Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/05592/2019 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
Remotely by Skype for Business	
On 25 February 2021	**On 17 March 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

S F M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Gayle of Elder Rahimi Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

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Introduction

2. The appellant is a citizen of Iraq who arrived in the United Kingdom illegally on 30 November 2018. He made a claim for asylum. He claimed he was born in 2002 so that he was a minor (16 years old). The appellant was subsequently assessed to have a different date of birth instead of being assessed as age 16, the appellant was assessed as an adult of around 22 years of age.

3. The basis of the appellant's asylum claim was that he came from Jalawla in the Diyala province of Iraq. He claimed that he had formed a sexual relationship with an Arab girl ("K") whose father was a senior figure in the Hashd Al-Shaabi militia or, alternatively in his account, someone who played a role in the Baghdad government. That relationship had been discovered and the appellant was required to marry K but had refused and he feared that he would be killed on return. In addition, the appellant claimed that his father worked for the Shi'a militia, the PMF as a cook and that he would be at risk on return because of his father's association with the PMF.

4. On 2 June 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a detailed determination, Judge Raymond dismissed the appellant's appeal on all grounds. He made an adverse credibility finding and did not accept that the appellant was from Jalawla in the Diyala Province of Iraq, that he had formed a sexual relationship with K and was at risk from her father on return or that his own father had worked for the PMF.

The Appeal to the Upper Tribunal

6. The appellant appealed to the Upper Tribunal on a number of grounds. First, it was contended that the judge had been wrong to find that the appellant was not from Jalawla in the Diyala province on the basis that the appellant had wrongly described himself, in his asylum interview, as coming from 'Kurdistan'. Secondly, it was contended that the judge had been wrong to find aspects of the appellant's account of his 'secret relationship' with K as being implausible. Thirdly, it was contended that the judge had wrongly relied upon minor discrepancies in the appellant's evidence.

7. Permission to appeal was initially refused by the First-tier Tribunal but, on renewal to the Upper Tribunal, on 13 July 2020 UTJ Sheridan granted permission to appeal. His reasons are set out at paras 1 and 2 of his decision as follows:

> "1. Judge of the First-tier Tribunal Raymond found damaging to the appellant's credibility that although he claimed to be from Jalawla in Diyala Province he also referred to coming from Kurdistan.
>
> 2. Arguably, it was not inconsistent for the appellant to say that he came from Kurdistan given, inter alia, the evidence of Dr Fatah in *SMO, KSP & IM (Article*

> *15(c); identity documents) Iraq* CG [2019] UKUT 400 (IAC) at [103] that there are parts of Diyala which had been controlled by the Kurds prior to 2017. It is arguable, therefore, that there was no basis for the judge to find it damaging to the appellant's credibility that he said he came from Kurdistan."

8. As regards the other grounds of appeal, UTJ Sheridan described them as "weak" but, nevertheless, granted permission on all grounds.

9. Plainly, therefore, UTJ Sheridan considered that the first ground of appeal was the most meritorious and the remaining grounds of appeal lacked any real strength.

10. Following directions, the appeal was listed for hearing at the Cardiff Civil Justice Centre. The UT worked remotely and Mr Gayle, who represented the appellant, and Mr Howells, who represented the respondent, joined the hearing remotely by Skype for Business.

The Submissions

11. On behalf of the appellant, Mr Gayle relied upon the grounds although he focused upon the first ground. He submitted that the judge had given considerable weight to the issue of whether the appellant came from 'Kurdistan' in assessing his credibility. Mr Gayle pointed out that before the 2017 Kurdish Referendum, the Kurdish Regional Government ("KRG") had control (at least jointly) of the area from which the appellant claimed to come. Mr Gayle submitted that it was entirely possible that the appellant considered his home area was part of Kurdistan even if it was not part of the Kurdistan Region of Iraq ("KRI") itself.

12. As regards the remaining grounds, Mr Gayle accepted that he could not point to any blatant errors and that he did not wish to go through what was in each of the remaining grounds. However, he submitted that it was not implausible that the appellant would form the relationship, as he claimed, including taking the risk of discovery when he was concentrating (as he claimed) from having any sexual relationship with K.

13. On behalf of the respondent, Mr Howells submitted that the judge's determination was a detailed and long one. He submitted that notwithstanding that there were some deficiencies in some of the judge's findings, he had given a large number of reasons for not believing the appellant on the three main points: (1) his claimed relationship with K; (2) his father's claimed association with the PMF; and (3) that he came from Jalawla in the Diyala governorate.

14. As regards the point upon which UTJ Sheridan had specifically granted permission, Mr Howells submitted that the judge was aware that the area from which the appellant claimed to come had been under Kurdish control until 2017. The judge had referred to this in paras 30 and 31 of his determination and it had been accepted by the respondent in paras 67 and 80 of the decision letter. Mr Howells pointed out that in answer to Q149 of his asylum interview, the appellant had said he came from 'Kurdistan'. That, Mr Howells accepted, had been picked up by the interviewer at Q153 where he had asked a question about what had happened to the appellant's

father "up until you left Kurdistan". Mr Howells acknowledged that 'Kurdistan' as a term could encompass an area greater than the KRI under the control of the KRG. In answer to a question from me, Mr Howells was unable to provide any explanation as to why the judge in para 30 assumed that the appellant meant by the term "Kurdistan", the KRI itself. Nevertheless, Mr Howells submitted that even if the judge had made an error it was not material to his adverse findings that led him to dismiss the appeal.

15. As regards the plausibility points, Mr Howells submitted that the grounds lacked detail and UTJ Sheridan had considered them to be "weak". He submitted that the judge was entitled at paras 79 - 115 not to accept the appellant's evidence that he had formed a sexual relationship with K who was the daughter of a senior figure in Hashd Al-Shaabi militia or an important figure in the Baghdad government. Likewise, the judge was entitled to find at paras 116 - 120 that he did not accept that his father worked for the PMF. Mr Howells submitted that apart from the contention that the appellant's claim was wrongly found to be implausible, the grounds gave no detail as to the "minor discrepancies" which, at paras 100 - 139 of the determination, the grounds claim the judge wrongly took into account.

Discussion

16. The judge's determination is a detailed and lengthy running to 143 paragraphs over 35 pages. I set it out in summary only to the extent necessary to deal with the grounds and whether the decision is legally sustainable.

17. The judge set out the appellant's claim ("the asylum narrative") at paras 10-74. In that section, the judge dealt at paras 10-17 with the appellant's claim to come from Jalawla in Diyala province. Then at paras 29-36, the judge gave reasons for not accepting that the appellant was, as he claimed, from Jalawla.

18. At para 29, the judge noted that the appellant had said in his substantive interview that he had left 'Kurdistan' and that he had correctly described the Kurdistan flag. Then, at para 30 the judge said this:

> "The appellant would seem to mean by 'Kurdistan' the 'Kurdistan Region of Iraq" or KRI. However, Diyala province, and [] Jalawla, is not considered in the objective evidence as part of KRI. Although as the CPIN of August 2017 on Political opinion in the Kurdistan Region of Iraq (KRI) points out by reference to a map showing the concentration of Kurds in KRI, there is a significant number of Kurds living to the north of Diyala, in an area constituting just under half of the province, and in which is found the town of Khanaqin, that the appellant identified (with Sadita and Kalar) as a district near Jalawla (q162). This area, and that part of Diyala which is not considered to have any significant Kurdish presence, falls outside the Kurdish Autonomous Region (as the KRI is also referred to) proper, and where are to be found the cities of Erbil and Sulaymaniya (5.1.2). This fits in with the assessment already noted from **SMO** of Diyala province as an ethnically diverse region of Iraq [§ 13 above], but it cannot be seen to come within a geographical area that could be considered as part of KRI, or Kurdistan, which comprises the northern governorates of Erbil, Dohuk, Sulamaniyah and Halabja (6.1.1-2). Although Diyala, because of its population of Kurds, is one of a number of Disputed Territories between the Kurdistan authorities and the federal government of Baghdad

(7.4.1). The refusal letter refers to the home area of the appellant as having been under the control of both the Iraqi government and the IKR (*sic*) (80), and it is apparent from the objective evidence that this would have been before the forces representing the KRG, principally KDP and PUK, were pushed back to the 1991 frontiers of Kurdistn in the aftermath of the 2017 Kurdish referendum."

19. Then at para 31 the judge dealt with a broader meaning of the term 'Kurdistan' as follows:

> "As the August 2017 CPIN points out, 'Kurdistan' itself is also a term of reference for an area where Kurdish people reside that spans Western Kurdistan in Syria, Eastern Kurdistan in Iran, Southern Kurdistan in Iraq, and Northern Kurdistan in Turkey (4.1.2)."

20. The judge then referred to the political position in the KRI and continues as follows:

> "**SMO** sets out how after the expansion of ISIS into the region of the KRG was able to extend its de facto control into what are now the disputed territories, but after the defeat of ISIS, and the Kurdish Referendum of 2017 for independence, the Iraqi authorities have been able to reclaim the Disputed Territories, which includes the governorate of Diyala with those of Ninewa, Kirkuk and Salah-al-Din, thus pushing back the KRG to its 1991 frontiers [§ 18-19]."

21. At para 32, the judge referred to the appellant's evidence, inter alia, the distance between Jalawla and where he went to avoid K's family after his relationship was discovered.

22. At para 33, the judge dealt with the respondent's submissions and evidence concerning the so-called Disputed Territories and the appellant's estimate of the distance between Jalawla and Kalar (at least in his asylum interview) as being 35km was not credible looking at the map to which the judge had been referred.

23. At para 34, the judge referred, inter alia, again, to that latter issue. Then at paras 35 - 36 the judge reached the following conclusions:

> "35. Because of the confusion the appellant sows in this regard it seems necessary to have to speculate whether by saying he was living in Kurdistan, he thereby means that he places Jalawla in that region, Diyala province, with its ethnological mix that includes Kurds, a greater majority of whom could be expected to want to see the disputed territories within Diyala province to be part of KRI, a point of view that would normally have meant that they would have nothing to fear from the KPD (*sic*) and PUK. Unless, of course, they were supporting the PMF, which is what the appellant claims for his father, when they were living in Diyala province, Jalawla, after their return there in 2017.
>
> 36. I find that this confusion created by the appellant having randomly it seems thrown out the information that he lived in Kurdistan, as well as Jalawla in Diyala province, is damaging to the credibility of his asylum narrative."

24. The judge then went on in paras 37 - 59 to reject the appellant's account of his relationship with K and at paras 60 - 71 to reject his claim that his father worked for the PMF.

25. Having approached the issues in that way, and having made some factual findings, the judge, at paras 78 - 138 under the heading "Reasons" gave further reasons based upon the evidence for his finding that the appellant's asylum claim was not credible and for rejecting the two main strands of his claim, namely his relationship with K and his father's involvement with the PMF. In this section, the judge said little about the appellant's claim to come from Jalawla in Diyala province, no doubt because the judge has already reached an adverse finding on that issue in paras 29 - 36.

26. At para 121 the judge said this:

> "I further find that considerable difficulties, which have already [been] touched upon, attach to the claim of the appellant that he comes from Jalawla in Diyala governorate."

27. At para 122, the judge stated that the appellant had failed to give a credible account of how he had obtained a residence certificate for the district of Jalawla from his uncle. He referred to the appellant's "elaborate account in his oral evidence" as to how he had relied upon a friend to find his uncle on Facebook and obtain the residency certificate signed (purportedly) by the Mukhtar. The judge rejected the appellant's explanation and at para 134 said this:

> "In the light of the proceeding reasons that call into question the credibility of the appellant on where he claims to originate in Iraq, and which includes, as well as the incomprehensible assertion of the appellant that he lived in Kurdistan, the principal feature of his not providing any credible explanation for why his uncle would have had this document on his phone so as to send it to him on the same day of the one and only occasion that they spoke, for only some 5 - 10 minutes according to the appellant, at some point over the first two months after the appellant arrived in the UK in November 2018. I find by reference to **Tanveer Ahmed (Starred)** 2002 UKIAT 00439, that upon looking at the residency certificate in the round, that the residency certificate is not a document upon which reliance can properly be placed."

28. Then at paras 135 - 137, the judge made the following findings:

> "135. I find that in a fabricated asylum narrative the appellant made a false assertion of being illiterate as a means of helping him to avoid any difficult issues that could arise from his falsely claiming that he and his family come from Jalawla, which was, in November 2018 when he made his asylum claim, in the contested area of Diyala province, and to which it would not have been safe to return in the light of the country guidance then obtained. However, this has since in any case been overtaken by the latest country guidance assessment in **SMO** which found that Diyala province is no longer a contested area.
>
> 136. In the light therefore of the totality of my negative credibility findings, and in particular the very substantial fault lines that undermine the credibility of the core features to the asylum narrative of the appellant, consisting of his claimed secret relationship with an Arab girl; and his father having an association with the PMF. I therefore find that the appellant has not established a well-founded fear of persecution at the lower level. For the same reasons I find that he did not qualify for humanitarian protection.
>
> 137. In the light of all my specific findings on the asylum narrative set out in the preceding I do not accept he has a relationship with an Arab girl from which arose his claimed fear of her family. I do not accept that his father has ever had

> any form of association with the PMF. I do not accept that the appellant comes from Jalawla in Diyala province which in any case if it was a contested area when he made his asylum claim in November 2018, this is not now the case. ..."

29. The judge made a clear finding that the appellant was not from, as he claimed, Jalawla in Diyala province. The basis for that finding was, substantially, at paras 29 - 36 that the appellant had been wrong to say that he was from 'Kurdistan'. Mr Howells submitted, the judge was plainly aware that the term 'Kurdistan' had a broader meaning than the KRI in Iraq. Yet, at para 30 the judge interpreted the appellant's claim that he came from 'Kurdistan' to mean that he came from the KRI. Mr Howells was unable to offer any basis upon which the judge could have made that assumption.

30. In truth, the appellant only once referred to his coming from 'Kurdistan' in his evidence at Q149 of his asylum interview. The other reference to it in his asylum interview (at Q153) was a use by the interviewer, no doubt picking up on what the appellant had earlier said in Q149.

31. The evidence before the judge showed that the area from which the appellant claims to come had been both an area with significant Kurdish population in the past, had been under the joint control of the KRG and others prior to the 2017 Kurdish Referendum and was, at the time the appellant left Iraq and came to the UK and claimed asylum, a Disputed Territory.

32. The judge made a great deal out of the appellant's single use of the term 'Kurdistan' to reach his adverse finding that he did not accept that the appellant came from Jalawla in Diyala province. There was nothing in the appellant's evidence, that was drawn to my attention, to suggest that the appellant meant that he came from an area which was part of the KRI. Not inconsistently with what he was saying, it was a Kurdish area which he might well have regarded as part of 'Kurdistan' used in a broad sense. Further, it does not seem that this point was ever put to the appellant so as to enable him to explain why he described himself as coming from 'Kurdistan'.

33. In my judgment, the reasons given by the judge, based upon the appellant's answer to Q149, to conclude that he did not come from Jalawla in Diyala province, were inadequate to sustain his adverse finding. Whilst the judge did also point up an inconsistency, at least in the appellant's evidence interview though not it would seem in his oral evidence, as to the distance between Jalawla and Kalar where his maternal uncle lived, the weight of his adverse finding lies in his reasoning that the appellant was wrongly describing his home area as being part of 'Kurdistan'. To that extent, therefore, I accept Mr Gayle's submission that the judge erred in law in reaching his adverse finding as to the appellant's home area.

34. Mr Howells, however, submitted that if there was such an error, given the detailed reasons given by the judge for his adverse findings in respect of the relationship with K and his father's involvement with the PMF, any such error is not material.

35. That submission has some attraction given the detail of the judge's reasons for not accepting other aspects of the appellant's account. Clearly, if his erroneous finding as to the appellant's home area had no overall effect on his credibility findings and his specific adverse findings on other aspects of the appellant's account, that error would not be material.

36. It is tempting to postulate, given the detail of reasons given by the judge on other aspects of the appellant's account, that the error in reaching the adverse finding on the appellant's home area was not material. Not every error in reaching an adverse credibility finding on one issue in a case will necessarily lead to a conclusion that no adverse findings are sustainable. The error must be material, i.e. affected the other findings or the judge's overall conclusions. There are two principal reasons why I conclude that the error I have identified was material.

37. First, the issue of the appellant's home area and origins is a fundamental aspect of an international protection claim. Here, the judge began his detailed assessment of the appellant's account by making a positive adverse finding on a significant part of the appellant's claim, namely where he came from as supporting his fear both from the father (and family) of K with whom he claimed to have formed a sexual relationship and as a result of his father's activities with the PMF. It was an impermissible, and unsatisfactory, starting point for his assessment of the two strands of the claim.

38. Secondly, the judge himself turned to his adverse findings in regard to the appellant's claimed origins, having considered the "two main strands" to the appellant's claim. At paras 134-137 (set out above) the judge rehearsed his adverse credibility finding in relation to the appellant's claimed home area in Iraq. The judge would appear to have the adverse finding on the appellant's home are in mind when reaching his later adverse findings on the claim.

39. In this case, notwithstanding the detailed reasons given by the judge, I cannot be confident that the adverse finding made explicitly at the beginning of the judge's assessment of the appellant's account in relation to the appellant's claimed place of origin in Iraq has not infected his overall credibility findings and adverse conclusions on the two main principal strands of the appellant's claim to fear serious harm or death on return to Iraq.

40. For these reasons, therefore, the judge's error of law was material in rejecting the appellant's international protection claim.

41. In the light of this conclusion on the ground upon which permission was explicitly granted by UTJ Sheridan, it is unnecessary to consider the remaining grounds set out in the grounds of appeal though not relied upon, with any force, before me orally by Mr Gayle. The weakness of those grounds was commented upon by UTJ Sheridan. Given their lack of detail and general attack upon the judge's assessment that certain aspects of the appellant's claimed relationship were implausible, is a characterisation which has much to attract it. But, as I say, I need not address those grounds as the decision cannot stand for the reasons I have given.

Decision

42. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of a material error of law. That decision cannot stand and is set aside.

43. Both representatives indicated that, if this was my conclusion, the proper disposal of the appeal was to remit it to the First-tier Tribunal for a *de novo* re-hearing.

44. I agree. In the light of the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* re-hearing before a judge other than Judge Raymond.

Signed

Andrew Grubb

Judge of the Upper Tribunal
9 March 2021