



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005179

First-tier Tribunal Nos: PA/55778/2021
PA/00846/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

D.A.
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M Malik (Counsel)

For the Respondent: Mr C Bates (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 15 March 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

1. This is an appeal against the determination of First-tier Tribunal Reed, promulgated on 18th July 2023, following a hearing at Nottingham Magistrates' Court on 4th July 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was

granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male and a citizen of Iraq. The essence of his claim is that he fears a man by the name of Jaafar Sheikh Mustafa ("JSM") and his men. He claims to have worked as a driver for JSM in June 2019 on a part-time basis. He was doing so while studying at university. After a few weeks JSM asked him to take part in the kidnapping of a critic of JSM. The Appellant refused to do so and he was detained and beaten up by JSM's men. The Appellant's father was able to obtain the release of the Appellant after around three weeks. The father then entered into an agreement with JSM that the Appellant would work for him indefinitely. Around four days later, the Appellant fled Iraq and made his way to the UK. Since then, JSM has become a vice president of the IKR as a member of the Patriotic Union of Kurdistan (PUK). The Appellant further claims that upon arrival in the UK he has been involved in political activities from around April 2022. He has attended three demonstrations. He has posted on Facebook against the Kurdish authorities. He has received death threats via Facebook from two individuals on 8th and 9th May 2023. Finally, he does not have any relevant documentation with him in the UK so that he would not be able to return back to his country.

The Judge's Findings

3. The judge accepted that the Appellant had worked for JSM in the capacity of a driver (paragraph 34). However, the judge did not accept that the Appellant ever came to the adverse interests of JSM or that he has any reason to fear JSM (paragraph 35). In any event, it was "highly unlikely that JSM would harbour a vendetta against the Appellant for around four years", particularly as he had since then "become the vice president of the Kurdistan Region" and that it was for this reason "implausible that such a high profile and senior figure would be concerned with the actions of a part-time driver so many years earlier", because "the Appellant was never a serious opponent or critic of JSM" (paragraph 36). Moreover it was not plausible that JSM's men would continue to raid the Appellant's family home "on a weekly basis for around four years, either to ascertain the Appellant's whereabouts or to threaten the family" (paragraph 37).
4. The judge also concluded that, "even to the lower standard" it was not plausible that the Appellant has lost contact with his family because he had been inconsistent in his evidence. An example that the judge gave here was that the Appellant claimed that he lost contact with his family via WhatsApp messages on 6th June 2023. However, his witness statement, which was also signed on 6th June 2023, "refers to contact having stopped" already. According to the Appellant's oral evidence, "it was not until 24 hours after the WhatsApp message on 6 June 2023, when the Appellant realised that he had lost contact with his family", which did not make sense given that his witness statement attesting to the same was signed on 6 June 2023 (paragraph 38).
5. There were photographs that the Appellant had tendered in evidence but that "they could be in Iran for several reasons" (paragraph 39). There was evidence from the Red Cross which was "self-serving" (paragraph 40). The Appellant had referred to alleged threats made through Facebook, but the judge observed that

“very little is known about the individuals, such that the threats could have been made by anyone for any reason “ (paragraph 41).

6. In relation to the Appellant’s sur place political activities in the UK there were photographs of the Appellant at demonstrations but “these are of very poor quality and the details are not clear” and that “the signs being held up by the Appellant and the others are not sufficiently visible” (paragraph 42). The Appellant’s political activity in the UK, as alleged, had to be considered in the context of a lack of political activity in his home country “and only limited involvement in the UK” (paragraph 45). As for the lack of Iraqi documentation the judge was clear that, “I note from the asylum interview that the Appellant has a ‘CSID/national card’ in Kurdistan with his family” and that “Having found that the Appellant is still in contact with his family, I am not satisfied that he would suffer any material problems on return ...” (paragraph 47). For all these reasons, the appeal was dismissed.

The Grounds of Appeal

7. The Appellant put forward eight Grounds of Appeal. These are:
- (i) the judge is making assumptions;
 - (ii) the judge contradicts himself;
 - (iii) the judge erred in considering plausibility;
 - (iv) the judge is taking into account things that he should not;
 - (v) the judge attaches no weight to the Red Cross evidence;
 - (vi) the judge places no weight on the Appellant’s evidence;
 - (vii) the judge fails to consider the sur place activities correctly; and
 - (viii) the judge fails to consider the country guidance case of **NA (Libya) v SSHD [2017] EWCA Civ 143**.

Submissions

8. At the hearing before me on 15th March 2024, Mr Malik, appearing on behalf of the Appellant carefully went through each of the eight Grounds of Appeal. In response, Mr Bates, appearing on behalf of the Respondent, relied upon the detailed Rule 24 response of 8th December 2023 and observed that “there is not much I can add”. He did submit that there was a difference between a rank and file member and a person of high rank who JSM would wish to go after.
9. The Appellant was only a part-time driver and a full-time student and four years had passed, during which time JSM had risen to a senior position and it simply did not make sense for his men to expend both time and resources to harass the Appellant’s family on a weekly basis. There was a request from the Red Cross asking the Appellant for more detail, to which the Appellant did not respond and so one can hardly say that the judge’s decision was an error in this respect. As far as the Appellant’s alleged threats are concerned these are “anonymous threats” and that without knowing the source of them, and the reason why they have taken place, one simply cannot assume that they come from Iraq from

people affiliated to JSM. The Appellant's *sur place* activity was of low rank and there was no evidence that he would be subject to surveillance or be of any interest to people in Iraq if he was returned. As for his CSID card the judge had properly found that it was with his family and that he had been in contact with them.

10. In reply, Mr Malik submitted that given that protection claims have to be determined on the lower standard of proof, the fact that the Appellant had attended three demonstrations, which the judge accepted, and could point at threats on Facebook against him, meant that he succeeded in his claims. The threats to him over a period of four years, made on a weekly basis would suggest that there were 200 such visits to the family home. Although the Appellant produced no evidence of his WhatsApp account showing whether a message sent by him had either been opened, received, or even read, it was his case that contact had ceased on the 6th June. The Respondent relied upon a country guidance case from Iran to make the point that social media activity, even if monitored, would not lead to ill-treatment of a person of some insignificance, and this was misconceived. The Appellant had no documents and therefore he faced the prospect of return to Baghdad, which he could not do. The truth of the matter was that he had been consistent in the evidence he had given. He asked me to allow the appeal.

No Error of Law

11. I am satisfied that the making of the decision by the judge did not involve the making of an error of law. The decision of Judge Reed is clear, comprehensive, and simple to follow. This is nothing more than a detailed disagreement with that determination. Ultimately, the judge was entitled to conclude on the evidence before her that, "it is highly unlikely that JSM would harbour a vendetta against the Appellant for around four years" especially given that since those alleged events, "JSM has become the vice president of the Kurdistan Region", bearing in mind that "the Appellant was never a serious opponent or critic of JSM" (paragraph 36).
12. This is a case where permission to appeal was granted to the Appellant on 24th October 2023 by the First-tier Tribunal. Three reasons were given. First, that it was arguable that when the judge held that it was not plausible that JSM's men would continue to raid the Appellant's family home on a weekly basis for around four years, that the reasons given were too short. However, paragraph 37, where this reason is given, has to be read in conjunction with the previous paragraph, at paragraph 36, which explains why harbouring a vendetta against someone who was a part-time driver for four years is so implausible.
13. Second, permission was given on the basis that it was arguably procedurally unfair to have placed reliance upon the lack of clarity of photographs submitted by the Appellant. However, these are the Appellant's photographs, and as the Rule 24 response makes clear, the Appellant and his legal advisors know that information submitted digitally has to have the requisite degree of clarity about it. If it does not, the decision maker is entitled to conclude that the visuals do not make out the case for the Appellant that they are intended to make.
14. Third, permission to appeal was granted on the basis that the judge's finding in relation to the CSID/IND documentation has arguably not been properly addressed by reference to the relevant country guidance caselaw. However, the

judge at the outset makes it clear that the documentation before the Tribunal included both the **SMO & KSP (Civil status documentation: article 15) Iraq CG [2022] UKUT 00110** decision and the Country Policy Information Note of July 2022 (see the reference at paragraph 21 of the determination).

15. In any event, the error, such as it is alleged, cannot be a material one if the judge's finding as a matter of fact is that "the Appellant is still in contact with his family" and that "his family would be there to support him to mitigate any destitution concerns" (paragraph 47). Nothing in this runs contrary to the country guidance case of **SMO**. Accordingly, the Grounds of Appeal are not made out such as to lead this Tribunal to conclude that the judge fell into an error of law.

Notice of Decision

16. There is no material error of law in the judge's decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th May 2024