



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003417

First-tier Tribunal Nos: PA/53824/2023
LP/01791/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 27th of November 2024

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MH
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr H Sadiq, Adam Solicitors

For the Respondent: Mr J Thompson, Home Office Presenting Officer

Heard at Field House on 17 October 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. The Appellant is a citizen of Iraq of Kurdish ethnicity from Kirkuk. His date of birth is 6 September 2001.
2. The Appellant was granted permission to appeal against the decision of the First-tier Tribunal (Judge C J Williams) by the First-tier Tribunal (Judge Elliott) against the decision of the Respondent on 13 January 2023 to refuse his protection claim.
3. The represented Appellant has not complied with directions. A bundle was uploaded onto CE file days before the hearing. It was not in the correct format. The Upper Tribunal re-sent standard directions to the solicitors on receipt of the deficient bundle. By the time of the hearing there was no properly formatted consolidated bundle uploaded onto CE-file. I raised this with Mr Sadiq at the hearing. He apologised and said that practitioners were trying to get to grips with the new system. I found this difficult to comprehend bearing in mind the clear directions setting out what is required and templates which are sent to the parties. The solicitors have not complied with the standard directions issued by the Tribunal or the Practise Direction for the Immigration and Asylum Chamber of the Upper Tribunal: electronic filing of documents online -CE file-Courts and Tribunals Judiciary. I was, however, able to proceed with the hearing although it was needlessly prolonged as a result of the incomplete bundle which was not hyperlinked. I accepted Mr Sadiq would put measures in place to ensure that this would not happen again.
4. The Appellant's says that the Popular Mobilization Forces (PMF) demanded his family gave their land to Arab families. The Appellant's family refused to hand over their land and as a result they were threatened by PMF. The Appellant sought help from an agent and arranged to come to the UK. He fears the PMF on return to Iraq.
5. The judge heard evidence from the Appellant who adopted his witness statement and was cross-examined. The judge rejected the Appellant's evidence that he was at risk on return. The judge made the following findings:-
 - i. The Appellant's evidence was inconsistent insofar that he said that the PMF had visited his farm three times and then he said four times during his interview and in oral evidence he said that there were seven visits.
 - ii. The Appellant's evidence (that the PMF would have visited the Appellant's family seven times) is inconsistent with the background evidence that the organisation had been known to kill Kurdish families over land.
 - iii. Kirkuk is a majority Kurdish area and the Appellant has not shown that there was a policy of "Arabisation".
 - iv. With reference to s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, while the Appellant's evidence was that he was under control of an agent, it was clear that he had an opportunity to claim asylum when fingerprinted by the Italian authorities and his failure to do so damaged his credibility.
 - v. Other aspects of the Appellant's claim undermined his credibility. The judge took judicial notice of the costs involved to fund a journey to the UK and he did not find it credible that a farmer from a family with no power or influence would have resources.
 - vi. It undermined the Appellant's claim that he had had no contact with his family since they were in Turkey together.

- vii.** Evidence from the Red Cross indicating that the Appellant was looking for family members is not evidence of a person being missing.
 - viii.** The Appellant has not shown that he had lost contact with his family.
6. In the alternative, the judge considered internal relocation. The judge accepted the HOPO's submission that the Appellant could relocate to the IKR relying on the Respondent's CPIN (Iraq: Internal relocation, civil documentation and returns, version 14.0), October 2023. The Respondent's case was that the Appellant could be returned to Sulaymaniyah or Erbil airport within the IKR. The judge said that there would be "no impediment" to the Appellant bearing in mind he is an ethnic Kurd.
7. The judge found that the Appellant had not shown that the reach of the PMF extends to the IKR or that there is any ongoing interest in him. The judge said that bearing in mind his family had now fled, the land has presumably fallen into the hands of the PMF and there would be no reason why they would maintain an interest in the Appellant nearly three years after his exit. The judge said at paragraph 19 that the Appellant has not shown any reason why residing in the IKR would be unsafe or unduly harsh.
8. The judge considered whether the Appellant would have access to documentation. He referred to SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110. The judge said that the Appellant's evidence was that he had a CSID card and that the agent took it from him. The judge did not accept this. He rejected the Appellant's claim not to be in contact with his family and he concluded that his family is reasonably likely to have the Appellant's CSID, which they could post to him in the UK or meet him with it at the airport. The judge further noticed that the Appellant's evidence was inconsistent in relation to his CSID card. He initially said it was taken from him in Turkey but then he said he left it at home. He said that while there was some attempt to explain the discrepancy the explanation "did nothing but further muddy the waters and leave me with the impression the Appellant was simply not telling the truth".

The Grounds of Appeal

9. The grounds of appeal consist of eight paragraphs. They are not sufficiently particularised and they are difficult to understand. The first paragraph is a bare assertion that the judge made an error. The second paragraph says "it is contended that the findings relating to core aspects of this case are in legal error. Such findings are at paragraphs 10, 11 and 13 essentially". There is no expansion on this. Paragraph 3 says that the finding of the judge at para 10 is "one - dimensional". The following is said
- "The actions of a lawless Militia are viewed through the prism of a presumed consistency of approach. That is not what the Appellant contended. For example, there are many Kurdish families who owned land who have not been troubled by the PMF or Arabs. Such would at face value be inconsistent with what is described as the claimed nature of the PMF."
10. In relation to the inconsistency in the Appellant's evidence relating to visits by the PMF and the findings of the judge at para 11, the grounds say that "the Appellant's evidence has never been that he was present at all seven visits. He details the core three visits as key within his asylum interview."

11. In relation to para 13 of the decision, where the judge took judicial notice, it is said in the grounds that that no questions were asked of the Appellant about his uncle's ability to pay for his journey and that the Appellant's instructions are that his uncle was a wealthy landowner and he could comfortably pay for the required sums. It is said that the finding of the judge at para 13 is not based on the evidence.
12. At para 6 of the grounds it is said that the findings of the judge are inadequate. It is said that the finding of the judge that the Appellant has not shown any policy of "Arabisation" in Kirkuk was "never a specific issue in this case and no questions were asked of the Appellant in this regard". The grounds refer to objective which is said to support the Appellant's case.
13. Paragraph 7 of the grounds states that the judge failed to consider the country guidance in relation to relocation and the relevant factors to be considered, taking into account the Appellant's profile and that he has limited work experience, skills and no connections to the IKR.

The hearing

14. The Appellant had not made an application under Rule 15 2(A) of the 2008 Procedure Rules ; however, at the hearing before me, my attention was drawn to two documents that the Appellant sought to rely on to support the presence of PMF in Kirkuk. These had been emailed to the Tribunal one day before the hearing. They were not admissible for the purpose of deciding whether there is an error of law.

Submissions

15. Before hearing submissions, I drew the parties attention to the decision of the Respondent at page 51 of the composite bundle. Under the heading of external inconsistencies the decision reads as follows:

" ... there is no external information that suggests that the PMF are taking land and giving it to Arabs. You state that their duty is not to allow any Kurdish individuals to remain in the are however external information suggests the district of Kirkuk has a majority Kurdish population, it would be considered reasonable that more Kurds live in that are than Arabs and the PMF cannot make it their duty to rid the area of the Kurdish population"

16. I was keen to identify the " objective evidence" referred to in line nine of para 6 of the grounds. I note that at para 18 of the ASA reference is made to the CPIN issued in January 2021. The parties agreed that this is the Country Policy Information Note Iraq: Sunni Arabs version 3.0 January 2021. At sections 7 and 8 of the CPIN there is reference to Arab militias operating across the contested areas as an arm of the central authorities in Baghdad and committing human rights abuses. There is support that the Arab militias seize property and target Kurdish families. Paragraph 8.1.7 supports that Iran aligned PMF militia groups are committing unlawful violence throughout the country, particularly in ethnically and religiously mixed governorates. Paragraph 8.1.8 supports that PMF and Peshmerga prevented civilians including Sunni Arabs and ethnic and religious minorities from returning to their homes. An example is given of the Office of the UN High Commissioner for Refugees reporting that local armed groups bared returns to Baiji, Salah al-Din I asked Mr Sadiq to distil the grounds

in the light of my observations. His focus was on paragraphs 10 - 11 and 13 of the decision of the First-Tier Tribunal.

17. Mr Sadiq submitted that Arabisation was not an issue raised by the Respondent and that in any event the judge did not take into account the background evidence. Mr Thompson said that the background evidence in the 2021 CPIN does not specifically mention Kirkuk and accordingly there was no error of law.

Error of Law

18. I do not accept that the issue of "Arabisation" was not raised by the Respondent. It clearly was as set out above.
19. There is no reference in the judge's decision to the 2021 CPIN . I do not know whether it was raised in submissions at the hearing. However, there is specific mention of it in the ASA which was before the judge. It is said in the ASA that this evidence supports that Arab militias operate across contested areas as an arm of the central authorities in Baghdad and that they commit human rights abuses and seize property from Kurdish families. I find that the judge did not take into account the 2021 CPIN which was capable of supporting that the PMF seize property. I accept that there is no specific mention of Kirkuk, but para 8.1.7 says "throughout the country" and the areas mentioned in para 8.1.8 are examples only.
20. Taking a broad view of the grounds, I accept that para 6 challenges the credibility findings in the context of what the judge described as the "Arabisation" of Kirkuk and that it is said that the judge did not consider the objective evidence. I am satisfied that there was evidence before the judge that was capable of supporting the Appellant's case which was not taken into account. While I note that the judge made a number of adverse credibility findings, I cannot say with any certainty that had the judge taken into account the evidence in the 2021 CPIN relied on in the ASA, he would have reached the same conclusion. There is no need for me to consider the ground relating to re-location or seek to clarify the remaining issues raised in the grounds.
21. The credibility findings are infected by error. I set aside the decision to dismiss the Appellant's appeal. The appeal is remitted to the First-tier Tribunal (Manchester) to be re-heard. There will be a face to face hearing and a Kurdish interpreter is required.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 November 2024