



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005161

First-tier Tribunal No: PA/50104/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

23rd January 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

KSM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes instructed by RZZ Solicitors.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 19 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals which permission a decision First-tier Tribunal Judge Monaghan ('the Judge'), promulgated following hearings at Bradford on 27th July 2022 and 25 July 2023, in which the Judge dismissed the appellant's appeal

against the refusal of his application for international protection made on 7 April 2021. The date of refusal is said to be 15 December 2021.

2. The appellant is a citizen of Iraq born on 23 March 1990. The Judge's findings are set out from [11] of the decision under challenge. The Judge noted an early determination by First-tier Tribunal Judge Turnock, promulgated on 13 November 2019, which formed the starting point of the assessment in accordance with the Devaseelan principles. In that decision the appellant's account had been found to lack credibility.
3. The Judge considered the appellant's political activities in the UK which he claims began after 2019. The Judge records at [16] the appellant being extremely vague about the date of the commencement of those activities which the Judge found relevant to the assessment of his credibility. The Judge also found the appellant had not provided a clear picture of the political demonstrations he had attended in the UK, found his evidence vague, and therefore only placed limited weight on it for that reason [17].
4. The Judge notes the appellant's Facebook profile describing him as a New Generation Movement Volunteer in the UK but records that when the appellant was asked about whether he was part of a group attending demonstrations and asked for the names of the groups that he referred to, his answer was described as being vague. The Judge records the appellant having had two opportunities to identify his association with the New Generation Movement and to name them but failing to do so which was found to harm his credibility [18 - 19].
5. The Judge records the appellant was asked whether he took part in organising the demonstrations but claims he did not answer the question; stating instead that he did participate in them. When asked to explain how he participated the Judge records the appellant being asked to be more specific in his answer [20].
6. The Judge finds the appellant inconsistent in his evidence about the part he plays in political activities. He declared he attended demonstrations at least 10 times in the UK and posted about all of them on his Facebook account, a claim not supported by the evidence provided, with only two demonstrations being identified [21].
7. The Judge finds limited evidence of the appellant attending political demonstrations in the UK and that based on the evidence he was a mere attendee with no evidence he played a significant part during the demonstrations, was merely a face in the crowd with no specific role which would further identify him or bringing to the attention of anyone [22].
8. The Judge accepts at [23] there was limited evidence of the appellant posting photographs of two demonstrations and publicising one of the uploaded posts and photographs of a general political nature against the KDP, the PUK and Masoud Barzani [23].
9. The Judge expressed concern about the appellant's claim he was the one who uploaded the posts onto his Facebook account as they are in English [25]. The Judge notes concerns about the Facebook account as there was only limited evidence available from the account, that it is in the name of another and states a different location for the appellant, leading to it being concluded on return the authorities would not link the account to the appellant. The Judge also has concerns about the genuine nature of the Facebook evidence given the appellant's difficulties with the English language and that some posts are in English. It is found he could delete the Facebook prior to return to Iraq in light of the finding his opinions are not genuinely held [26].
10. At [27] the Judge deals with the alleged threat the appellant claims to have received as a result of his Facebook postings and finds that despite the evidence being strong evidence that the appellant will be a risk on return he had failed to

mention the threats in either of his two witness statements which is found to harm his credibility.

11. The Judge rejects documentary evidence at [28] in relation to the identity of a named individual and other concerns regarding other aspects of the evidence.
12. At [34] the Judge confirms the evidence of the appellant's wife has not been overlooked, but was found to cast doubt on her credibility, with the Judge recording having concerns that the appellant had not been truthful about losing contact with his family since entering the UK and that he remains in contact with his brother [34 - 35].
13. The claim of a risk of FGM for their daughter by the appellant's wife's family was rejected by the Judge.
14. The Judge notes that Judge Turnock had made a finding the appellant has access to a CSID, either because he retained it or is left in the custody of his father, finding there was nothing that would warrant a different finding in this appeal. The appellant claimed in his witness statement he did not have any ID documents or passports with them when they arrived in the UK, but the Judge rejected this in light of the adverse credibility findings. The Judge finds the appellant will be allowed to return to his family in the IKR with there being no reason why with the support of his family he could not re-establish himself.
15. The Judge notes at [40] not being asked to consider whether the appellant could succeed in a claim for Humanitarian protection, Articles 2 and 3 or Article 8.
16. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 5 December 2023, the operative part of the grant being in the following terms:
 2. The appellant sought asylum on the basis of his political activities both in Iraq and while in the UK, and also a fear that his daughter might be forced to undergo FGM by his wife's family if returned. The Judge dismissed the appeal.
 3. In his application for permission to appeal, the appellant contends that the Judge has erred in law through failing to resolve a material issue that was in dispute between the parties.
 4. Specifically, the grounds note that the Judge has accepted at [27] that there was evidence amongst the Facebook documents suggesting that the appellant had received threats from someone in Iraq in relation to his criticism of IKR leaders, and that this amounts to 'strong evidence that the Appellant would be at risk on return'. However, it is said the Judge then fails to make an actual finding in relation to whether the appellant is at risk on return on this basis, instead simply finding that the evidence is undermined by the appellant's failure to comment upon it in his written statements.
 5. I find that the challenge does raise an arguable error of law, for the reasons stated, it being difficult to identify a clear conclusion in this matter anywhere in the Judge's decision. Permission to appeal is therefore granted.

Discussion and analysis

17. Contrary to the ground seeking permission to appeal, the Judge did make a specific finding on the issue referred to at [27], that the appellant's failure to have raised this issue or to have mentioned it in other parts of his evidence damaged the credibility of the claim.
18. That finding cannot be read in isolation from the rest of the determination. In the other paragraphs the Judge makes numerous well reasoned findings as to why the appellant had not been truthful and why his claim lacked credibility. It is necessary to consider whether the alleged threat was genuine and credible in light of the evidence as a whole.

19. If one looks at all the material taken together, the finding of the Judge that the failure of the appellant to raise this issue cast doubt on his credibility is wholly within range of findings reasonably open to the Judge.
20. The Court of Appeal have made it abundantly clear that appellate judges should not interfere with decisions of judges below unless a clear legal error material to the decision under challenge is made out.
21. The Judge was not satisfied the appellant faced a real risk on return to Iraq, and so dismiss the appeal.
22. The Judge clearly considered the evidence with the required degree of anxious scrutiny, has made finding supported by adequate reasons, and even if this particular issue could have been expressed more fully, has made findings within the range of those reasonably open to the Judge on the evidence.
23. I do not find it made out that the Judge has erred in law in a manner material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in relation to this matter. It has not been made out the Judge's findings are rationally objectionable.

Notice of Decision

24. The First-tier Tribunal has not been shown to have materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 January 2024