



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001168
First-tier Tribunal No:
PA/51014/2022
IA/02840/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 28 June 2023**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

**HD (IRAQ)
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan, solicitor, of Kings Law Solicitors
For the Respondent: Mr Terrell, Senior Presenting Officer

Heard at Field House on 20 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. I make this order because the appellant is an asylum seeker.

DECISION AND REASONS

1. The appellant appeals with the permission of UTJ Stephen Smith against the decision of First-tier Tribunal Judge Rodger, who dismissed his appeal against the refusal of his second claim for international protection.

2. The appellant is an Iraqi national. He arrived in the UK in November 2015 and claimed asylum, asserting that he was at risk in the Independent Kurdish Region (“IKR”) due to his relationship with a woman named Lewan. The respondent did not believe the appellant’s account and refused the claim. The appellant appealed. His appeal was dismissed by FtT Judge Clapham on 30 December 2016. Like the respondent, he found that the appellant’s account was a fabrication. He concluded in the alternative that the appellant could safely relocate within the IKR or that he could seek protection from the authorities there. Judge Clapham’s decision was upheld on appeal to UTJ Macleman and the appellant became appeal rights exhausted in 2017.
3. The appellant did not leave the UK and he made further submissions to the Secretary of State on 18 February 2020. It was asserted in those submissions that the appellant had converted to Christianity and would be at risk as a result of his conversion and his online activities in connection with his faith.
4. The Secretary of State did not believe the appellant’s account of his conversion and she did not accept that his online activity would give rise to risk. She therefore refused this second claim for asylum. The appellant appealed for a second time.

Proceedings on Appeal

5. The appellant’s second appeal was dismissed by Judge Rodger (“the judge”) following a hearing at which he was legally represented and gave oral evidence. The judge found him to be an untruthful witness. She declined to depart from Judge Clapham’s findings and took those as the starting point for her assessment. She found that he had attempted to mislead throughout, including at the hearing, and she gave extensive reasons for those findings. She did not accept that his Facebook activity was reliable, that it was open to the public or that it had caused him to receive any threats. Then, at [67], the judge turned to the question of documentation. She said this:

Further, he has not been able to prove that there would not be sufficiency of protection for an individual such as him returning to Iraq and I am satisfied that he would be able to internally relocate to other parts of Iraq if he did not want to return to his home area. I have read the case of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) and I do not accept that he is not in contact with his family members or that they would not be able or willing to assist him in obtaining his identity documents. He is not a reliable person and I am not satisfied that he does not have identity documents or that he cannot arrange for his family to send them to him or obtain them for him or assist him in obtaining them.

6. Permission to appeal was sought on rather diffuse grounds. Permission to appeal having been refused by the First-tier Tribunal, it was granted on renewal by UTJ Stephen Smith, who was concerned by the absence of any reference to *SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC)* (“SMO (2)”) in the decision of the judge, and the impact this might have had on the findings in [67] of that decision. He considered the remaining grounds to have less merit.

Submissions

7. Before me, Mr Khan developed the following submissions. He submitted that the judge's treatment of redocumentation was insufficient and that it had been undertaken without reference to *SMO (2)*. He submitted that the judge's finding that that the appellant or his family had access to his documents was inadequately reasoned, since it relied on earlier findings which were themselves flawed. The judge had 'superimposed' Judge Clapham's findings rather than making his own and he had failed to take account of material evidence. The appellant's faith was his own subjective belief and the judge had failed to consider all relevant evidence which bore on that question.
8. For the respondent, Mr Terrell submitted that the judge's failure to refer to the later country guidance was immaterial since the first finding in the final sentence of [67] was properly open to the judge. That finding had followed from strong and cogently reasoned findings and it was simply wrong to suggest that the judge had erred in law in her treatment of the earlier decision, or that she had overlooked any material evidence in reaching those findings.
9. Mr Khan did not seek to respond and I reserved my decision.

Analysis

10. Whilst the absence of reference to *SMO (2)* is a matter which understandably concerned UTJ Stephen Smith, I am entirely satisfied that the judge's decision is legally sustainable when it is read as a whole.
11. As Mr Terrell submitted, the judge's failure to deal with questions which were considered fully in *SMO (2)* (not least the ongoing introduction of INID terminals) is immaterial in light of the finding which she made in the final sentence of [67] of her decision. The judge was not satisfied that the appellant "does not have identity documents or that he cannot arrange for his family to send them to him". That finding was reached because the judge did not consider the appellant to be a 'reliable person'. As I think Mr Khan was constrained to accept before me, these findings of fact are determinative of the documentation question in this case, providing that the judge's conclusions about the appellant's credibility were otherwise sound.
12. There can be no doubt that the credibility findings were sound. Mr Khan struggled, with respect, to articulate before me any way in which those findings were conceivably wrong in law. He submitted that the judge had failed to consider material evidence. He said that the judge had failed to consider the evidence of the Reverend Mann and Pastor Moseley, both of whom provided letters which were supportive of the appellant's conversion. But both of those letters were analysed by the judge in her holistic consideration of the evidence.
13. Mr Khan submitted that the judge had failed to consider the Facebook evidence but, again, there is clear reference to that evidence in the decision of the judge. Mr Khan was then reduced to submitting that the judge had given inadequate weight to this material but, as he recognised, it is trite that matters of weight are for the trial judge. It is only where the weight given to an item of evidence is

irrational that it is permissible for an appellate body to intervene. There is no such irrationality here and, as Mr Terrell noted, the judge's approach to the evidence of the church witnesses and the social media material followed that required by *MH (review; slip rule; church witnesses) Iran* [2020] UKUT 125 (IAC); [2020] Imm AR 983 and *XX (PJAK - sur place activities - Facebook) Iran CG* [2022] UKUT 23 (IAC).

14. Mr Khan sought to submit that the judge had 'superimposed' the analysis of Judge Clapham onto her own. When I explored the use of that term with him, it became clear that what was meant was that the judge had not followed *Devaseelan* [2003] Imm AR 1 and had simply followed Judge Clapham earlier conclusions, despite the fact that the basis of claim had shifted from honour killing to Christian conversion. As Mr Terrell submitted, however, that complaint has no foundation in the decision of the judge. She took Judge Clapham's decision as her starting point, she considered the more recent basis of claim and the evidence which bore upon it, and she made her findings on the basis of all of the relevant material. In doing so, she drew on statements made by the appellant during the hearing before her, which she carefully set out verbatim in the decision under challenge. With respect to the judge, it is difficult to imagine a more textbook approach to the guidance in *Devaseelan*.
15. Mr Khan submitted on three occasions that the appellant's faith was a matter of his subjective belief and that the judge had to take care to assess it as such. His submissions in this regard brought to mind what was said by the late Gilbert J in *R (on the application of SA (Iran)) v SSHD* [2012] EWHC 2575 (Admin). As the Upper Tribunal explained in *MH (Iran)*, however, nothing said by Gilbert J in *SA (Iran)* prevents a judge hearing an appeal such as this making a finding on the claim that a person such as the appellant has converted to a different faith. That was the very basis of the appellant's claim and it was the task of the judge to assess the truthfulness of that claim by taking into account all of the evidence which was said to bear on that question. That is precisely what the judge did, and there is no error of law in her careful and cogently reasoned analysis.
16. There is no error of law in the decision of the First-tier Tribunal and that decision shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the appellant's appeal is dismissed accordingly.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2023