



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000847
First-tier Tribunal Nos:
PA/51879/2020
IA/01911/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR RSA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Sadiq (Solicitor)

For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 14th June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Rose, promulgated on 8th September 2021, following a hearing at Manchester on 2nd September 2021. 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 1st October 1980. He appeals against the refusal of asylum and the denial of permission for leave to remain in the United Kingdom as a refugee.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is at risk of death or persecution as a result of a blood feud or honour based killing. This arises from a relationship he had outside of marriage with a member of a different family. The Appellant claims that both the woman he had the relationship with and his father had been killed as a result of the feud. As the judge recounted, "Although his case has been repeatedly dismissed, he has now obtained what he claims is additional, documentary proof, that he is at risk as a result of a feud. This further evidence has led to his latest set of submissions" (at paragraph 2).

The Judge's Findings

4. Given that a feature of this appeal is that there have been previous judicial decisions, the judge began by stating that the starting point in his consideration of this appeal was the principle in **Devaseelan [2002] UKIAT 000702**, referring to the determination of a previous judge, R A Prickett, on 23rd March 2004. The judge had dismissed the Appellant's claim because of a number of adverse credibility findings, specifically the reason why the Appellant and his girlfriend had sex, whether or not the Appellant saw his mother the day before he left Iraq, and whether the Appellant's brother was similarly at risk of ill-treatment (at paragraph 18).
5. The judge applied the principle in **Tanveer Ahmed [2002] UKIAT 00439**, and held that, "I do not understand why it has taken so long for these documents to come into the Appellant's possession" (paragraph 20). He then went on to reject the letter from a solicitor (paragraph 20) in that it had been issued in 1997 with a second copy being made in 2017, but submitted only very late in the process.
6. Equally, he rejected the particular arrest warrant which had been issued rather late in 2017 in relation to the Appellant (paragraph 22). The judge then returned to the application of **Devaseelan** in the latest decision of **BK (Afghanistan) [2019] EWCA Civ 1358** (at paragraph 23). The appeal was dismissed.

Grounds of Application

7. The grounds of application are that the judge had failed to make any findings on the oral evidence of a Bakhtyar Ahmed and a second statement, which had been filed on 16th August 2021 because it recounted this witness's visit to Kurdistan in January or February that year. He had given evidence in his statement that he spoke with the Appellant's mother and that she had told him that the Gelali family had continued to visit the house with rifles since the Appellant's departure threatening the Appellant's family. Yet, no assessment had been made by the judge of this evidence.

8. On 10th January 2022 the Upper Tribunal granted permission to appeal.

Submissions

9. At the hearing before me on 14th June 2023 Mr McVeety, appearing on behalf of the Respondent, conceded that there had to be an error of law on the basis that this new piece of evidence which had been tendered for the first time, had not been considered by the judge in his reasons. Given that there is agreement of the Respondent with the Appellant with respect to this crucial basis of the appeal before this Tribunal, I have to agree that the decision of the judge below cannot be upheld. As the judge had made clear early on in his determination (at paragraph 2) this was “additional documentary proof, that he is at risk as a result of a feud” and it was this which had “led to his latest set of submissions” (at paragraph 2). That being so, notwithstanding the fact that the principle in **Devaseelan** had to be applied, whilst the judge rejected a number of other arguments put in favour of the Appellant, including the late submission of an arrest warrant, he decidedly failed to deal with the evidence of Bakhtyar Ahmed. That being so, the decision must be aside. Both parties before me agreed that the appeal should be remitted back to the First-tier Tribunal for a *de novo* hearing.

Decision

10. The decision of the First-tier Tribunal involved the making of an error of law, such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined again by a judge other than Judge Rose on a *de novo* basis.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 December 2023