



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05223/2017

THE IMMIGRATION ACTS

Heard at Field House
On 8th May 2018

Decision & Reasons Promulgated
On 13th June 2018

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

A.M.

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant: Ms A Everett, Home Office Presenting Officer
For the respondent: Ms S Akinbolu, Counsel, instructed by Rashid and Rashid,
Solicitors.

DETERMINATION AND REASONS

Introduction

1. The Secretary of State is the appellant in these proceedings. However, for convenience, I will continue to refer to the parties hereinafter as they were in the First tier Tribunal.

2. The appellant is a national of Iraq who made a claim for asylum on 24 January 2008. His claim was refused and his appeal dismissed in a decision promulgated on 10 July 2009.
3. That appeal was heard by First-tier Tribunal Judge Mozolowski. Para 8 of the decision records his claim was that in January 2008 he was working as a taxi driver when he was asked to collect some passengers in Kirkuk and take them to Sulimaniya. En route there was the police checkpoint, the passengers threaten the appellant with guns, and he drove through the checkpoint. The police fired and the occupants were detained. The appellant said that after five days he was released on bail. That night his home was attacked by terrorists and the appellant left the following day.
4. The appellant was cross-examined about the claimed altercation with the police and it was noted there was no reference at screening to him being detained by the police. At paragraph 16 the judge found he had been inconsistent about much of his evidence. His knowledge of Kirkuk was considered superficial. The judge did not believe his account about being stopped by the police and the judge found it incredible that given the claim he would have been released after five days. The account of the attack upon his home was not credible, with no indication being given as to why this happened. The judge concluded at paragraph 29 there was very little in the account that could be believed and concluded he was of no interest to the authorities.
5. On 14 April 2016 he made a further claim. That claim was refused on 23 May 2017. Reference was made to the Devaseelan principle and the previous tribunal decision where the judge found the appellant had been inconsistent about much of his evidence and then very little of his account which could be believed.
6. The appeal in his subsequent claim was heard before Judge of the First tier Tribunal Seifert on the 3rd July 2017. In a decision promulgated on 13 October 2017 the appeal was allowed on asylum grounds. The account was the same as that made earlier, namely that he was a taxi driver from Kirkuk and a customer forced him at gunpoint to drive through a roadblock. The respondent on this occasion accepted he was from Kirkuk. The appellant's evidence to the judge was that after fleeing his home country he contacted his parents who told the police had been to their home looking for him. He was told of an arrest warrant and that this was sent to him by a friend. In his bundle was a warrant dated 17 February 2009. It was described as having been issued by the Supreme Judicial Council in Kirkuk and authorised the arrest of the appellant for an offence under section 4. The envelope which was unstamped was included. At paragraph 26 of the decision the judge referred

to the evidence, including that relating to a warrant, and was satisfied his account was credible.

The Upper Tribunal

7. Permission to appeal was granted on the basis that the judge had not followed the principles in Devaseelan when considering the appeal.
8. There is a rule 24 response which states that the judge was aware of the previous decision and the principle of Devaseelan but had evidence which post dated the decision. It was argued that the judge then looked at the totality and found in favour of the appellant.
9. Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702 gave guidance on the use of an earlier decision. For protection. The first determination stands as an assessment of the claim then made. It is not binding on the second but as an assessment of the matters that were before the first Adjudicator it should be regarded as unquestioned. It may be built upon, and, as a result, the outcome of the hearing before the second Adjudicator may be quite different. It is not the second Adjudicator's role to consider arguments intended to undermine the first determination. In the present appeal the judge clearly has not followed that principle.
10. The claim being advanced is exactly the same as the first. The only difference is that the appellant has produced an arrest warrant. The judge refers to the refusal letter which had raised the Devaseelan point. The judge refers to the previous immigration judge not believing the appellant. The judge then refers to the arrest warrant produced at paragraph 26. The judge then accepts the claim as credible referring to having considered the evidence as a whole, including the warrant and the claim of visits to his home by the police.
11. I find the judge has not demonstrated the Devaseelan principle was applied correctly. The judge does not explain what weight they attached to the previous finding that the appellant was not credible. The about-face is explained by a general comment that the matter has been looked at as a whole, the warrant produced, and the claimed visits to his parents. The judge did not reflect upon the amount of time that had passed between the appellant arriving in the country and the first hearing and the late production of the warrant. The decision does not indicate that the judge afforded the weight that should have been attached to the previous decision and has not provided adequate explanations for reaching the opposite conclusion.

Decision

A material error of law has been demonstrated in the decision of First tier Tribunal Judge Seifert. Consequently, that decision is set aside and the matter remitted to the

First-tier Tribunal for a de novo hearing. That hearing will include consideration of the appellant's appeal in respect of article 8.

Francis J Farrelly
Deputy Upper Tribunal Judge

Date: 12 June 2018

Directions.

1. List for a de novo hearing in the First-tier Tribunal excluding First tier Tribunal Judge Seifert. That hearing will deal with all issues originally raised which will include the appellant's article 8 claims. If the appellant has an appeal in relation to a claim under European law that should be linked.
2. The appeal should be listed at Hatton Cross.
3. A Kurdish Sorani interpreter is required
4. A hearing time of less than two hours and half hours is anticipated.
5. The appellant's representatives should provide updated bundles no later than two weeks before the hearing.

Francis J Farrelly
Deputy Upper Tribunal Judge

Date: 12 June 2018