



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/01729/2016

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 27 April 2017**

Decision Promulgated

On 08 May 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**HAITHAM GHAZI FAISAL AL-ZIAYYIR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors

For the Respondent: Mr C Bates

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 16 December 1975 and is a national of Iraq.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Brookfield promulgated on 22 November 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 22 January 2016 to refuse his protection claim.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Brookfield ("the Judge") dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged which argued:
 - (a) The Judge failed to relate her findings to the background material provided by the Appellant.
 - (b) The Judge failed to apply the concession made in the summary by the Respondent at paragraph 23 of the refusal letter that the Appellant had taken part in demonstrations in Iraq.
 - (c) The Judge applied the wrong standard of proof.
 - (d) The Judge failed to consider and give adequate reasons for finding that the Appellant would not be at risk on return.
 - (e) The Judge's assessment under Article 8 was flawed.
7. On 19 December 2016 First-tier Tribunal Judge Shimmin refused permission to appeal. The application was renewed and Upper Tribunal Judge Perkins gave permission to appeal.
8. There is a Rule 24 Response dated 10 February 2017 in which the Respondent argues that the Judge directed herself appropriately; the Judge made a 'plethora' of adverse credibility findings which are well reasoned and while rejecting the credibility of his account in relation to events in Basra made an alternative finding that the Appellant could relocate to Baghdad.
9. At the hearing I heard submissions from Mr Howard on behalf of the Appellant that who enlarged on the grounds of appeal which he relied on :
10. He acknowledged that he could not pursue the issue in relation to the findings on the death certificate on the basis of a letter that he acknowledges was not before the Judge.

11. The Judge applied the wrong standard of proof in referring at paragraph 10(vi) to finding it 'highly probable' and 'highly improbable.'
12. He argued that the Judge had failed to take into account the wife's evidence and made no findings in relation to it as to the events in issue or to the documentary evidence that supported his account including the police report and the DVD and news report of the demonstration. The Respondent accepted that the Appellant attended the demonstration.
13. On behalf of the Respondent Mr Bates relied on the Rule 24 response and submitted that :
14. The Judge did not take issue with the consistency of the Appellants account with other evidence but rather she did not find the account credible.
15. She found that there was nothing in the evidence to suggest that the Appellant was anything other than a bystander at the demonstration rather than a participant.
16. In relation to the kidnapping she set out well reasoned findings for finding that the claim was incredible.
17. In relation to the police letter he argued that this could not undermine her conclusions: it was a self serving document in that someone reported an incident and the police recorded that report.
18. In reply Mr Howard on behalf of the Appellant submitted that care was required in relation to findings on plausibility in relation to general norms.
19. In relation to the risk on return the Judge had not only failed to take into account the police report but other relevant documentary evidence.

The Law

20. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or

evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

21. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Finding on Material Error

22. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

23. It is a trite observation that a judge need not address in detail every single argument advanced before her, nor consider in isolation every single piece of evidence. The Judge was not required to each piece of documentary evidence contained within the 275 page bundle relied on by the Appellant. She was required to weigh all of the evidence before her, and give clear reasons for her conclusions such that the parties, and in particular the losing party, can understand the reasons for her decision. I am satisfied that in this case the challenge is simply a disagreement with well reasoned findings made by the Judge.

24. In relation to the argument that the Judge had erred in failing to apply the correct standard of proof I find that his challenge is without merit. The Judge at

paragraphs 4-6 sets out the law and the burden and standard of proof in respect of the claim for asylum, humanitarian protection and the ECHR claim. Complaint is made because in her findings while for the vast majority of the decision she uses expressions such as *'I did not find it reasonably likely'* or *'I did not find it credible'* or *'I find that the appellant has failed to establish there is a reasonable degree of likelihood'* at paragraph 10(vi) she states *'I find it highly probable that'* the Appellants father would have reported him missing to the police and at 10(x) having reviewed the evidence in relation to a letter about his attendance at a demonstration in London she found it *'highly improbable'* that the letter was genuinely sent by Shia militia. I find that on any reading of the decision the Judge has always had in mind the appropriate standard of proof. On these two occasions it is clear to me that that she is simply saying that the Appellant has in fact fallen far from meeting the standard of proof as the Appellants account was so wholly lacking in credibility.

25. At paragraph 49 of MA (Somalia) [2010] UKSC 49, it was said that *"Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned"*. The Judge set out in her decision that she heard evidence from the Appellant's wife (paragraph 8(iv)) and at paragraph 10 that she took all of the evidence into account and of course her evidence was that she was present at the alleged kidnapping and the Judge mentions that at paragraph 10(iii). The Judge made adverse credibility findings not on the basis of any discrepancy between the two accounts but on the basis that the account that they both gave was not credible and she sets out at paragraphs 10(ii) and (iii) a number of reasons why she found their account incredible. Those reasons were open to her.

26. In relation to claim in relation to the demonstrations at Basra the Judge accepts all of the background material that there were demonstrations in Basra. There is nothing in that material to suggest that simply being present in an area where a demonstration was taking place would put an applicant at risk. It is again clear from reading the refusal letter as a whole that while the Respondent accepts that the Appellant was *present* at the demonstrations that he was not actively

participating in them. This was the finding made by the Judge at 10(i) and it was a finding that was open to her.

27. In relation to the claim that her Article 8 assessment was inadequate I am satisfied that given the Judges rejection of the Appellants claim and therefore the rejection of his account that he was at risk on return taken together with the short period that the Appellant and his family had lived in the UK her findings at paragraphs 10(xxii) to (xxvi) which includes a consideration of the best interests of the children, s117B of the Nationality Immigration and Asylum Act 2002 and s 55 of the Borders Act 2009 and relevant caselaw is more than adequate.

28. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

29. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

30. The appeal is dismissed.

Signed

Date 7.5.2017

Deputy Upper Tribunal Judge Birrell