



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001422
First-tier Tribunal No:
IA/03163/202 PA/51053/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

HS
(ANONYMITY ORDER MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Kogulathas
For the Respondent: Mr E Terrell

Heard at Field House on 22 June 2023

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of HS who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

1. This is the appeal of HS, a citizen of Iraq born 1 February 2003, against the decision of the First-tier Tribunal of 14 March 2013, dismissing his appeal on asylum grounds.

Background to appeal

2. The Appellant's asylum claim was based on his assertion of having lived in Sulaymaniyah in the Iraqi Kurdish Region (IKR) and suffered a violent upbringing at the hands of his father, an Imam who insisted that he attend the mosque, albeit that he had permitted the Appellant's sister to study at university where she stayed in all-woman accommodation. When he began to have doubts about his faith his father beat him violently with rubber cables. His mother was frightened of his father and would not stand up to him. He discussed his unbelief with his best friend but begged him to not to mention this to anyone. He confided in his uncle, who he knew was not a religious man, and who offered to help him; the uncle let him stay at his home in Erbil for a few days, during which time they were threatened by his father, before taking him over the border and introducing him to agents with whom he travelled onwards to the UK. His father continued to hold his CSID. He had been able to contact his sister who lived in Erbil once he reached the UK.

First-tier Tribunal decision

3. The First-tier Tribunal accepted that the Appellant was a Sunni Kurdish national of Iraq aged 20 from the IKR. It did not accept his account of religious problems with his father, having directed itself to take account of his vulnerability given his young age when arriving in the UK, because
 - (a) It was implausible that his father would permit the Appellant's sister to study at university were he strictly religious or that the Appellant would discuss his lack of faith with his friends were he frightened of his father or others discovering this;
 - (b) His evidence was inconsistent as to when he learned of his uncle's religious views and as to how he first got in contact with his uncle, as to whether he had discussed his religious views with one or more friends, as to for how long his uncle had spent with him in Turkey, and as to his degree of contact with his family once he reached the UK.
4. Accordingly the appellant's core account was found not credible: "including his claimed conversion to a disbelief in Islam that led him to having to leave Iraq." He was not at risk from his father albeit that it was possible that his father was a local Iman who required his children to attend the mosque on threat of being punished. He might well have a genuine subjective fear of his father but was always free to seek his maternal uncle's protection in Erbil. The Judge expressed serious doubts as to whether the Appellant had truly lost contact with family members and concluded that it was reasonably likely he remained in touch with them,

even if his mobile phone had been lost; thus he could presumably obtain his CSID card from his father in order to access key services and travel across Iraq. At interview he had stated that he would have continued to keep his atheism to himself even absent the problems with his father and so no issue arose as to the potentially persecutory consequences of concealing his beliefs. As to his human rights claim, the evidence of depression and anxiety did not itself constitute very significant obstacles to integration in Iraq nor did it evince unjustifiably harsh consequences for him.

Permission to appeal

5. Grounds of appeal contended that the First-tier Tribunal had materially erred in law (by failing to give adequate reasons and/or failing to take account of material considerations or coming to conclusions that were irrational for illogicality) because
 - (a) The findings of fact were inconsistent, rejecting the Appellant's core account of fearing his father for religious reasons but also ostensibly accepting aspects of that very account, *viz* that he might well continue to have a genuine subjective fear of his father and that it "may be that his father was a local Imam who required his children to attend the mosque on threat of being punished"; and the latter finding was also inconsistent with the statement that it was unlikely that his father would permit the Appellant's sister to study at university were he strictly religious.
 - (b) It was inconsistent to accept the Appellant might have a subjective fear of his violent father yet expect him to approach him for his CSID to secure safe passage across Iraq, particularly given that other family members were also, on his account, fearful of the father.
 - (c) Even if the First-tier Tribunal had lawfully rejected the Appellant's Refugee Convention claim, his Humanitarian Protection claim still required lawful adjudication, and the statement that fears of a strict religious father "does not bring the Appellant within the parameters of an international protection claim in terms of his circumstances prior to leaving Iraq" left the latter to be determined.
 - (d) As per JA Nigeria [2021] UKUT 97 (IAC) there could be circumstances amounting to very significant obstacles to integration which fell short of the "serious harm" threshold. Here the Appellant was a "looked after child" (by the local authority) who the Judge accepted suffered from mental health difficulties and who had (to the relevant standard) a genuine subjective fear of returning home to his father. That sufficed to require detailed consideration of whether these factors amounted to very significant obstacles to integration rather than summary dismissal of the point.

6. Permission to appeal was granted on 25 April 2023 on the basis that it was arguable that the findings as to the Appellant's subjective fear of his father and his need to seek his uncle's protection were materially inconsistent with the rejection of the Appellant's fears due to a lack of religious faith, and with the Appellant's potential ability to regain his CSID from his father notwithstanding his potential need to seek his uncle's protection.

Upper Tribunal hearing

7. Ms Kogulathas developed the grounds of appeal, emphasising that if credible the Appellant had a potentially viable asylum claim given the EASO Common analysis of January 2021 stating there were reports that "atheists have been physically threatened, harassed or rejected by their families". The core of the Appellant's asylum claim related to suffering violence from his disciplinarian father. An Imam would have a reputation to uphold and that would provide a motivation to pursue the Appellant on a return to Iraq.
8. Mr Terrell submitted that this was a model application of the vulnerable witness guidance and detailed reasons had been given for the adverse credibility findings. The Judge had found that the Appellant would be at no greater risk than would his siblings; the reference to abuse was to violence inflicted on him as a young teenager which would not foreseeably be repeated at the age of twenty. The Judge had pointed out some inconsistencies before making findings of fact. It was open to make the finding re obtaining documents from his father. The private life findings were lawful and sufficiently reasoned.

Decision on error of law

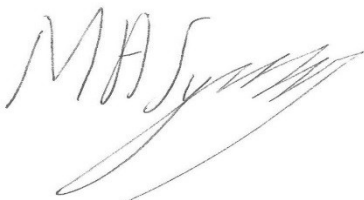
9. The Appellant's evidence, if accepted as credible, could give rise to a tenable asylum claim. On his account his father, a violent man who has repeatedly beaten the Appellant due to their disagreement as to whether the latter should attend the Mosque, holds an important role in a religious society where the norm is to follow the tenets of Islam relatively strictly. That history is capable of amounting to persecution for reasons of religion. The country evidence shows that the society is a patriarchal one. Elements of the country evidence might permit an inference that the authorities of the IKR would not intervene in what they might well see as a family dispute, calling into question the availability of state protection against the serious harm that his father would foreseeably inflict on him. And the availability of a reasonable internal relocation as a solution is the subject of Country Guidelines in the series of decisions culminating in SMO and KSP (CG) Iraq [2022] UKUT 110 (IAC). Each element that I have just summarised would need to be the subject of careful analysis if the credibility findings are legally unsuccessful. It is to that issue that I now turn.
10. It is rather difficult to follow the logic of the First-tier Tribunal's reasoning. It expressly found that the Appellant might have a genuine subjective fear

at his father's hands arising from the latter's status as an Imam who would punish his son for disobeying his wishes as to his performance of religious obeisance. But it also found that this would not amount to an international protection claim. For the reasons I have just given, that is incorrect. The fact pattern relied on might give rise to a viable Refugee Convention claim. It is also difficult to reconcile the finding that the Appellant might face the threat of physical violence from his father for religious reasons with the possibility that he would be able to obtain his CSID card from him; particularly given that even the Appellant's uncle received threats from his father when harbouring the Appellant in Erbil. Mr Terrell's defence of the decision was based on the submission that the Appellant would be returning as an adult male rather than as a vulnerable young teenager. But that fails to take account of the country evidence as to the influence of religious leaders in a patriarchal society.

11. Thus the conclusions to which the First-tier Tribunal came were irrational in the sense discussed in R (Law Society) v Lord Chancellor [2019] 1 WLR 1649 §98, due to "a demonstrable flaw in the reasoning ... for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error."
12. Unfortunately, it is not possible to unravel any findings of fact that can survive the difficulty identified above. Accordingly, the scope of the re-hearing of the appeal is such that remittal to the First-tier Tribunal is the only realistic option.

Decision:

- (1) The First-tier Tribunal decision involved the making of errors on points of law.
- (2) I set aside the decision.
- (3) I remit the appeal for hearing afresh before the First-tier Tribunal.



Deputy Upper Tribunal Judge Symes
Immigration and Asylum Chamber

29 August 2023