Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04155/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre on 4 September 2019.
Typed, corrected, signed and sent to promulgation on 10th September 2019.

Decision & Reasons Promulgated
On 12 September 2019

Before

Upper Tribunal Judge Chalkley

Between

MARIWAN KHASRAW
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: *Ms R Evans, Solicitor, WTB Solicitors*
For the Respondent: *Mr McVeety, Senior Home Office Presenting Officer*

DECISION AND REASONS

1. The appellant is a citizen of Iraq of Kurdish ethnicity who was born there on 1 June 1982. He travelled from Iraq in May 2018 to Turkey and then from Turkey he travelled by sea to Greece. His fingerprints were taken in Greece, but he did not claim asylum there. He then travelled to Italy where he was detained and again fingerprinted but again did not claim asylum. He then arrived in the United Kingdom on 3 August, 2018 when he did claim asylum.

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2. The respondent concluded that the appellant was not entitled to asylum and refused his claim on 15 April 2019 as a result of which the appellant appealed to the First-tier Tribunal.

3. His appeal was heard in Manchester on 7 June this year by First-tier Tribunal Judge Andrew Davies. The basis of the appellant's claim was set out at paragraphs 5 and 6 of the judge's determination and is as follows:-

> "5. The basis of the claim is well-founded fear of the Iraqi anti-terror police. The appellant worked as a bus driver and claims that on more than ten occasions he was hired by the Iraqi government to transport prisoners to and from Chamchamal Prison, Sulaymaniyah. On the appellant's account, a fight broke out between the family of Kadir Abdulla Kwekha Mubarek's family and the anti-terror forces outside the prison Mubarek's brother was killed and others were injured. The appellant claims that the family are related to his wife [omitted] the appellant stated that he fled as soon as fighting broke out and saw nothing.
>
> 6. According to the appellant, in April, 2018, the anti-terror forces contacted him and asked him to be a witness in the trial related to the prison shooting. He was warned to lie in court and state that the victim died from a bullet fired by his own side and not by the anti-terror forces. They paid the sum of $5,000 to him and warned him that he would be killed if he did not co-operate. He signed a witness statement but was not given a copy. However, a few days later the appellant was approached by the Mubarek family who threatened to kill him if he did not contact the court and retract his evidence. The appellant fled Iraq shortly afterwards."

4. The judge found that the appellant was generally consistent in his account of occasionally transferring prisoners and also that during transfers there would be several security officers on the bus and there was an escort by security vehicles both preceding and following the bus. The judge found that such an arrangement had appeared to him to be entirely credible. The judge said at paragraph 36,

> "The incident at the prison occurred in January 2018. The appellant claimed that his problems started from that date. There is no dispute that an incident occurred at the prison in January 2018. The appellant did not witness what happened. He heard gunshots and fled immediately. In the course of his oral evidence the appellant stated that he was outside the prison at the time of the incident. There was a lot of shooting and he ran away immediately. He did not know whether there were other civilians around. He did not know how many people were present. During the asylum interview on the other hand he stated that he was the only civilian around which is why he was approached."

5. The judge recorded that there was no dispute about the incident which was reported in articles in the appellant's bundle. The judge found, at paragraph 41 of the determination, that the appellant from his own account did not witness the battle, because he fled as soon as he heard gunfire and was up to 50 metres away. According to the appellant he was not approached for more than three months after the incident, by which time the matter had already gone to court. The judge accepted that the proceedings may have continued. According to the press report, the dead man's brother had confirmed that the matter was subject to an appeal in court and the judge also accepted that the dead man's brother made veiled references to a potential blood feud in his remarks directed towards the family of Talabani.

6. The judge recorded that the appellant had no knowledge of any problems being caused by his family in Iraq by either of the parties and he did not know whether a trial had taken place. The judge recorded that there was no dispute about the facts, namely that the heavily armed security forces were overpowered by a smaller group and that one man was killed and several others injured. The dispute, the judge said, appeared more to concern the cause of the problem in the first place, namely the reason for the transfer of prisoners, property issues and disputes within the PUK. The judge recorded at paragraph 45 of the determination that although the appellant has produced press reports relating to the incident and comments on it, he has not produced any further reports relating to the outcome of any court proceedings. The judge did note at paragraph 46 of the determination that there appeared to be no dispute about the cause of death.

7. The article at page 29 of the appellant's bundle referred to an attack by a group of armed men on a prisoner transfer. The forces responded and hence the death occurred of one person with several injured. There was no denial or any claim that the man was killed by his own group. For his part, the judge could see no reason why the special forces would arrange a cover up more than three months later with the assistance of someone who was some 500 metres away and who had fled immediately he heard gunfire and who did not witness the clash as it unfolded. He also found that the appellant had not established that he was approached and bribed as he claimed.

8. If the judge was wrong in that conclusion, he found in the alternative that the appellant would in any event have been able to seek the protection of what were clearly powerful and well-armed special forces if they were indeed prepared to bribe the appellant to give false evidence. The appellant denied that there would have been protection available to him and stated that the family of the dead man was powerful enough to take on the anti-terrorist security forces the judge rejected the claim. He noted that the press reports confirm the superiority that would be expected of special anti-terror forces no doubt trained to deal with threats from the likes of ISIS.

9. The judge dismissed the appellant's appeal. He was not satisfied that the appellant would be at any real risk of serious harm on return to the Iraqi Kurdish region from either parties that he now claims to fear. He considered the question of the return of the appellant and concluded that the appellant would have no difficulties in obtaining a CSID card with the help of male members of his family in the IKR. The appellant knows where his family live and he and they were resident in the IKR. He was satisfied that the appellant would be able to return directly to the IKR without difficulty and dismissed the appellant's claim.

10. It was asserted in grounds relied upon by Ms Evans, that the judge erred by making findings based on a misunderstanding of the facts and that the reasons given by the judge for not accepting the appellant's account of subsequent events after the battle at the prison, was based on an incorrect interpretation of the evidence and a misunderstanding of the facts. The grounds pointed out that there was no dispute as to the facts of the battle which took place outside the prison, contrary to what the

judge said at paragraphs 45 and 46. It asserted that the evidence had been misinterpreted by the judge the special forces had not claimed responsibility for the death of the individual or the injury of the others who suffered injuries in the battle and it was claimed that the findings of the judge at paragraphs 45 and 46 were not borne out of the evidence and are contrary to the evidence before the Tribunal.

11. The second challenge suggested that the findings of the judge at paragraph 48 of the determination that the appellant could realistically have sought protection from the special forces was not based on any evidence, but appears to have been based on an unfounded assumption of the judge. The third challenge asserted that the judge appeared to be calling for corroboration where at paragraph 49 the judge says in relation to the court case,

> "I have seen no evidence produced as to how the matter played out and I am satisfied that given the press extracts relied upon by the appellant that there was some interest in this issue and the positions taken by the protagonists. I am satisfied that there would have been further publicity as the case reached its conclusion but nothing has been put forward."

12. Ms Evans argued that that was an error of law because the judge was calling for corroboration and I deal with that point first.

13. I am satisfied that the judge was not calling for corroboration. He noted the press articles produced by the appellant in relation to the battle itself and it was reasonable to assume that if the matter was subsequently litigated upon in the courts there would have been further publicity as the case reached its conclusion. The judge was entitled to say, as was the case, that no further evidence was produced; that was a statement of fact.

14. For the respondent Mr McVeety submitted that this was obviously a high-profile case the courts in Iraq had apparently opened a case but the appellant had not actually seen anything. There has since been no attempt by either party to contact the appellant via his family. There are clearly lawyers in Iraq and a functioning legal system. If the appellant were to attend court and claimed that he witnessed special forces killing someone, he would soon be exposed as a liar because he admitted that he had not actually seen anything and was some 500 metres away. That is quite apart, of course, from the fact that his evidence would be contradicted by forensic evidence. Mr McVeety suggested that the judge had not erred in law. The appellant had received the bribe according to him and only disappeared after its payment to him. It was only then that he was approached by the victim's family and following that, that he fled. Ms Evans suggested that there was an error in the reason given as to why the claim lacks plausibility in that the appellant was asked to give full testimony. But what the judge said at paragraph 47 was that he could see no reason why the special forces would arrange to cover up more than three months after the event with the assistance of someone who was 500 metres away and who had fled immediately he heard gunfire and did not actually witness the clash.

15. I agree with Mr McVeety that this does not disclose any error of law. Ms Evans suggested that there could be any number of reasons why they wanted the

appellant's testimony. She said that the judge said in paragraph 46 that there was no dispute as to the facts surrounding the death of the deceased, but the reports are silent as to who was responsible for the killing. The security forces had not denied that they were responsible, equally, but there was no admission by them either. The reports were silent as to who was responsible. Mr McVeety did not believe there to be any inconsistency in the reports of the two attacks the security forces neither denied nor admitted killing anyone. There was a dispute as to who started the event, but he suggested that the judge was correct to ask why the security forces would want to blackmail the appellant when he had denied witnessing the battle. He had fled as soon as he heard gunfire and was some 500 metres away. According to the appellant the security forces wanted the appellant to say that they had not killed the person who died, but when the articles are looked at, it is clear that they had made no denial of being responsible for the man's death. Ms Evans asked me to bear in mind that the reports were silent as to who was responsible, but the security forces do not deny that they are responsible. Finally, she submitted that there was no evidence that the security forces would offer the appellant any protection.

16. I have concluded that the determination does not disclose any material error on a point of law. I am satisfied that by what the judge said at paragraph 49, he was not seeking evidence to corroborate the appellant's account, he was merely pointing out that there was no such evidence in relation to the court hearing. According to the appellant he had been paid a $5,000 bribe to give false evidence and he signed a statement which was presumably submitted to the court. It was that which prompted the dead man's family to approach the appellant and seek to have its retraction under fear of death. If the appellant genuinely had been approached by the security forces and taken $5,000 of their money and made a statement then it would have been in their interests to arrange the appellant's safety. I do not believe that the judge was wrong to suggest that the appellant could have sought the protection of the security forces given that they had been prepared to bribe the appellant to give false evidence. I do not believe that the judge has misunderstood the evidence at all. There was no dispute in the articles adduced on behalf of the appellant as to the shooting and the result of the attack. It was not admitted that the security forces had killed a man and injured several others, but neither was it denied that they had if in fact these men were attacking the security forces then one would have expected the security forces to have returned force. The judge was correct in saying he could see no reason why the special forces would arrange a cover up more than three months after the event and if they were going to arrange a coverup why on earth would they do it with someone who on his own evidence was some 500 metres away and who fled immediately he heard gunfire and had not witnessed the clash as it unfolded. I believe that the judge was entitled to make the findings he did and **I uphold his determination**. The appellant's appeal is dismissed on asylum grounds, on humanitarian protection grounds and on human rights grounds.

Richard Chalkley

Upper Tribunal Judge Chalkley

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley Date 10 September 2019