In the Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07024/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On Tuesday, 16 October 2018	**On Wednesday, 24 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR AWDER HASID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Unrepresented
For the Respondent: MR TARLOW, a Home Office presenting officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iraq who is believed to have been born on first July of 1998. He appeals to the Upper Tribunal (UT) with the permission of First-tier Tribunal Judge Alis given on 4 September 2018 against the decision of Judge BROE (the immigration judge) in that tribunal (the FTT) to refuse his appeal against the respondent's decision to refuse his application for international humanitarian protection and asylum.

2. In granting permission Judge Alis identified that the immigration judge might have decided the matter on immaterial matters rather than considering the contents of the appellant's skeleton argument. Furthermore, it was at least arguable that the immigration judge had not made specific findings on matters set out in paragraph 3 of the grounds of appeal to this tribunal. Arguably, the immigration judge should have dealt with most of the matters in paragraph 3 of those grounds of appeal whereas in fact he had only dealt with certain matters such as age and nationality. The findings in paragraph 29 of the decision were identified as potentially particularly relevant as they related to the appellant's risk on return to Iraq. The immigration judge's findings were arguably "flawed", Judge Alis thought.

The appellant's asylum claim

3. The appellant entered the UK on 20 February 2016 and claimed asylum two days later. The appellant claims to be of Kurdish ethnicity. The basis of his claim was that his father had been a member of the Baath party – Saddam Hussein's own party. Following the US led invasion in 2003 a widespread attempt to side-line politicians of that background had occurred. The appellant claimed to fear for personal safety and therefore fled to the UK. However, he failed to attend an asylum interview on 14 August 2016. He made submissions on 14 December 2016 but the respondent was not persuaded that he was genuinely in need of international humanitarian protection or qualified as a refugee. Accordingly, on 30th of April 2018 the respondent gave notice of her decision to refuse asylum and the human rights claim and reject the appellant's claim for humanitarian protection.

4. The appellant appealed that decision to the First-tier Tribunal (FTT) by notice of appeal on 4 June 2018.

The appeal hearings

5. The appellant claimed in the FTT that not only was he a minor deserving of protection but also that returning him to Iran would place the UK in breach of its obligations under the Refugee Convention. He provided a witness statement written in English in support. He claimed that as a Sunni Muslim in a largely SHIA Muslim state. His father had been involved with the Baath party.

6. The appellant attended the hearing at the U T unrepresented and without an interpreter. It appears that he did not request such an interpreter. An interpreter in Sorani Kurdish had to be booked at short notice by HMCTS. Mr Aziz was able to attend the UT to enable the appeal to proceed. However, the hearing did not begin until 14.40. It finished at approximately 15.15.

7. I tried to explain to the appellant the nature of his appeal, although he expressed unfamiliarity with the contents of the decision of the FTT which

he had been unable to read. I did my best to set out the key points that arose from that document to give the appellant an opportunity to comment on them. He believed that the hearing below had not been conducted properly as the judge and not let him finish certain answers. He also criticised the respondent's interviewer who, he said, had not necessarily recorded his answers accurately.

8. Mr Tarlow for the respondent said that there was no material error but later changed his mind and stated that it was possible to reach the view that if matters had not been fully put to the appellant at the hearing or properly analysed in the decision the matter would need to be remitted to the FTT for a *de novo* hearing. I indicated to Mr Tarlow that I would need to consider carefully the contents of the file and what had transpired at the hearing before I took the view, first, that there was an error of law based on the evidence given and the submissions made before the FTT, and, secondly, if there were such an error, whether it was necessary to set aside the decision. Thirdly, it would be necessary to decide whether, if there was such an error, the matter could be disposed of in the UT or had to be remitted to the FTT. There was generally common ground that some form of additional hearing would be needed if the current fact findings were found to be inadequate or incomplete.

9. At the end of the hearing before the UT I reserved my decision which I will later give.

Discussion

10. Ground 3 of the present grounds pose the following questions:

    (i) What was the appellant's nationality?

    (ii) What was his age?

    (iii) Whether A's father was a Baath party member who worked for intelligence?

    And, if so:

    (iv) Did he provide intelligence to the Sadam-led government in relation to the activities of Shias and Kurds?

    (v) Having regard to the above, was it plausible that the appellant's father would remain hidden from the present Shia led government?

    (vi) Was it plausible or accurate atht ISIS within Iraq is a compilation of ex Baathists?

    (vii) Did ISIS force the appellant's father to fight for ISIS?

    And, if so:

    (viii) Whether there was a real risk of harm to A from the Shia government and or anyone else?

    (ix) Is it feasible to return the appellant?

(x) What about his alleged lack of documentation?

11. Judge Alis said that findings should have been made on “most” of the matters set out above.

12. The burden rested on the appellant to show that he qualified as a refugee within the meaning of the U N Convention relating to the Status of Refugees 1951 (Refugee Convention) or that he would be subject to death or face inhuman or degrading treatment within the meaning of articles 2 and 3 of the European Convention on Human Rights 1950 (ECHR). The standard of proof is a low one – was the appellant able to establish his case to a reasonable degree of likelihood, or whether there were substantial grounds for believing his claim. A person is entitled to international humanitarian protection under paragraph 339C of the Immigration Rules where there are substantial grounds for believing that there is a real risk of serious harm to the appellant on return to his own country, in this case Iraq.

13. The appellant gave oral evidence before the FTT and was cross-examined. He also gave a full account of his claim in interview. He has not criticised the manner of his representation. I am entitled to look critically at the conduct of the hearing but can find nothing untoward in the manner of the conduct of the hearing. If the immigration judge failed to allow the appellant to answer any point, objection should have been made and it was not. I am not sure that Judge Alis had an opportunity to read fully the notes of the hearing but these seem to suggest that the points in the appellant’s skeleton argument were fully considered. This tends to dispose of point 2 made by Judge Alis in his grant of permission.

14. Adverse credibility points should only be taken by a judge where justified and based on conflicts on the evidence/inconsistencies rather than basing such an assessment merely on the appellant’s demeanour. Implausible and inconsistent evidence is very much the domain of the judge who hears or reads and weighs up that evidence.

15. Here the immigration judge found that there were inconsistencies which he identified (paragraph 25). Having listed a number of adverse credibility points, the immigration judge concluded that the appellant’s account could not be trusted. He referred to the appropriate case law at pargaprgh 28 of his decision and fully considered the risk on return, this included consideration of the plausibility of the appellant returning to the IKR.

16. Turning to the specific questions raised in paragraph 3 of the grounds of appeal to the U T referred to above:

(i) The respondent doubted A’s nationality at paragraph 19 of the refusal but at paragraph 27 the immigration judge accepted that the appellant was an Iraqi Kurd and there is no cross appeal against that finding.

(ii) The appellant's evidence of his age was not accepted either by the local authority, who assessed it under the principles in **R (B) v Merton London Borough Council [2003] EWHC 1689 (Admin),** or by the respondent who interviewed him. This was an adverse credibility point that the immigration judge was entitled to take into account when judging whether to accept the appellant's other evidence. The adverse credibility findings in relation to the appellant's age and a number of other parts of his evidence formed part the immigration judge's overall assessment of the case.

(iii) Whether A's father was a Baath party member who worked for intelligence? The appellant claimed that his father was a member of the Baath party and as such they had not been unable to obtain proper id cards after Sadam's fall as "people would have been able to work out (that he and his family were) former Baathists". The notes of hearing disclose that it lasted from 10.15 until 11.25 and that the appellant was cross examined at length about his statement including this part of his statement. Having set out fully the nature of the appellant's claim the immigration judge, implicitly perhaps, did not accept the appellant's father's Baath party membership. The point about the ID card was that his statement summarised above was inconsistent with his interview where he said his father had not told him whether or not he was a member of a particular tribe.

(iv) Did he provide intelligence to the Sadam-led government? There were many features of the appellant's case which were unsatisfactory. If the appellant's father really was a senior figure in the Baath regime, as the appellant had claimed, I find it hard to accept that the appellant would have been brought up illiterate and in some poverty as he claimed, but leaving that on one side, as the immigration judge said at paragraph 26, the appellant provided "no evidence of his father's notoriety". Overall it seems highly unlikely that the appellant's father provided intelligence to the former regime. If the immigration judge did not spell this out in his decision he did not have to do so.

(v) Was it plausible that the appellant's father would remain hidden from the present Shia-led government? The immigration judge's reasons for rejecting this evidence are recorded principally at paragraph 26 where he said that he did not find it credible that the appellant's father would be able to remain living in the same area for "so many years" without being detected if, as the appellant had claimed, his father was a member of the Baath party and one of Sadam's executioners.

(vi) Was it plausible and or accurate that ISIS within Iraq is a compilation of ex Baathists? The immigration judge dealt with this issue by finding at paragraph 26 that the appellant's father would not have chosen to become involved with the ISIS organisation if he was a former member of the Baath party as it would have been too dangerous to do so.

(vii) Did ISIS force the appellant's father to fight for ISIS? The immigration judge rejected this evidence because, as he said at paragraph 26, this would only bring him to the attention of the authorities.

(viii) Whether there was a real risk of harm to A from the Shia government and/or anyone else? The immigration judge's consideration of the issue was brief. He said at paragraph 29 of his decision that the appellant "might face risk" on return but because of the appellant's account of the reasons for his departure were not credible it was not accepted he was at risk. The immigration judge also explained that the appellant would be returned to Bagdad, from where he would be able to travel to the IKR safely and it had not been suggested by the appellant or his representatives that this was not a course open to him. The immigration judge also made the point that the appellant had relatives who would assist him in providing a safe place for him to go. The rejection of the appellant's claim to having "no relatives who could assist him in Iraq" flowed from the judge's overall rejection of the credibility of the appellant's evidence. The immigration judge's conclusion in this respect was supported to some extent by the country guidance case law recited at paragraph 28 of his decision. This tends to indicate that return to Bagdad may be safely achieved subject to exceptions. From there it is possible for a Kurd to travel to the IKR. The issue of documentation for returnees is not straightforward but I understand the immigration judge to be saying that the appellant had not left the country illegally and that he would be able to obtain ID documents as nothing adverse would be known about him.

Conclusions

17. These were findings the immigration judge was entitled to come to on the evidence. I can find nothing in the account of the proceedings to suggest that the appellant was not given a full opportunity to present his case with the aid of competent counsel. If the analysis is short on detail and there are matters that have been insufficiently dealt with, they are not material to the adverse view of the appellant's credibility which the judge came to. In the light of these findings and conclusions, there is no material error of law in the decision of the FtT.

Notice of Decision

The appeal is /dismissed on asylum grounds/ humanitarian protection grounds / human rights grounds/ under the immigration rules

No anonymity direction is made.

Signed Date 18 October 2018

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date 18th October 2018
Deputy Upper Tribunal Judge Hanbury