



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002158

First-tier Tribunal No: PA/50059/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

8th February 2024

Before

**UT JUDGE MACLEMAN
& DEPUTY UT JUDGE DOYLE**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RH
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr S Winter, counsel, instructed by Rutherford Sheridan, solicitors.

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at 52 Melville Street, Edinburgh, on 6 February 2024

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

Introduction

1. We make an anonymity direction because this appeal arises from the appellant's protection claim.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Prudham, dated 23/04/2024, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 30/10/1983 and is a citizen of Iraq. The appellant entered the UK on 26/09/2020 and claimed asylum that day. On 20/12/2022 the respondent refused the appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Prudham ("the Judge") dismissed the appeal against the Respondent's decision.
5. Grounds of appeal were lodged, and on 22/05/2023 First-tier Tribunal Judge Moon gave permission to appeal stating
 1. The grounds were submitted on 5 May 2023 and the decision was promulgated on 12 April 2023 (rather than 10 March as stated in the grounds) and so the grounds are in time.
 2. The grounds assert that the Judge erred in the application of standard of proof. It is also asserted that in considering the feasibility of return, the Judge failed to consider the implications on the appellant's wife who is a national of Iran. It is also submitted that insufficient consideration has been given to the Article 8 claim.
 3. The Judges explanation as to the standard of proof to be applied to the claim for Humanitarian Protection is not entirely clear although reference is made to the lower standard applying.
 4. The Judge did not consider the documentation status of the appellant's wife but there was no suggestion this would be an issue because the appellant married her in 2006 while he still lived in Iraq and travelled with her when leaving Iraq in October 2017.
 5. The appellant's bundle contains statements and letters from friends and evidence of ties in the local community. While evidence in relation to the appellant's family

and private life is mentioned, the failure of the Judge to properly engage with this evidence is an arguable error of law.

The Hearing

6. For the appellant, Mr Winter moved the grounds of appeal. He told us that although there are three grounds of appeal, the second and third grounds of appeal are entirely dependent on the first ground. If the first ground of appeal does not succeed, grounds two and three fall away.

7. Mr Winter relied on MAH(Egypt) v SSHD [2023] EWCA Civ 216 , and told us that the standard of proof applied by the Judge is too high. Mr Winter took us to [26] and [30] of the decision and said that the Judge's credibility findings there are unsafe.

8. Mr Winter formally moved grounds two and three but made no submissions in relation to article 8 ECHR. He asked us to set the decision aside and remit this appeal to the First-tier Tribunal to be determined of new.

9. For the respondent, Mr Mullen opposed the appeal and told us that the Judge's credibility findings are sustainable. He said that the Judge's clear findings at [26] and [30] mean that the appellant's protection claim could not succeed. He told us that the Judge reached conclusions well within the range of reasonable conclusions available to the Judge. He asked us to dismiss the appeal and allow the decision to stand.

Analysis

10. At [4], [5], and [6] of the decision the Judge correctly identifies the burden and standard of proof in relation to each part of the appellant's appeal. At [25] the Judge records that he has considered each strand of evidence in reaching this decision.

11. The Judge's findings of fact are brief. At [26] the Judge highlights a fundamental inconsistency in the appellant's evidence and explains why that damages the appellant's credibility. At [27] the Judge records that the appellant's credibility is further damaged by the operation of section 8 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004.

12. At [28], the Judge clearly says that, because he does not find the appellant credible, he cannot accept there is a risk to the appellant on return to Iraq.

13. At [29] & [30] the Judge deals with the appellant's claim that his CSID card is not in his possession. The appellant says that a male relative in Iraq holds his CSID card. At [30] the Judge makes the succinct finding that the appellant's

male relative can meet the appellant at Baghdad airport and return his CSID card, so that the appellant can travel overland to his home village near Kirkuk.

14. In AE (Iraq) v Secretary of State for the Home Department [2021] EWCA Civ 948, Warby LJ said :

Commonly, the suggestion on appeal is that the FTT has misdirected itself in law. But it is not an error of law to make a finding of fact which the appellate tribunal might not make, or to draw an inference or reach a conclusion with which the UT disagrees. The temptation to dress up or re-package disagreement as a finding that there has been an error of law must be resisted.

15. A fair reading of the decision demonstrates that the Judge applied the correct standard of proof. The Judge carried out a holistic assessment of each strand of evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The appellant might not like the conclusion arrived at, but it is the result of the correctly applied legal equation. The correct test in law has been applied. The decision does not contain a material error of law.

DECISION

16. The appeal is dismissed. The decision of the First-tier Tribunal, dated 23 April 2023, stands.

Signed **Paul Doyle**
February 2024
Deputy Upper Tribunal Judge Doyle

Date 7