established in countries other than the sending state's territory).

18. The appeal was therefore listed before the Upper Tribunal. Ms Cleghorn, who had appeared before the FtTJ, appeared on behalf of the appellant and Ms Petterson, senior presenting officer, appeared on behalf of the respondent. At the hearing Ms Cleghorn confirmed in her submissions that she did not seek to rely upon Ground 2, which referred to the issue of return to Iraq and documentation and that she only sought to advance Ground 1 which related to the findings of fact made by the FtTJ and her assessment of the appellant's credibility.

Ground 1:

19. Ms Cleghorn relied upon the written grounds where it was asserted that the FtTJ erred in law in her assessment of the appellant's credibility. In those grounds it was submitted that rather than identifying any credibility issues, the appellant's case was dismissed because of the FtTJ's assumptions as to how the appellant's father would act. For example, the FtTJ did not accept that the appellant would know more about the Peshmerga from his father (at [16]) and that depended on his father who was a captain sharing that information. The grounds assert that "presumably there are clear confidentiality agreements within the Peshmerga which prevent people from sharing information with family members".

20. It is further submitted that the FtTJ assumed that he could not obtain this role through nepotism at [18] and because of the nepotism to earn an inflated salary. Equally the FtTJ did not understand why he was not specially trained and did not carry a gun notwithstanding his role was only to take people on the base and back to their homes.

21. It is therefore submitted that given her findings of fact which are central to her decision it is difficult to see how the decision can be a safe one. This is particularly the case as the judge's findings at paragraph 19 rely entirely on plausibility. A failure to explain why his father might behave in a particular way cannot form the basis of dismissing the claim without something more.

22. The grounds also challenge paragraph 21. It is asserted that the findings are difficult to understand and that it is difficult to see how, if his mobile phone was damaged, he could attempt to contact his family members who, with the exception of his maternal uncle had disappeared to join Daesh. The judge also records at [15] that he does not want to contact family and friends because he does not want them to know that he is in the UK.

23. In her oral submissions Ms Cleghorn submitted that the FtTJ fell into a classic “HK error” and that the decision reached was based on how the judge would think a member of the Peshmerga in Iraq would operate and it was on this basis that the FtTJ dismissed the claim.

24. Ms Cleghorn further submitted that at paragraph 18 of the decision, the FtTJ failed to understand how society in the IKR operated. In the decision of AAH (as cited) there is reference made to the importance of patronage and nepotism in securing employment (see the head note) and that this ties into the “HK point” and that this is relevant to the background country information and society in general. The judge’s decision was in essence considering the factual circumstances based on a western perspective. Thus, she submitted that in the appellant’s case he was able to obtain his job without any expertise or training because of his father’s role in the Peshmerga.

25. Ms Petterson on behalf of the respondent relied upon the rule 24 response filed on 16 July 2019. That document concentrated on ground 2 which was no longer pursued but at paragraph 6 set out the respondent’s position that the credibility of the appellant’s account was a question of fact and that the judge properly made adverse credibility findings that were reasonable and open to her on the evidence.

26. In her oral submissions, Ms Petterson submitted that the FtTJ rejected the appellant’s account that his father was a senior Peshmerga (at [16]) and at [17] gave adequate and sustainable reasons as to why she did not accept that the appellant was recruited as a driver and that it was not only because it was said his father had given him the job but that even if his father had secured such employment it was not credible that he received no special training and did not carry a gun. The judge looked at the security risks around driving and did not accept his account. Ms Petterson submitted that the FtTJ did not consider credibility from a western standpoint and that even if he had got his job through some form of nepotism that the fact that he had not been provided with any training at all was not credible (see [18]).

27. Furthermore, the judge also referred to the hugely inflated salary for only working two days a week for a job that required no specialist training. It was open to the judge to find that the appellant was someone with a lack of knowledge of how the Peshmerga operated. It was in the public domain that the Peshmerga were a well organised and highly trained force and their success in their operations in defending the IKR involved fighting Daesh.

28. Ms Petterson submitted that the grounds did not seek to criticise the FtTJ’s findings at paragraph 19 and 20 which related to his father’s asserted defection to Daesh and issues related to how the appellant was taken and the opportunity to make his escape. At [20] the FtTJ did not accept that the appellant’s father supported or aligned himself to Daesh.

29. At [21] the FtTJ considered the issue of contact to family relatives and it was open to the judge to reject his account as he had failed to explain why he had not used other methods of communication such as writing to his family members in Iraq and also his maternal uncle or attempting to contact his relatives via the red cross. Thus, she submitted the grounds were no more than a disagreement with the findings of fact made by the FtTJ.

Discussion:

30. I remind myself that I can only interfere with the decision of a FtTJ if it is demonstrated that she made a decision which involved the making of an error on a point of law.

31. The FtTJ set out her findings of fact at paragraphs [15]-[21]. The FtTJ rejected the appellant's account as to the occupation of his father, his own occupation and as to the subsequent events in Iraq as a "complete fabrication" (at [15]).

32. The grounds assert that the FtTJ fell into error by considering the issues of credibility from a westernised perspective and based on plausibility which is what Ms Cleghorn described as a "classic HK error".

33. The Upper Tribunal in KB & AH (credibility-structured approach) Pakistan [2017] UKUT 491 (IAC) accepted that plausibility is a relevant factor when assessing credibility but it is a factor which must be treated with a degree of caution. The Tribunal in that case cited from HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 as follows:

> "28. Further, in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familial factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).
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> 29. Inherent probability, which may be helpful in many domestic cases, can be a dangerous, even a wholly inappropriate, factor to rely on in some asylum cases. Much of the evidence will be referable to societies with customs and circumstances which are very different from those of which the members of the fact-finding tribunal have any (even second-hand) experience. Indeed, it is likely that the country which an asylum-seeker has left will be suffering from the sort of problems and dislocations with which the overwhelming majority of residents of this country will be wholly unfamiliar. The point is well made in *Hathaway on Law of Refugee Status* (1991) at page 81:

> 'In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability'

> 30. Inherent improbability in the context of asylum cases was discussed at some length by Lord Brodie in *Awala v Secretary of State* [2005] CSOH 73. At paragraph 22, he pointed out that it was 'not proper to reject an applicant's account *merely* on the basis that it is not credible or not plausible. To say that an appellant's account is not credible is to state a conclusion' (emphasis added). At paragraph 24, he said that rejection of a story on grounds of implausibility must be done 'on reasonably drawn inferences and not simply on conjecture or speculation'. He went on to emphasise, as did Pill LJ in *Ghaisari,* the entitlement of the fact-finder to rely 'on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible'. However, he accepted that 'there will be cases where actions which may appear implausible if judged by ...Scottish standards, might be plausible when considered within the context of the applicant's social and cultural background."

34. The Tribunal also made the point at [30] that plausibility ought to be considered along with other factors; this is "also illustrative of the need to avoid basing credibility assessment on just one indicator". Plausibility is also "not a concept with clear edges"; there may therefore be varying degrees of implausibility and some aspects of a claim may be plausible even if others are not.

35. In Y v Secretary of State for the Home Department [2006] EWCA Civ 1223, the Court of Appeal stressed the importance of viewing an account of events in the context of the conditions in the country from which the appellant comes and of being cautious before finding an account inherently incredible. These are indeed important principles. However, this does not mean a judge cannot, applying common sense to a particular situation, reach the conclusion that an account (or an aspect of an account) is implausible. It is important, when considering plausibility, to keep in mind what the Court of Appeal in *Y* stated at paragraphs 26 - 27, not just paragraph 25. I therefore set out below paragraphs 25-27 of *Y*:

> *25. There seems to me to be very little dispute between the parties as to the legal principles applicable to the approach which an adjudicator, now known as an immigration judge, should adopt towards issues of credibility. The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr*

Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham, as he then was, in 1985 in a passage quoted by the IAT in Kasolo v SSHD 13190, the passage being taken from an article in Current Legal Problems. Sir Thomas Bingham said this:

> "'*An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done.*"

26 None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. The point was well put in the Awala case by Lord Brodie at paragraph 24 when he said this:

> "*... the tribunal of fact need not necessarily accept an applicant's account simply because it is not contradicted at the relevant hearing. The tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole*".

He then added a little later:

> "*... while a decision on credibility must be reached rationally, in doing so the decision maker is entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible*".

27. I agree. A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in the case

of HK and I do not regard Chadwick LJ in the passage referred to as seeking to disagree.

36. With those points set out, I now turn to the challenges made to the decision of the FtTJ. The grounds advanced on behalf of the appellant assert that the FtTJ's findings upon both his occupation and that of his father as members of the Peshmerga did not identify any credibility issues but that such findings were solely based on the judge's own assumption as to how a father would act (see paragraphs 2-3 of the grounds).

37. The FtTJ set out her reasons at paragraph [16] for rejecting the appellant's account that his father was a member of the Peshmerga. The evidence of the appellant was that his father had been a member of the Peshmerga for 20 years and that he had attained the rank of captain, both in his interview and evidence. However, when questioned further, the appellant was unable to provide any further details or provide any further account concerning that employment. The FtTJ identified that the appellant could not produce any explanation as to how and why his father became a Peshmerga (also set out at question 25 of the interview). The judge considered the appellant's response which was "I really do not know because I was only two when he joined them." However, it was open to the FtTJ to reject that explanation in the light of the factual background given in the appellant's own evidence that even if the appellant's father had become a Peshmerga when the appellant was two years of age, it did not explain why over the following years the appellant as a young boy would be precluded from learning more about his father's role in the peshmerga. In my judgement that finding was not based on any assumption but was based on the judge's consideration of the appellant's evidence.

38. The grounds at paragraph 3 assert that "presumably there are clear confidentiality agreements within the Peshmerga which prevent people from sharing information with family members". I have not been referred to any evidential foundation for such a submission from either the country materials or from the appellant's own evidence. By way of comparison, the FtTJ was entitled to make her finding based upon the appellant's own evidence of length of service of his father alongside the appellant growing up in the family home.

39. At [17]-[18] the FtTJ gave reasons for rejecting the appellant's account that he was also employed in the Peshmerga. The point made by Ms Cleghorn is that the judge did not take into account in reaching her conclusion is that there was background evidence to support patronage and nepotism as important factors in securing employment as set out in the head note in AAH(Iraq) (as cited at iv), and therefore it was plausible that the appellant had obtained his job through his father.

40. However, that part of the head note does not expressly relate to employment in the Peshmerga forces but even if it did, the FtTJ gave other reasons for rejecting his claimed occupation. The FtTJ did not accept that he had such a role in the light of his evidence that he was provided with no training for his role at all. The FtTJ stated that the role of driving Peshmerga fighters to and from work was "an important one given that all the passengers on board were Peshmerga" and the FtTJ was entitled to consider that evidence in the light of the information known about the Peshmerga who are the security forces and described in the material before the FTT as the armed units of the KDP and the PUK (p71 AB). The FtTJ found that his claim to have received no training and no preparation was inconsistent with the "security risks involved with such a job and it is not credible that nothing was done by way of preparation to assist the appellant in his job. The Peshmerga had other Peshmerga could drive the bus which could be at risk of ambush because of the pressure at passengers it was carrying" (at [17]).

41. At [18] the judge expressly considered that even if the appellant had secured his job through his father, it was not credible that he had not received any training for such a role and did not carry a gun. It was open to the FtTJ when considering his account that his claim to have received no training was inconsistent with the security of the men whom he was driving around.

42. Furthermore, at [18] the FtTJ considered the appellant's evidence about the salary he received and that the sum claimed was "hugely inflated" and was not consistent with the job which he claimed to be undertaking of limited employment of two days a week for a job that required no special training. This had been supported in the decision letter by country materials which referred to his claimed daily rate which was 4.4 times the national average (see paragraphs 27 and 30 of the decision letter). That was also inconsistent with the country materials which demonstrated that the Kurdistan Regional Government had been unable to pay the Kurdish fighters.

43. Consequently, it was reasonably open to the FtTJ to reach the conclusion that the appellant and his father were not employed as claimed.

44. As Ms Petterson submitted the grounds did not seek to challenge other findings of credibility made by the judge at paragraphs 19 and 20. In those paragraphs, the FtTJ considered the appellant's account of events in Iraq concerning his father's efforts to forcibly recruit him to Daesh. The appellant's evidence was that his father was seeking to forcibly recruit him (along with his mother and brother). However, his evidence was that on 4 July, after he drove his father to work and his father returned home again and then forcibly took his mother and brother. When considering that evidence the FtTJ found that no credible or plausible reason was given as to why the appellant's father did not see fit to have his son accompany his mother and younger brother to a meeting point or for his father to simply place all four members in the car and drive them to a

Daesh stronghold if he was intent on recruiting the appellant to Daesh. The FtTJ also made the point that if the appellant's account was true that his father wanted to forcibly recruit him to Daesh, it was not reasonably likely that he would have telephoned the appellant's maternal uncle to ask him to bring him to a meeting point. The FtTJ set out the appellant's evidence at [19] on this issue and was entitled to conclude that the appellant's account of events "put the appellant via his maternal uncle on notice that he was going to be recruited into Daesh. This lacks credibility because it afforded the appellant an opportunity to escape and the appellant's father would be aware that by revealing his intentions to the maternal uncle there was always the risk that he will tell the appellant of his father's plans to recruit him to Daesh."

45. In my judgment, it was open to the FtTJ to conclude that the appellant's account lacked credibility because it gave the appellant an opportunity to escape and that his father by revealing his intention to a third party would mean that there was a risk that he would inform the appellant of plans to recruit him. In essence, the FtTJ found that the appellant's account of his father's conduct to be inconsistent with his own evidence that the appellant's father was seeking to forcibly recruit him. That was a finding based on an assessment of the appellant's evidence set in the context of his claim.

46. As to paragraph [21] of the decision, the grounds assert that the judge's findings of fact are difficult to understand and that if the appellant's mobile phone was damaged it was difficult to see how we could contact his family members. However, the grounds fail to take into account what the judge actually set out at [21] where she made reference to other ways of contacting his family other than by way of phone such as attempting to contact relatives via the Red Cross, by writing to relatives or via his maternal uncle.

47. Having considered the grounds in the light of the decision of the FtTJ and the evidence that was before her, I am not satisfied that the judge fell into any error as asserted. The judge gave adequate and sustainable reasons for reaching the conclusion that the appellant overall had not given a credible account as to events in Iraq and those reasons were based on the evidence before her.

Conclusion:

48. In summary, the FtTJ gave adequate and sustainable reasons for reaching his conclusion that he had not given a credible and plausible account of the events that he claimed to have occurred in Iraq.

49. The assessment made was one reasonably open to the FtTJ on the evidence, both oral and documentary, and I am not satisfied that the decision of the FtTJ demonstrates the making of an error on a point of law. The decision to dismiss the appeal shall stand.

Notice of Decision

50. The decision of the FtTJ did not involve the making of an error on a point of law; the 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 his 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: 27 February 2020
Upper Tribunal Judge Reeds