IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003502
FtT No: PA-55788-2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 31 May 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

AWARA OMAR MAHMUD
(no anonymity order)

Appellant

and

SSHD

Respondent

Heard at Edinburgh on 17 May 2023

For the Appellant: Ms H Cosgrove, of Latta & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. FtT Judge Prudham dismissed the appellant's appeal by a decision dated 27 June 2022. At [24] the Judge notes the appellant's case that he would come to attention as a former police officer and an active member of the Gorran movement, whose political activities had been extended *sur place*. Having further summed up the appellant's position, the decision states at [31]:

> My starting point is the 2020 determination. In that determination Immigration Judge Wolfson made a number of findings. These included:-
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> (i) The appellant was inconsistent in his evidence over the threats he had received in Iraq and his account lacked credibility.
> (ii) The appellant is a former member of the Iraqi police who left the country without the consent of his superior officer. This is an offence which carries a potential jail sentence of up to one year.
> (iii) The appellant had not attended any demonstrations in the UK that would bring him to the attention of the Iraqi authorities. He is a low-level supporter of the Gorran Movement although he is not a member.
> (iv) The appellant was not at risk on return to Iraq due to his political opinion. He can also re-document himself to enable a return to his former home area in Iraq.

2. It is not in dispute that Judge Prudham was right to start there. He considered further evidence from the appellant's brother, but at [33] gave it little weight. At [34], he found further inconsistencies in the appellant's evidence. At [35-37], he noted evidence of *sur place* activity since 2020, but the appellant was simply one of a number of demonstrators outside the Iraqi Embassy; his Facebook evidence was limited and of little weight; and information from the Gorran movement was self-contradictory, and did not alter the finding that the appellant is a low-level supporter.

3. At [38] the Judge notes the respondent's CIPIN, updated since 2020, on opposition to the government in Kurdistan, but finds that the appellant as a low-level protestor is not at risk.

4. From [39 – 44] the decision considers updated country guidance and concludes that the appellant may return with documentation currently held by the German authorities, or alternatively by re-documenting himself in the UK or by way of friends and family in Iraq.

5. The appellant applied to the FtT for permission to appeal to the UT. His grounds cite [24] and [38] and then say: …

> Whilst the Judge has considered the Appellant's profile as a low level supporter of the Gorran Movement who is involved in *sur place* political activities against the Kurdish authorities and whether this would amount to the Appellant being at risk of persecution on return to Iraq, it is submitted that the Judge has erred in law by failing to consider whether other elements of the Appellant's profile, namely him being a former member of the police in Kurdistan who deserted the authorities, or indeed the combination of these elements, would put him at risk of persecution on return to Iraq. *Esto* it is considered the Judge did take account of this matter, it is submitted the Judge has erred in law by failing to make clear findings in relation to this aspect of the claim.
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> 2. Furthermore and with reference again to paragraph 38 of the decision, submissions were made both in the Appeal Skeleton Argument (paragraph 19, 3 pages 22-23 of the Combined Hearing Bundle) and in oral submissions that it was not necessarily of import whether an individual is a low profile or high-profile activist. Reference was also made to background evidence in support of same (pages 80, 384, 386, 582 of the Combined Hearing Bundle). The Judge has referred to the Country Policy and Information Note, Iraq: Opposition to the government in the Kurdistan Region of Iraq and the paragraphs referred to make no reference to any background evidence, rather it is simply the Respondent's policy position. It is submitted that the Judge has erred in law by failing to consider these submissions or make clear findings in relation to same.
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> 3. In the Appeal Skeleton Argument (page 24 of the Combined Hearing Bundle) and in oral submissions, it was submitted that *esto* it was not accepted the Appellant was at risk of persecution on return to Iraq on account of his *sur place* political activity, the Appellant's rights under Articles 2, 3 and 6 ECHR would be breached if he is returned to Iraq on account of the treatment he would face for being absent from the police without permission. Reference was made to background evidence before the Tribunal in relation to conditions in detention and the use of torture. It is submitted that the Judge has erred in law by failing to consider these submissions. *Esto* it is considered the Judge did consider these submissions, it is submitted the Judge has erred in law by failing to make clear findings in relation to this aspect of the claim.

6. On 15 July 2022 FtT Judge Kudhail granted permission:

> The grounds assert that the Judge erred in failing to consider the risk to the appellant from his accepted profile as a member of the Iraqi police who left the country without consent, thus facing prosecution and possible imprisonment. There is an arguable error of law as the Judge does not refer to this accepted profile in his assessment of risk on return and Article 3 infringement.

7. On 22 August 2022, in a rule 24 response to the grant of permission, the SSHD submitted that the Judge took the correct approach to the case, and continued:

> Assuming the judge gave sufficiently clear reasons for rejections of risk on account of his political opinion and the lack of any risk arising from his leaving the police, he did not additionally need to consider whether the appellant's past desertion from the police amplified the claimed risk from his political views or *vice versa*.

8. I accepted the submission of Ms Cosgrove that the grant of permission extends to all 3 grounds. She argued further:

   i. On ground 1, elements of the case had been accepted cumulatively by Judge Wolfson and by Judge Prudham, namely liability to arrest and detention as a deserting police officer, and a low-level part in the Gorran movement since 2014, but Judge Prudham made no clear finding on whether that added up to a risk .

   ii. On ground 2, there was little to add. The references in the skeleton argument and oral submission to the FtT, and in the grounds to the UT, showed that a high profile was not necessary. This was an argument distinct from the point in ground 1.

   iii. On ground 3, the findings in the appellant's favour, along with the background evidence cited to the FtT, were briefly referred to in the decision at [23] as presenting a case based on conditions in detention, on which the FtT made no clear finding.

   iv. The decision should be set aside, and a further hearing fixed to apply the background evidence to the findings in the case. That could be either in the FtT or in the UT.

9. Mr Mullen relied upon the rule 24 response and further submitted:

   i. The "desertion" issue was settled by the first tribunal and there was no evidence by which to revisit it. The Judge had found that any proceedings did not involve a likely breach of article 3.

   ii. The appellant had not shown any activities in Iraq or in the UK which placed him at risk.

   iii. He had not shown that on either or even on both aspects of his case he was in a distinct risk category, which was the end of his case.

iv. The extensive country guidance case law on Iraq does not find that article 3 risk arises from detention alone. If there was evidence to support it, the point would have been established by now.

v. There was no evidence of active monitoring of demonstrators or other surveillance by which the authorities in Kurdistan were likely to link the appellant as a deserter and as a political opponent.

vi. There was no material omission in the decision.

10. In reply, Ms Cosgrove submitted:

i. It was nothing to the point that country evidence did not hold there was a risk through detention alone, if the background evidence was enough to disclose it.

ii. The submissions for the respondent read into the decision conclusions which perhaps should have been there, but were absent.

11. I reserved my decision.

12. On ground 1, which triggered the grant of permission, the appellant did not show risk either as a police deserter or as a low-level activist. There was no evidence that the authorities might connect those two elements to create a risk which did not arise from either on its own. I do not detect an error of omission. In any event, any more explicit conclusion could only have been negative.

13. Ground 2 is correct, to the extent that while information in the respondent's CIPIN's may be a valuable source, policy assessments in such documents are no more than that and are not direct guidance for tribunals to apply. However, the policy is not stated without reference to background evidence. It is based on such evidence, as is clear from the quotation at [23] of the respondent's refusal letter and from the document itself.

14. The logic of ground 2 is not to require any further hearing, but that the evidence should lead the UT to reverse the decision and allow the appeal based on risk even to a low-level activist. I was not taken directly to any evidence to bear that out.

15. On following up the references, such as the UNHCR report on freedom of expression in Kurdistan, 12 May 2021, there are concerns over the repression of dissent, including arrests of activists, but only such as to show that each case raises an issue of fact and degree. There is nothing to justify a finding of risk at even a minimal level of activity, or at such a low level as established by the appellant.

16. On ground 3, Ms Cosgrove is correct that general risk from detention might be shown by background evidence, regardless of country guidance case law. However, it is not surprising, given the number of cases from Iraq and the extent of such case law, that Mr Mullen submits that such a risk would by now have been ruled upon.

17. The case based on consequences of prosecution and detention was resolved by the first tribunal. There was no evidence to show that the incidence of abuse in detention had increased since then to show a generality of risk to anyone detained.

18. There are background examples of poor prison conditions, abuse and even of torture, but I have not been taken to, or discovered, anything which might justify a blanket finding.

19. This is another issue of fact and degree, with nothing to displace the previous finding of no real risk on the circumstances of this case.

20. The appellant's representatives have pressed each aspect of his case as far as it could go, both in the FtT and in the UT, but I am not persuaded that any of the 3 grounds disclose an absence of clear findings, or that the outcome in any of those respects should have been different.

21. The appeal to the UT is dismissed. The decision of the FtT stands.

22. No anonymity order has been requested or made.

Hugh Macleman
Judge of the Upper Tribunal, Immigration and Asylum Chamber
24 May 2023