



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: UI-2023-002276

First-tier Tribunal No: PA/50868/2022

IA/02619/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On the 02 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

MAW

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain, Counsel instructed by Barnes Harrild & Dyer
Solicitors

For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 21 September 2023

DECISION AND REASONS

Background

1. This is an appeal, brought with permission of the First-Tier Tribunal, from the Decision of First Tier Tribunal Judge Davey (“the Judge”) promulgated on 2 May 2023. By that Decision, the Judge dismissed the Appellant’s appeal from the Secretary of State’s decision refusing to recognise him as a refugee, or as a person otherwise requiring international protection.

2. The Appellant is a national of Iraq of Kurdish ethnicity. His claimed date of birth of 14 September 2001 is disputed by the Respondent. Following his last arrival in the United Kingdom (UK) he claimed asylum in 2020 (a previous claim made in 2019 was treated as withdrawn).
3. The Respondent did not accept the core of the Appellant's claim, and so the Judge was tasked in the first instance to make an assessment of credibility. In conducting that task the Judge considered the Appellant's evidence, the documentary evidence supportive of his claim, an expert report and a medico-legal report from a community psychiatrist. The Judge identified that the "...claim faces a number of credibility issues" and considered them at [15] to [23], and concluded the Appellant's claim and the documentary evidence "was not sufficiently cogent or reliable". The Judge considered the medico-legal report was founded upon the Appellant's narrative and the expert's report was at one with the background evidence and "did not advance the issue of credibility of the claim."
4. In his omnibus conclusion the Judge found the Appellant's claim "was false and fabricated". The Judge did not accept the Appellant was undocumented and nor did he accept that his presence at demonstrations in the UK against the corruption within the KRG presented a risk on return. As for the claim under Article 8 ECHR the Judge considered that the mere dint of the Appellant's presence in the UK was insufficient to surmount a claim on that basis either within or outside of the Immigration Rules.
5. The Appellant's representatives applied on his behalf for permission to appeal to the Upper Tribunal and permission was granted by the First-tier Tribunal on 23 June 2023.
6. The Respondent filed a Rule 24 response dated 13 July 2023.

Discussion

7. I have considered the submissions of the representatives. Mr Hussain's submissions aligned with the grounds of appeal, and Ms McKenzie relied on the Respondent's Rule 24 response and advanced no further oral submissions. I do not recite all of the submissions except to explain why I have reached my decision.
8. I am satisfied the Judge materially erred in law for the following reasons.
9. The primary basis of the Appellant's claim is recorded by the Judge at [4] as follows:

"The basis of the Appellant's claim on entry to the United Kingdom was that he was in fear of ill-treatment on return because of the conduct of his brother (RB76, paragraph 4.1). In subsequent interviews he disclosed that he had had a forbidden sexual encounter with a girl, [...] (GAB), in October 2018. The GAB's father was a high profile senior person in the Peshmerga and held a senior role in the PUK, a dominant political party. It is said that shortly after the one-off

occasion of the Appellant and the girl having sexual intercourse, which they had mutually photographed on their mobile phones, the girl's phone was opened and seen by the daughter of one of the Appellant's aunts who had passed on the information within the family of the girl GAB to others in the family. In the result, within a very short space of time, it was claimed that the Appellant became aware that GAB had been beheaded and that her family thought the same end should apply to the Appellant."

[my emphasis]

10. There is a clear mistake of fact in the Judge's opening two sentences which I have emphasised above. It appears to have arisen within the following context. The Appellant first entered the UK on 21 March 2019 and claimed asylum. The screening interview conducted on that day is the interview the Judge was referring to at [4]. At question 4.1 of that screening interview it is expressly stated by the Appellant:

"I fear I will be killed because I have been in a relationship with a girl who was the daughter of someone in the Government, on social media there was photos of me and the girl. I fear the father of the girl and brothers because they want to kill me."

11. There is no mention here of any conduct by the appellant's brother as forming the basis of the Appellant's claim on entry, and it is also clear that he based his claim on a forbidden sexual encounter from the outset and not as the Judge stated, in subsequent interviews. Before the conclusion of his claim the Appellant left the UK, and was subsequently returned to the UK from Norway and interviewed at Gatwick North Holding Room on 17 July 2020. It was during this interview the Appellant refers to his brother's conduct. At question 3 the Appellant was asked why he left the UK during the course of his asylum claim. In answer he states that he was threatened in the UK by people in Croydon who had a problem with his brother. At question 4 the Appellant states that he wishes to continue with his asylum claim. The Appellant does not assert in this interview that he is claiming asylum on the basis of any problems associated with his brother.

12. The Respondent in her Rule 24 response does not expressly accept that there is a mistake of fact. She states the Judge was simply saying that the Appellant's claim has evolved as his claim was processed. I cannot accept that submission as it is not supported by the evidence. The Judge, plainly, and mistakenly, confused the content of the two interviews and it was this mistake that led to the grant of permission to appeal by the First-tier Tribunal, albeit permission was granted on all grounds.

13. Of course, not all factual mistakes are material to the decision, however, I am satisfied that it is in this case because of what the Judge stated at [15], namely:

"The claim faces a number of credibility issues. First that he did not seek to rely upon the sexual relations out of marriage when he first claimed but believed he was at risk because of the conduct of his brother...".

14. It is appreciably clear, here, that the Judge’s mistaken understanding of the initial claim is a factor he took into account in his credibility assessment. The Judge identified it as a credibility issue and drew a direct negative inference from this evidence when in fact he should not have done so. Whilst I acknowledge the Judge identified other credibility issues, I am not satisfied that this finding can be severed from the Judge’s overall view of the Appellant’s claim, particularly when it featured significantly in the reasons at [4] and [15]. When the assessment of credibility has to be a global one, the Judge’s decision on credibility is not safe and cannot stand. I find ground one is made out and is sufficient to vitiate the Decision.
15. I am also in agreement with the grounds that the Judge erred in his consideration of whether the Appellant could redocument himself either in the UK or on return to Iraq, and whether his family who had emigrated to Iran (due to the problems they faced from GAB’s family) could assist him. The Judge was clearly not assisted by the Respondent who took a “blithe view” of the issue of return, having not properly addressed it in her refusal letter, but she nonetheless put her case on the basis that the Appellant’s family could support him and assist him in re-documenting himself in Iraq. The Judge took into account the expert evidence and noted there was no challenge to the evidence of the Appellant’s friend who tried to carry his CSID or similar document into an unknown airport and had had it seized [36]. The Judge then says this at [37]:
- “There was, other than the Appellant’s say-so, no evidence effectively of a move to Iran for fear of the Bor family [GAB’s family]”.
16. This was a finding that fed into the Judge’s ultimate conclusion at [39] that he did not accept the Appellant was undocumented because his claim was false. The difficulty with this is that, first, the Appellant relied on a tenancy agreement in his father’s name for a property in Iran which supported his claim that his family no longer lived in Iraq, which does not appear to have been considered by the Judge; there is no reference to it in the Decision. Second, the existence of this evidence is contrary to what the Judge stated at [37], and further indicates the Judge omitted to consider it. Third, the corollary of the Judge’s finding at [39] is that the Appellant is documented. If so, it is not clear what that documentation is, given that there was no suggestion the Appellant had a laissez passer or expired passport, and there was no challenge to the evidence of the friend that the Appellant’s CSID had been seized (at [36]). Fourth, following SMO, KSP (Civil status documentation; Article 15) Iraq [2022] UKUT 00110, the Judge was required to consider whether the Appellant’s local Civil Status Affairs (CSA) Office had moved over to the new INID system, which, if so, would require him to attend in person, and whether he could do so. Whilst the Judge referred to the country guidance, I agree with the grounds that he failed to apply it in this case. For these reasons I am satisfied that ground four is made out.

17. The errors of law can be characterised, therefore, as a mistake of fact, a failure to consider documentary evidence and a failure to adequately apply the Tribunal's country guidance in respect of the issue of documentation.
18. In light of the above, it is not necessary to traverse the remaining three grounds as the above substantiated errors are material and sufficient to set aside the decision, but I will simply observe that I do not accept the Judge failed to assess credibility "in the round" and failed to apply settled refugee law. The Judge clearly considered the evidence in the round and said so at [24], and gave adequate reasons for his conclusions. It is the manner and route by which he reached those conclusions that is flawed for the reasons given above. The remaining ground challenge's the Judge's failure to assess the Appellant's sur place claim. This I find is without merit. The Appellant's claim was not put on a sur place basis and, in any event, the Judge dealt with that claim within the context of the evidence (at [14] & [41]).
19. I turn to the question of disposal. I remind myself of the decisions in AEB v SSHD [2022] EWCA Civ 1512 and Begum [2023] UKUT 00046 (IAC) and the nature and extent of the necessary fact-finding, (see §7.2(b) of the Senior President's Practice Statement). Both representatives agreed with me that this was an appropriate case that would need to be remitted back to the First-tier Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of errors on a point of law.

I set aside the decision of the First-tier Tribunal with no preserved findings of fact.

I remit this appeal to the First-tier Tribunal for a complete rehearing by a judge other than Judge Davey.

Anonymity Order

An Anonymity Order was made by the Upper Tribunal on 3 August 2023. It continues to apply.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Appeal Number: UI-2023-002276
First-tier Tribunal No: PA/50868/2022
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R.Bagral
Deputy Judge of Upper Tribunal
(Immigration and Asylum Chamber)
Date: 27 October 2023