



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02983/2017

THE IMMIGRATION ACTS

Heard at Centre City Tower Birmingham
On 21st May 2018

Decision & Reasons Promulgated
On 1st June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

RAHMAN AZIZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M Chaggar of Counsel instructed by Braithe Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Parkes (the judge) of the First-tier Tribunal (the FtT) promulgated on 5th May 2017.
2. The Appellant is an Iraqi citizen born 1st January 1966. On 22nd September 2015 the Appellant made a protection and human rights claim. This was refused on 9th March 2017. The appeal was heard by the FtT on 21st April 2017. The judge found that the Appellant is of Kurdish ethnicity, speaks Kurdish Sorani, that he converted to Islam having been a Yazidi by birth and that he is from Shingal which was in a contested area in Iraq. The judge found that the medical evidence showed the Appellant had a stroke in 2010, and that he requires medication, physiotherapy and some personal care.

3. The judge did not accept that the Appellant had lost contact with his family, finding at paragraph 24 that he was not satisfied that the Appellant was unaware of his family's location or that he was unable to contact them. The judge found at paragraph 27 that the Appellant had not shown that he would be at risk of persecution in Iraq arising from his conversion from Yazidism to Islam. It had not been shown that he could not relocate to the area controlled by the Kurdish Regional Government (the KRG) or that relocation there would be unreasonable. The appeal was dismissed on all grounds.
4. The Appellant thereafter applied for permission to appeal to the Upper Tribunal. Permission to appeal was refused by Judge Mahmood of the FtT on 7th September 2017.
5. The application for permission to appeal was renewed. The Appellant relied upon two grounds which are summarised below. Firstly it was contended that the judge had made a mistake of fact by relying upon a letter from Dr Rasheed dated 20th May 2016, which was authorised by Dr Rasheed on 16th June 2016. The judge noted at paragraph 18 that on the first page of the letter the Appellant told Dr Rasheed that he had lost all contact with his family including his wife and children, but on the second page of the letter the Appellant said that he has a wife and four children "back in Iraq". Having considered this letter the judge found that the Appellant had not shown that his family are not still in Iraq and had not shown they would not be in a position to provide him with the necessary support on return. It was contended that Dr Rasheed had made a mistake in that letter, and this had been proved by a subsequent letter dated 24th April 2017 which confirmed that the Appellant's documentation at the hospital had been reviewed, and it is stated that he has no family in Iraq.
6. The Appellant relied upon E v SSHD and R v SSHD [2004] EWCA Civ 49. This confirms that a mistake of fact giving rise to unfairness can be an error of law. It was submitted that there had been a mistake as to an existing fact, that being the judge finding that Dr Rasheed considered that the Appellant had family in Iraq. It was contended that Dr Rasheed had now clarified that this was a mistake, and the Appellant was not responsible for the error. While the error was not determinative, it clearly had cumulative weight when the judge was considering the totality of the evidence.
7. Secondly it was submitted that the judge had erred by not following the guidance given by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944 in that the judge had not considered whether the Appellant had a CSID or would be able to obtain one reasonably soon after arrival in Iraq.
8. Permission to appeal was granted by Upper Tribunal Judge Blum in the following terms;
 - "1. The FTJ relies, inter alia, on a consultant's medical letter dated 20 May 2016 stating that the Appellant's wife and four children are in Iraq, in rejecting the Appellant's claim that he has no family in Iraq. With reference to a letter from the same consultant, dated 24 April 2017, the grounds contend that the FTJ made a mistake of fact amounting to an error of law (E&R [2004] EWCA Civ 49) as the consultant now states, having reviewed the Appellant's documentation at the hospital, that

the Appellant said he has no family in Mosul and has no knowledge of their whereabouts.

2. It is, at this stage, arguable that there may have been a mistake of fact in respect of the reference in the consultant's letter of 20 May 2016 to the Appellant's family being in Iraq. In determining whether the fact is "established", the Appellant should provide the hospital notes that were considered by the consultant. The Upper Tribunal will also consider whether the Appellant or his representatives were responsible for any mistake.
 3. Permission is additionally granted in respect of the second ground as the existence of family members in Iraq is a relevant factor in determining whether the Appellant is likely to be issued a CSID within a reasonable time."
9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was contended that the judge directed himself appropriately. The Respondent had not seen the further correspondence from Dr Rasheed, and therefore did not accept at this stage that there was a material error of law in the FtT decision.
 10. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

11. Mrs Chaggar applied for an adjournment as the Appellant had not been able to provide the hospital notes considered by the consultant, referred to at paragraph 2 of the grant of permission. In support of the application for an adjournment Mrs Chaggar submitted some copy correspondence from her instructing solicitors, indicating the efforts they had made to obtain the hospital notes. The documents submitted indicate that the solicitors first attempted to contact the hospital on 9th May 2018.
12. If I was prepared to accept that Dr Rasheed had made a mistake of fact, without considering the notes, Mrs Chaggar confirmed there would be no need for an adjournment. I observed that there was reference in the grounds seeking permission to appeal to a further letter from Dr Rashid dated 24th April 2017, and reference was also made to this letter by the judge granting permission. The letter dated 24th April 2017, is not in fact from Dr Rasheed, but is from another consultant Mr D A Badwan which states "I am certain that it will be more accurate to state that Mr Aziz has no knowledge of his family's whereabouts at this present time". Mrs Chaggar also submitted a copy of a letter from her instructing solicitors dated 23rd March 2017, addressed to University Hospitals Coventry and Warwickshire, pointing out that the letter from Dr Rasheed dated 16th June 2016 implied that the Appellant's wife and four children were in Iraq. For clarification, I should point out that the letter dated 16th June 2016 from Dr Rasheed and a letter dated 20th May 2016 are the same letter. The date of the letter is 20th May 2016, and it was authorised on 16th June 2016.
13. Mr Mills opposed the application to adjourn. I was asked to note that this point had initially been raised in the Home Office refusal decision dated 9th March 2017 at paragraph 24. The Appellant had been put on notice that the Respondent did not

accept that he had lost contact with his family, because the letter from Dr Rasheed stated that he had a family and four children in Iraq. That had caused the Appellant's solicitors to send the letter dated 23rd March 2017 asking for clarification.

14. Mr Mills pointed out that Judge Blum's grant of permission was dated 19th October 2017, but the Appellant's solicitors had not made any further attempt to obtain the hospital notes until 9th May 2018.
15. I was asked to find that there would be no purpose in adjourning the hearing, because one of the issues that must be considered, according to E&R v SSHD is whether the Appellant or his representatives had been responsible for the mistake, if a mistake was in fact proved. Mr Mills' point was that it was clear that it was the Appellant's solicitors who had provided the letter from Dr Rasheed and had not made any attempt to inform the judge that there was an issue as to the contents of that letter.
16. I refused the adjournment request. I took the view that a fair hearing could take place without the need for an adjournment. It was open to the parties to make submissions as to whether there had been a mistake of fact, but the most salient issue did appear to me to be whether the Appellant's solicitors had been responsible for the mistake, if there was a mistake.
17. I then heard submissions as to error of law. Mrs Chaggar relied upon the grounds contained within the application for permission to appeal.
18. Mr Mills submitted that it had not been proved that there had been a mistake of fact, and the judge had not erred in law on this point. In any event, it was the Appellant's solicitors who had produced the letter from Dr Rasheed, and included it in the Appellant's bundle to be considered by the judge. The solicitors had not alerted the judge to any issue with that letter. I was asked to find no error of law on this point.
19. Mr Mills accepted that the second ground disclosed an error of law as the judge had not considered whether the Appellant had a CSID or would be able to obtain one reasonably soon after arrival in Iraq. It was however submitted that this was not a material error, because the guidance in AA (Iraq) as amended by the Court of Appeal, indicated that the Appellant would be likely to face a real risk of destitution through not having a CSID, if he did not have family or other members likely to be able to provide means of support. The judge in this case had specifically found that the Appellant would have support from family. Therefore it was submitted that in the absence of any material error of law the decision should stand.
20. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

21. The authority to be followed when considering whether there has been a mistake of fact which amounts to an error of law is E&R v SSHD [2004] EWCA Civ 49. There are four issues to be considered. Firstly there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly the fact or evidence must have been "established", in the sense that it was

uncontentious and objectively verifiable. Thirdly, the Appellant (or his advisors) must not have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning.

22. I do not find that the judge erred in law on this issue. The judge recorded at paragraph 22;

"22. The evidence relating to the Appellant's family is contradictory and incomplete. Dr Rasheed clearly formed the view that his family were still in Iraq and not that they had separated on their way to the UK. Doctors are used to taking histories of their patients and will be aware of the importance of obtaining accurate information because of the possible consequences."

23. The Appellant has now submitted a further letter from another consultant, Mr Badwan dated 24th April 2017, indicating that it would be more accurate to state that the Appellant has no knowledge of his family's whereabouts at the present time. I do not find that a mistake of fact has been established. However, even if I was to accept that there had been a mistake of fact, this does not amount to an error of law, because I conclude that the Appellant's solicitors have been responsible for the mistake.

24. The solicitors were put on notice in the refusal decision dated 9th March 2017 that it was not accepted that the Appellant had lost contact with his family, because of Dr Rasheed's letter dated 16th June 2016. The solicitors quite properly sent a letter dated 23rd March 2017 to University Hospitals Coventry and Warwickshire asking for clarification.

25. However the solicitors then prepared a bundle of documents and included within that bundle Dr Rasheed's letter which indicated that the Appellant had not lost contact with his family. The solicitors did not advise the judge that Dr Rasheed had made a mistake. At the date of the FtT hearing it was not established that Dr Rasheed had made a mistake. There was no application for an adjournment in order to establish that fact.

26. Therefore the fact that the judge placed reliance on Dr Rasheed's letter, is the responsibility of the Appellant and his solicitors, who placed that letter in the bundle to be considered by the judge.

27. With reference to the second ground, I find the judge did err in law. This is because the judge did not follow the guidance given by the Court of Appeal in AA (Iraq). There is a simple explanation for the judge not following that guidance, in that the Court of Appeal decision had not been published when the judge promulgated his decision. The error is that the judge did not consider whether the Appellant had a CSID, or would be able to obtain one reasonably soon after arrival in Iraq. The error is not however material because the guidance in AA (Iraq) indicates that if the Appellant shows that there are no family or other members likely to be able to provide means of support, the Appellant is in general likely to face a real risk of destitution amounting to serious harm, if by the time any funds provided by the Secretary of State to assist return had been exhausted, it is reasonably likely that the Appellant would still have no CSID. In this case the judge found at paragraph 24

“I am not satisfied that the Appellant is unaware of his family’s location or that he is unable to contact them. Given the contents of Dr Rasheed’s letter the Appellant has not shown that his family are not still in Iraq or that they would not be in a position to provide him with the necessary support on his return.”

28. Therefore the judge has made a specific finding that the Appellant would have family likely to be able to provide means of support. The judge went on to conclude at paragraph 27 that the Appellant had not shown that he would be at risk of persecution in Iraq arising from his conversion from Yazidism to Islam. It had not been shown that he could not live in the KRG or that relocation would be unreasonable. It had not been shown that he would not be able to contact his family or that he could not access adequate medical facilities there.
29. I therefore conclude that the challenge made to the FtT decision and reasons does not disclose a material error of law.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The decision is not set aside. The appeal is dismissed.

The FtT did not make an anonymity direction. There has been no request for anonymity made to the Upper Tribunal, and I see no need to make an anonymity direction.

Signed

Date: 21st May 2018

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal is dismissed.

Signed

Date: 21st May 2018

Deputy Upper Tribunal Judge M A Hall