



IAC-AH-DN-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/05648/2018

THE IMMIGRATION ACTS

Heard at Field House
On 22nd November 2018

Decision & Reasons Promulgated
On 9th January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[I I]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Moran (Legal Representative)

For the Respondent: Mr S Whitwell (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This was an appeal against the determination of First-tier Tribunal Judge O'Keeffe, promulgated on 28th August 2018, following a hearing at Hatton Cross on 19th July and 8th August 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on [~] 1968. He appealed against the decision of the Respondent dated 18th April 2018, refusing his application for asylum and for humanitarian protection under paragraph 329C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he is a Sunni Muslim, and a successful businessman, from Iraq. He had lent money to a person called Ihsan, the money had not been paid back to him, and the Appellant had lodged a complaint through the courts. His son was arrested and released by the police. However, the Appellant then found out that the son had links to the Shia militia known as the "Asab Aha Al Haw" (AAH). They had control over the Iraqi authorities and the security services. In particular, his son had links to the commander in AAH, called Abu Namir. Subsequently, the Appellant was kidnapped on 2nd March 2017. He was accused of being a collaborator, and of selling information to the British, and Abu Namir questioned the Appellant. The Appellant was beaten up, and his captors constantly abused him about his Sunni sect. The Appellant was told that he would be released if he paid US\$500,000. He said he did not have that sort of money. He was given his mobile phone and he called his friend by the name Ismael [K]. The phone was then taken off the Appellant. His friend, Ismael, then went on to pay £300,000, which had successfully been negotiated, as the amount of the ransom. The Appellant was released he stayed with Ismael for a week and then stayed with various friends. On 15th March 2017, the Appellant transferred £150,000 into Ismael's account. On 20th March 2017, the Appellant went to a celebratory lunch due to having his returned out of captivity successfully. In order to repay his friend, Ismael, the Appellant subsequently sold his share of a Dubai business.
4. The Appellant came to the UK on 18th September 2017 and planned to return to Iraq on 27th September 2017. However, he was subsequently contacted by his lawyer and told that he should not return home because the AAH had kidnapped his brother. Later he learnt that his brother had been killed.

The Judge's Findings

5. In a long and protracted decision, the judge held that the Appellant's evidence was unreliable. He had not been able to demonstrate on the lower standard of proof that he had been kidnapped in Iraq as a result of a business disagreement with Ihsan. His evidence of the kidnap was not supported by medical evidence. The payment of a ransom was not supported by bank statements provided by the Appellant. There were discrepancies in the lawyer's letter on his behalf. He provided no explanation as to why he would be warned to leave the area in 2017 when he had left Iraq in March 2017.
6. The appeal was dismissed (see paragraphs 49 to 50).

Grounds of Application

7. The grounds of application state that the judge applied the wrong standard of proof, expected there to be corroboration of the case, failed to recognise serious failings in the Home Office interpreter during the interview process, made impermissible adverse inferences from the asylum screening interview, misunderstood key parts of the Appellant's evidence, misread the Appellant's documents, assessed the evidence out of the social and political realities of Iraq in a flawed manner, and failed to make findings in parts of the evidence provided.
8. On 28th September 2018, permission to appeal was granted.

Submissions

9. On 22nd November 2018, there was agreement between the Respondent's representative, Mr Whitwell, and the Appellant's representative, Mr Moran, that the judge had erred in law, such that this matter should be returned back to the First-tier Tribunal to be reheard again. There were extensive grounds of application, which Mr Moran decided not to take the Tribunal through. He focused on a few court matters, and having done so, at that stage Mr Moran agreed that he would have to concede that there was an error of law in the judge's determination.
10. These matters, for example, consisted of the fact that the judge had concluded that there was no evidence that the Appellant's friend, Mr Ismael [K], had helped to pay a ransom of £300,000 for the release of the Appellant (see paragraph 39). The judge had concluded that, "I was not provided with any evidence to show those transfers from Dubai". Mr Moran submitted that this was simply not the case. The Appellant had sold his business in Dubai and then made a deposit of £150,000 into the bank account for Mr [K]. Subsequently he had paid him in cash £55,000 and then £75,000. There had been an agreement between the two of them that this left £20,000 to be repaid, which would be done subsequently. The suggestion that, "I was not provided with any evidence to show those transfers from Dubai" (40) were simply incorrect. This was especially the case given that the judge recognised that, "Mr [K] was asked in cross-examination whether he had any documentary evidence of the ransom money leaving his account" (paragraph 41), and the evidence before the judge had been that during the 1990s sanctions were imposed on people who drew from a bank more than \$200 at a time, and as a result of this wealthy people in Iraq decided upon a practise of keeping large amounts of money in their home, and when this evidence was given before the Tribunal, the judge simply said, "This entrance was not supported by the documentary evidence provided of his bank statement" (paragraph 41). Mr Moran submitted that this was difficult to make sense of.
11. Similarly, the judge had stated, in relation to the claim that Abu Namir, was the commander of the AAH, and the judge observed, "I was not provided with anything independent to support that assertion in circumstances where the Appellant might reasonably have been expected to provide such evidence" (paragraph 48). However, this was not true because there was video evidence provided before the Tribunal, which included footage of the commander Abu Namir, but more importantly than

even that, there were photographs provided which showed Abu Namir in the pictures, which the witness had actually pointed out, and this documentation also appeared in the Appellant's bundle (at pages 38 to 41).

12. Moreover, the judge stated that, "The Appellant's claim to have been kidnapped is not supported by the medical evidence" (paragraph 49). The judge had also stated (at paragraph 45) that the Appellant's brother, [MI], was kidnapped on 24th September 2017, and there was written evidence to reflect that, after he was killed, "The body was left in the street on 28th September 2017 which was the same date of the kidnap" (paragraph 45). The judge went on to say that,

"The letter claims that the death certificate states that the victim was shot in the head and was left in the street. Whilst the death certificate states that the cause of death was 'shots in the head', nowhere does it state that the body was found in the street. The death certificate does not make any link between the death and any militia organisations" (paragraph 45).

13. Mr Moran rightly submitted that it is not the province of a death certificate to state that the body was found in the street, or necessarily to make a link between the death and militia organisations. The judge had clearly overstretched herself in this respect. As for the statement (paragraph 49) that the Appellant's own kidnapping was not supported by medical evidence, the injuries were plainly set out and medical evidence never can specifically say that the injuries are caused as a direct result of a particular form of ill-treatment.
14. For his part, Mr Whitwell submitted that he would have to agree that the determination of the judge was a "dense determination" but, in addition to that, having heard the points raised by Mr Moran, he would have to agree that there was an error of law, and that this matter should be remitted back to the First-tier Tribunal. He asked that directions be given that a properly compiled bundle of documents be submitted. It was also agreed that the judge's criticism of the screening interview, where she states that the Appellant's brother had not been identified as a person who had been murdered, was unwarranted because the screening interview was in relation to the Appellant, and not to the Appellant's brother, and is only a short summary of the core nature of the Appellant's claim.

Error of Law

15. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision, for the reasons that have been agreed upon both by Mr Whitwell and Mr Moran.

Notice of Decision

16. The decision of the First-tier Tribunal involved the making of an error on a point of law, such that it falls to be set aside. I set aside the decision of the regional judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge O'Keeffe, pursuant to Practice

Statement 7.2(b), because the nature of the fact-finding has been such that the Appellant has not had a fair hearing. I give directions that a properly compiled bundle of documents be submitted for the next Hearing.

17. No anonymity direction is made.
18. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

18th December 2018