



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00362/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
on 21 February 2018**

**Decision and Reasons
Promulgated
on 27 February 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S R B

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms H Cosgrove, of Latta & Co, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Kurdish citizen of Iraq from the KRG, aged 25. The respondent refused his protection claim for reasons explained in her letter dated 23 December 2015.

2. First-tier Tribunal Judge Mozolowski dismissed the appellant's appeal for reasons explained in her decision promulgated on 24 July 2017.
3. The appellant sought permission to appeal to the UT. His grounds submit that the judge speculated unfairly and made findings which no reasonable judge would have made, based on no evidence. Case law on the correct approach to plausibility in asylum cases is cited. Paragraphs 20, 25, 27 and 29 are said to disclose unfair speculation about the actions of Daesh, the security forces of the KRG, and people smugglers, without reference to country or expert evidence.
4. On 30 October 2017 FtT Judge Pooler refused permission, on the view that the grounds showed disagreement on the facts not misdirection in law.
5. The appellant applied to the UT on the same grounds.
6. On 19 December 2017 Deputy UT Judge Pickup observed that the judge might have indulged in speculation at paragraphs 20, 25 and 27, "importing a subjective assessment", and granted permission.
7. A rule 24 response for the SSHD takes the line that the grounds are only disagreement; the judge considered the whole claim; at paragraphs 18 and 19 the judge noted vagueness in the appellant's answers, which has not been challenged; at paragraph 21 the judge was entitled to find it incredible that the appellant would not enquire about an injury to a soldier which was at the core of his claim; and paragraph 25 was sustainable, given findings at paragraph 23 about the appellant's truck.
8. Ms Cosgrove submitted along the lines of the grounds, and further as follows. As to the rule 24 response, paragraph 18 was not based on vagueness and 19 was open to criticism as another speculative plausibility finding. There had been a failure to make an holistic assessment in context of background evidence, such that the case should be remitted for fresh hearing.
9. Mrs O'Brien submitted thus. The rule 24 response was inaccurate about paragraph 18, but the reasoning in that paragraph was sound. The judge's findings were reasonable inferences not unjustified speculation, grounded in rather than detached from the evidence. The decision was based also on rejecting documentary evidence produced by the appellant at paragraphs 30 - 34, for good reasons of which no criticism was made. Paragraphs 17 - 34 together constituted an appropriate assessment of the evidence.
10. I reserved my decision.
11. Decisions are to be read fairly and as a whole.

12. This is a summary of the reasoning in the decision:

Paragraph 18: the appellant said peshmerga uniform was distinguished only by a Kurdish flag sewn on the upper arm, about mobile phone size; that would not be recognisable to someone travelling in the gloom at 60 - 80 kph.

Paragraph 19: it was culturally usual to stop at the roadside to assist in case of need, but why would no-one else stop, how could the appellant know that one of the four soldiers had an injury, and how could the soldiers have arrived at a remote spot with no vehicles in the vicinity?

Paragraph 20: it was the culture to give lifts to those in need, but why would Deash fighters dressed as Peshmerga wish to betray their activities, and why would they not hijack the appellant's vehicle rather than taking the appellant and his companion with them?

Paragraph 21: having stopped, it was not credible the appellant would not have enquired about the injury and its severity while at the roadside, or while driving away.

Paragraphs 22 - 24: improbable account of the making of threats, given the situation in the truck, separating the other three soldiers from the appellant.

Paragraph 25: incredible that at the outset of the alleged ambush the soldiers would bother with giving the appellant an explanation.

Paragraph 26: not accepted that an ambush planned by government forces would be so inefficient as to leave the appellant uninjured.

Paragraph 27: improbability of appellant's escape from the ambush, then running for an hour without hindrance to his friend's house.

Paragraph 28: not likely the appellant's friend within a few hours could have obtained a vast amount of information, to the effect that the appellant was blamed for the incident and the death of his companion.

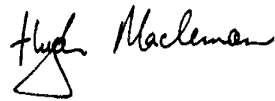
Paragraph 29: not credible the appellant could plan with and pay people smugglers within the next 48 hours.

Paragraph 30: arrest warrant referred to at interview, but not produced for another year; no details on the warrant; no explanation for late production.

Paragraph 31: warrant referred to by the appellant at a time when by his account it was not clear that he could have known of its existence.

Paragraph 32: background evidence of corruption in government; taking all factors into account, warrant not accepted as genuine.

13. It can be seen that the judge did take account of the cultural and political context and did refer to background evidence.
14. The appellant refers to no cultural features or background evidence which should have led the judge to other conclusions, or which show she may have not been entitled to find as she did about the likely behaviour of Daesh, the security forces of the KRG, or people smugglers.
15. The judge's reasons are multiple and specific. Many of them are not criticised at all. None of them are shown to be wrong.
16. The grounds and submissions for the appellant rely on legal generalities and on an incomplete representation of the decision. They resolve into no more than selective disagreement on the facts. They do not show that the decision errs on any point of law.
17. The decision of the First-tier Tribunal shall stand.
18. The FtT made an anonymity direction. The matter was not addressed in the UT. Anonymity is preserved.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

21 February 2018
Upper Tribunal Judge Macleman