



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001014
First-tier Tribunal No:
PA/5086/2023
(LP/02635/2023)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

R O M
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lay, Counsel

For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Heard at Field House on 10 June 2024

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. The Appellant's representative appeared in person and the Respondent's representative appeared via CVP.

2. The Appellant is a national of Iraq, born on 3 June 1982, who on 27 June 2022 applied for asylum. The Respondent refused her application in a decision sent out on 27 January 2023.
3. The Appellant appealed to the First-tier Tribunal and her appeal was listed before Judge of the First-tier Tribunal Hickey (hereinafter referred to as the FTTJ Judge on 31 January 2024 and in a decision promulgated on 15 February 2024 the FTT Judge dismissed the appeal.
4. Permission to appeal was granted by Judge of the First-tier Tribunal Saffer on 8 March 2024 who found:

“Given the positive finding made of her elevated profile and receipt of threats from the PUK for not joining them or spying for them, it is arguable that the Judge materially erred in dismissing the appeal. All grounds are arguable.”
5. The matter was listed for an error of law hearing before me on 10 June 2024.

SUBMISSIONS

6. Mr Lay adopted his skeleton argument and submitted the FTT Judge materially erred. With regard to ground one Mr Lay submitted the FTT Judge had found the Appellant was at risk from both the PUK and from the Kehlani tribe. Having made those findings Mr Lay submitted the FTT Judge should then have considered whether it would be unduly harsh or unreasonable to require the Appellant to relocate to S. By failing to do this Mr Lay submitted the FTT Judge had materially erred.
7. With regard to the second ground of appeal the Appellant explained in her evidence why she was able to remain in S during the “summer break”. She stated it was because the authorities believed she would co-operate with them and so left her alone. Mr Lay submitted the FTT Judge materially erred as he had not considered this explanation. The Appellant had generally been found to be a credible witness on all other issues so Mr Lay submitted the FTT Judge erred by not considering this explanation and thereafter whether it would, in all the circumstances, be unduly harsh to relocate.
8. Finally, with regard to the third ground Mr Lay submitted that if the Appellant had been at risk in E then it would be unduly harsh to require her to relocate to S when the FTT Judge had also found the Appellant had been at risk in S.
9. Whilst internal relocation was considered by the FTT Judge at paragraph [22] it was only a cursory assessment and the FTT Judge did not provide adequate reasons why it was safe, reasonable and not unduly harsh for her to return to S. By failing to explain this the FTT Judge had materially erred.

10. Ms Everett submitted that the Appellant actually came from S and if the FTT Judge gave adequate reasons in paragraphs [16] and [17] of his decision then there was no error in law.
11. Mr Lay submitted the Appellant left S in 2019 and went to E before leaving E because of risk from the K tribe. He submitted that she had already relocated to E and therefore internal relocation was to S.

DISCUSSION AND FINDINGS

12. Having heard the Appellant's oral evidence and submissions from both representatives I reserved my decision.
13. The FTT Judge made the following findings:
 - a. The Appellant did receive threats from the PUK for not joining them and for not spying for them. However, the threats made to her were part of a campaign to apply pressure to persuade her to join the party and become an informant. The fact she was able to remain in S for three months without incident to her self or her family and she was able to obtain travel documents to leave S with her family. She was able to settle in E without further incident with the PUK.
 - b. The Appellant never claimed she received threats from the KDP and whilst she found it difficult settling in E because she came from S and anyone from S was suspected of being a spy the FTT Judge did not accept she was ever harassed or was in danger as evidenced by the fact she was able to live and work there openly for three years.
 - c. The Appellant was threatened by members of the Khelani tribe for disclosing that one of their members was using a false qualification. Her husband was assaulted and there was an attempt to kidnap him. However, based on expert report of Dr Salah she would not be targeted by the whole tribe as the tribe does not have a high profile and she would not be at risk in her home area of S and could therefore return there.
14. Mr Lay submitted that having accepted she was threatened by the PUK in S and the Kehlani tribe in E the FTT Judge should have gone to consider whether it was unreasonable or unduly harsh for the Appellant and her family to return to S. Mr Lay argued that having spent around three years in E the FTT Judge should have considered whether requiring her to return and live in S was unreasonable or unduly harsh. Ms Everett submitted that as the Appellant actually came from S so she was not being required to relocate there, but that in any event the FTT Judge gave adequate reasons in paragraphs [16] and [17] of his decision for why she could return there.

15. The FTT Judge accepted the core of the Appellant's claim and the main issue he had to consider was whether the Appellant was at risk from the PUK or the Khelani tribe as he ruled out any risk from the KDP and this finding has not been challenged either in the grounds of appeal or by Mr Lay at the hearing before me.
16. The FTT Judge gave reasons for why the Appellant would be able to settle in S and why she would not be at risk of persecution in paragraphs [16], [17], [21] and [22]. The FTT Judge noted the Appellant and her family lived most of their lives in S and having concluded there was no ongoing risk in S the FTT Judge was entitled to find the Appellant could safely and reasonably return to live in S. I find ground one has no merit.
17. The second ground centres around the fact the FTT Judge did not make a specific finding about why she was able to stay for three months in S. She told the FTT Judge that she believed they gave her time to make her decision and that by failing to specifically consider this the FTT Judge erred. Whilst the FTT Judge did not consider her explanation for remaining in S for three months he did find that during this three month period neither she nor her family experienced any problems or any approaches from the PUK. In short, the FTT Judge was satisfied the Appellant would not have a problem in S and it is important to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors. I do not accept the submission that the second ground disclosed an error in law.
18. With regard to the third ground of appeal Mr Lay submitted that the FTT Judge did not properly consider the reasonableness of relocation or whether it would be unduly harsh. The FTT Judge's findings on this were not detailed but they were clear to anyone reading them. The FTT Judge accepted the Appellant had issues in E from the Khelani Tribe but concluded she could return to S because firstly she came from there and secondly the risk was not high enough to place her at risk of persecution from either the PUK or the Khelani tribe. In an international protection claim, findings are made by specialist immigration tribunals on a daily basis, and Appellate Courts should not "rush to find misdirection" in their decision-making. The FTT Judge had the benefit of hearing and seeing the Appellant give evidence and the findings in paragraphs [16], [17], [21] and [22] were findings that were open to him.

Notice of Decision

There was no error in law and the FTT Judge's decision shall stand.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber

21 June 2024