



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05635/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 2nd May 2019

Decision and Reasons Promulgated
On 05th June 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

M H A S H
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr F Farhat of Gulbenkian Andonian Solicitors

For the respondent: Mr C Bates, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq, born in February 1988. He lived in Baghdad and is a Sunni Muslim. He made a claim for protection on 11 February 2016 on the basis he would be at risk if returned by reason of imputed political opinion. His wife and their 2 children were dependent upon his claim.
2. There were various strands to his claim. The primary claim was that he worked for the government and this placed him at risk

from terrorist groups; in particular, he would be targeted by ISIS. He also said he would be at risk because of his wife's work as a hairdresser. Finally, he said he was at risk because of his religion.

3. His claim was rejected by the respondent and his appeal before First-tier Tribunal Judge Andrew at Birmingham on 8 October 2018 was unsuccessful.
4. Permission to appeal to the Upper Tribunal has been granted on the basis it was arguable the judge failed to properly take into account a report provided by a country expert, Dr George.
5. A DVD was shown of a car bomb exploding. The judge said this did not help because the appellant could not be linked to what was shown. The judge accepted that in the course of his work as a heating engineer he was allowed to enter government buildings to do maintenance work. Reference is made to the report from Dr George and the decision of BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC). The judge accepted an attempted kidnapping of the appellant happened but it was not established ICIS were behind it. The judge also accepted that his work colleague Safaa died on 18 August 2012 in a bomb explosion. However, the cause behind this was not identified.

The Upper Tribunal

6. Mr Farhat said that the appellant's case was that he was at risk because of his employment and that a work colleague, Mr Safaa had been killed for similar reasons. He said the judge's findings were contained at paragraph 18 through to 30 of the decision in relation to the risk from ISIS. Paragraph 30 onwards deal with his religious beliefs and his wife's hairdressing business.
7. He said that at paragraph 18,19 and 20 it was accepted that the appellant was employed to carry out work on behalf of the government. At paragraph 21 the judge set out the respondent's guidance and BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC). A collaborator was not susceptible to a precise definition. At paragraph 22 the judge indicated the respondent's guidance accepts ISIS are active and capable of carrying out attacks in Baghdad. At paragraph 23 the judge refers to the report from Dr George who found that if the appellant's account were believed that he would be at risk of being targeted by ISIS because of his work for the government. Dr George had found his account plausible.
8. At paragraph 26 the judge accepted the appellant was the victim of a kidnapping. At paragraph 28 and 29 the judge accepted he worked with Mr Safaa who was killed in an explosion on 18th

August 2012. Thus, Mr Farhat said the central aspects of his claim were accepted. He then suggested the judge did an about face at paragraph 30 where she said she only had the appellant's word that Mr. Safaa was targeted because of his work and that the appellant was similarly at risk. He said the surrounding circumstances had been accepted and then there were the appellant's assertions as to the cause. Mr Farhat said the judge in fact did not make a negative credibility finding.

9. I was referred to paragraph 25 where the judge referred to Dr George commenting upon a letter said to be from ISIS. The judge said the report from Dr George in this respect did not support the appellant's claims. However, Mr Farhat said this was a mischaracterisation of what was said in the report. At page 86 of the appeal bundle Dr George said he was surprised that the term Islamic State of Iraq and Syria is used in a letter dated 2016 because by June 2014 ISIS had changed their name simply to Islamic State. However, Dr George does not otherwise dispute the letter's format or content. At paragraph 121 the report concludes by stating that the appellant would be at risk. Mr Farhat suggested there could be any number of reasons why an old name was used on the notepaper; for instance, because old surplus notepaper was used.
10. He suggested that the judge, having accept the central aspects of the claim, rejected it at paragraph 34 for inadequate reasons. Mr Farhat accepted that the claims relating to religion and his wife's occupation were peripheral matters which he was not pursuing in argument. The judge had commented that a witness had not attended to confirm her statement. However, Mr Farhat explained on a number of occasions when she had attended the appeal which had adjourned. She could not attend on the last occasion because of childminding commitments.
11. He said there are other aspects of the appellant statement which were not referred to by the judge which could have been relevant. For instance, it said Mr Safaa used a car which could have identified him as working for the government. He also stated that he was to have travelled with Mr Safaa but did not because he was off work and his son was born that day.
12. Mr Bates said the judge had accepted that Dr George was an expert. The expert's role is to assess whether what the appellant says is plausible and the credibility findings are a matter for the judge. The expert commented on key areas which the judge had regard to . He made the point that the expert at paragraph 121 was accepting the risk for the appellant was based upon his testimony. The expert was indicating that if the tribunal found the appellant to be credible then there were risk factors as set out.

13. At paragraph 119 the expert dealt with the letter submitted, said to be from ISIS. The letter was a photocopy which meant the expert could not categorically say it was genuine. The expert considered the format and referred to the use of the old title used by ISIS. Referring Mr Farhat's comment that there could be a variety of explanations Mr Bates question why, it is were so, was the expert be surprised. The expert did not say, for instance, that within his knowledge they continue to use the old name. He submitted the judge was entitled to find a clear inconsistency arising.
14. At paragraph 119 Dr George said it was plausible that someone who was working as a contractor for a government department may be at risk from ISIS at that time. However, the expert expressed surprise that ISIS would so persistently pursue the appellant, bearing in mind he was someone with a low profile. He was an air-conditioning engineer working as a subcontractor. He was by no means a political or security -related target. Furthermore, he had ceased that type of work since mid-2012. The expert was expressing surprise that there would be a letter in 2016 threatening the appellant. The judge looked at these comments at paragraph 24 and 25 of the decision and concluded they did not support the appellant's claim.
15. Mr Bates submitted that the report was not a ringing endorsement of the appellant's claim and that the judge was entitled to take on board the expert's comments in this context. He submitted the judge was not departing from what the expert said at para 121 of the report because this was premised upon the claim being accepted.
16. The judge had accepted the appellant worked as a subcontractor and that Mr Safaa died in an explosion but it was not known if he was specifically targeted. He may have been killed simply because he was in a car which could be associated with the government but this would be speculation. At paragraph 25 the judge asked whether it would be credible that ISIS would have such an ongoing interest in the appellant and whether a risk existed at the time of hearing in 2018.
17. The acceptance of the kidnapping claim did not necessarily advance the appellant's claim. BA (Returns to Baghdad) Iraq demonstrated that kidnappings occurred in Iraq and the expert touched upon this in the report, stating people are kidnapped for a variety of reasons. The judge was simply making the point that this was not determinative of him being targeted by ISIS.
18. At paragraph 27 the judge went on to consider the other aspects of the claim. In terms of the DVD evidence the judge was simply

pointing out that this was not a continuous film and the judge could not say it was the same person.

19. The judge also considered his religion and his wife's occupation. None of these were sufficient to tip the balance in the appellant's favour. The country guidance decision had confirmed that being a Sunni Arab in itself was not sufficient to establish a risk of persecution. Regarding the witness who did not attend, the judge was not being perverse or irrational in placing limited weight on her statement. Mr Bates made the point that the judge was always going to observe that their evidence could not be tested by cross-examination. Had the appellant's representatives thought this was a significant issue they could have applied for an adjournment.

Conclusions

20. The appellant made a claim for protection and set out details of it. In support of that claim he submitted various pieces of evidence. These included a DVD of the outside of a house and subsequently, of an explosion involving a car. A country expert, Dr George, was engaged on his behalf. Part of the evidence he submitted was a letter said to be from ISIS.
21. It is the judge's task to evaluate the claim and determine if it has been established on the low standard of proof applicable. The respondent in refusing the claim had not accepted the account was credible. The judge rejected the claim.
22. I have considered the points made by Mr Farhat and the response of Mr Bates. It is my conclusion that no material error of law has been established. The various arguments are set out above. I find the argument advanced by Mr Bates adequately address the challenges. Ultimately, it is my conclusion that Mr Farhat's points amount to a disagreement with the outcome. I can find no error in the judicial process.
23. The challenge specifically has been in relation to how the judge treated the expert evidence of Dr George. As Mr Bates pointed out the expert can set out the country background and comment on the plausibility of the account. The fact an account is consistent with what takes place in a country is part of the assessment process. However, it does not follow that the account necessarily is true. It is for the judge to make that decision. Provided the judge has correctly approach that task it is not for an appellant court to interfere with the fact-finding exercise.
24. Dr George sets out at paragraph 29 the documents he was provided with. He had the appellant's interview and his detailed

statement as well as his wife's statement. The expert also had the respondent's detailed reasons for refusal. The expert was also provided with material by the appellant, including the DVD of a news report. Dr George is an expert on Iraq and had adequate information to provide a report. The expert is commenting on the consistency of the claim with the country situation as well as on the specific evidence submitted in support. The expert has approached his task in a professional way and shown an appreciation for the distinction between areas within his expertise and matters which are for the judge.

25. As Mr Bates points out the report is not a ringing endorsement of the claim. The expert expresses 'surprise' and the evidence being 'curious' in relation to two significant issues. The expert comments upon the fact the old title of ISIS is used in the threatening note submitted on behalf of the appellant. Furthermore, he expresses surprise at the apparent persistence in the targeting of the appellant over a number of years, particularly as he was not a key political or security target and had ceased the employment he claimed made him a target by mid-2012. The expert again appreciates the judicial task involved and prefaces his comments by stating he does not consider the appellant's testimony to be implausible. However, the reference to him being 'surprised' at their persistence and the use of ISIS on the notepaper as 'curious' can be read as a 'but'. Mr Bates makes the valid point that he is an expert and could have responded, for instance, by stating that in his experience ISIS do use their old title and can be tenacious in their pursuit. He does not say this.
26. In summary, I do not find any material error of law disclosed in the judge's treatment of the expert report. The judge has properly considered the report and is highlighted the comments made at paragraphs 119 and 120 which tell against the claim.
27. Mr Farhat argued that what the judge accepted appear to be leading to a favourable conclusion for the appellant. There was the acceptance of his employment. There was the acceptance of the kidnapping. There was acknowledgement of the explosion telling a work colleague. However these were matters setting the scene. They did not inevitably lead to a conclusion favourable to the appellant's claim. The aspects accepted did not inevitably create a nexus.
28. The judge has properly evaluated the various issues and evidence submitted and it was a matter for the judge to determine where the truth lay. Claims can be consistent with country information and therefore plausible. Obviously however this does not make them true. It is a matter for the judge to evaluate the evidence and I can find no material error of law

established in the present instance. The other issues have been treated as peripheral and I find no error established elsewhere. Overall, the decision reflects the care taken and the balanced approach of the judge

Decision

No material error of law has been established in the decision of First-tier Tribunal Judge Andrew. Consequently, that decision dismissing the appeal shall stand.

Deputy Upper Tribunal Judge Farrelly

Dated 04 June 2019