



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

Appeal Number: PA/10491/2018

THE IMMIGRATION ACTS

**Heard at Newport
On 4 April 2019**

**Decision & Reasons Promulgated
On 29 April 2019**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

G H

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr C Howells, Senior Home Office Presenting Officer

For the Respondent: Ms L King instructed by NLS Solicitors

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the respondent (GH). This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.
2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal (the "FtT").

Introduction

3. The appellant is a citizen of Iraq who was born on 5 March 2001. He arrived in the United Kingdom in December 2017 and, on 6 February 2018, he claimed asylum. That application was refused by the Secretary of State on 16 August 2018.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the FtT. In a determination promulgated on 22 October 2018, the FtT (Judges Lloyd-Lawrie and Page) allowed the appellant's appeal on asylum grounds.
5. The FtT rejected the appellant's account to be at risk on return to Iraq as a Christian or as a result of that he was at risk from the family of a girl with whom he had had a relationship in the IKR in Iraq.
6. Nevertheless, the FtT found that the appellant was a member of a particular social group (namely a minor) and that if he returned to Baghdad, which was the place to which he would be returned even though his home area was the IKR, he would likely face "destitution". Following the Country Guidance decision of AAH (Iraqi Kurds - internal relocation) CG [2018] UKUT 212 (IAC), in order to travel back to the IKR or remain in Baghdad he would need to be in possession of a CSID. The FtT found that the appellant was not in contact with his family and, without their assistance, he would not be able to obtain a CSID.

The Appeal to the Upper Tribunal

7. The Secretary of State sought permission to appeal to the Upper Tribunal which was granted by the First-tier Tribunal (D J Manuell) on 7 December 2018.
8. The appellant did not file a rule 24 response.

The Submissions

9. On behalf of the Secretary of State, Mr Howells accepted that there were inaccuracies in the grounds of appeal. First, he accepted that the grounds had been wrong to identify that the appellant came from Kirkuk when, in fact, he came from the IKR (Dokan in Sulaymaniya Governorate). Secondly, Mr Howells accepted that the FtT had been correct to assess the appellant's claim on the basis that he was a child at the date of the hearing and to assess the risk to him on return on that basis. Thirdly, Mr Howells accepted that the grounds were wrong to aver that the appellant had spoken to his father a month before, in effect, the hearing. Mr Howells accepted that the social worker's evidence (referred to by the FtT at para 41) was that he had spoken to his father a month before he was interviewed on 11 December 2017, in other words some ten to twelve months prior to the hearing in September 2018.
10. Finally, Mr Howells acknowledged that the Presenting Officer at the hearing had conceded that there were no direct flights to the IKR and so the appellant's claim had to be considered on the basis of his return to

Baghdad. However, he pointed out that the *CPIN* Report at para 2.7.2 (at page 94 of the bundle) identified that direct flights to the IKR had, in fact, commenced prior to the hearing. However, Mr Howells indicated that this was, in all probability irrelevant to the outcome of the appeal, since if an individual did not voluntarily return to Iraq, he had to be returned to Baghdad first before travelling to the IKR.

11. With those initial points set out, Mr Howells refined the grounds of appeal, which are undoubtedly discursive, into two points of law.
12. First, Mr Howells submitted that the FtT had been wrong to take at face value the evidence from the appellant and, indeed, from the social worker that the appellant had no contact and, therefore no knowledge of the whereabouts of his family in Iraq. Mr Howells submitted that the FtT had failed to bring forward, in assessing that evidence, the earlier finding that the appellant's claim was not credible in respect of his claimed fears on return to Iraq. Mr Howells submitted that in the context of a comprehensive adverse credibility finding, the FtT had failed to give adequate reasons why it accepted the evidence that the appellant did not know where his parents were. He submitted that the FtT had effectively reversed the burden of proof in para 41 when it has observed that there was "no evidence provided by the respondent to disprove the appellant's case that he does not know where his family are". Further, in stating in para 41, that the social worker would have stated that the appellant had been in contact with his family more recently if that was the case, the FtT failed to have regard to the fact that the appellant's evidence was disbelieved by the FtT and that, therefore, the appellant had not been honest with the social worker. Given that his account was not accepted, Mr Howells submitted that there was no reason to believe that his family had been forced to flee their home area.
13. Secondly, Mr Howells submitted that the FtT had failed to consider whether the appellant could apply for a CSID at the Iraqi Embassy in the UK consistently with AAH. However, Mr Howells acknowledged that this ground was, in effect, contingent upon ground 1. In order to apply for a CSID at the Iraqi Embassy in the UK the appellant would require documentation or information from his family in Iraq which he could not obtain if, as the FtT found, he was not and would not be able to contact them.
14. Mr Howells accepted that if the FtT's finding in relation to the appellant's inability to contact his family stood, then there was no basis for overturning the FtT's finding that the appellant succeeded in his asylum claim based upon the risk to him as a member of a PSG (as a returning minor) in Baghdad as he would likely face destitution in the absence of possessing a CSID and he would be unable to return to the IKR.
15. On behalf of the appellant, Ms King submitted that the FtT's findings in relation to his contact, or ability to contact his family, were sustainable. She submitted that simply because he had been disbelieved in relation to his claim based upon Christianity and his relationship with a girl in Iraq

did not necessarily mean that he had to be disbelieved in relation to other matters. That turned upon a specific consideration of the evidence in relation to that which, Ms King submitted, the FtT had done. She submitted that the FtT had not shifted the burden of proof to the respondent in para 41 but had merely noted the absence of any contradicting evidence from the respondent. She submitted that the FtT was entitled to rely on the fact that the Home Office had sought to trace the appellant's family but without success and to find at para 40:

“that as the Home Office have been unable to find the appellant's family, it is unlikely that the appellant could contact male members of his family to assist him in securing him a new CSID.”

16. There was no suggestion in the decision letter or otherwise that the appellants had been obstructive with the Home Office in providing them with information to trace his family. Ms King submitted that it was reasonably open to the FtT to conclude that the appellant did not know where his family were and that he is, and would be, unable to contact them such that he would be unable to obtain a CSID and, applying AAH, the FtT was entitled to find that he was likely to face “destitution” as a member of a PSG and to allow his claim on asylum grounds.

Discussion

17. Having carefully considered the submission of both representatives, I accept in substance those of Ms King and reject those of Mr Howells. In my judgment, the FtT was entitled reasonably and rationally to reach its finding that the appellant has been, and would be in the future, unable to contact his family and thereby obtain the necessary documentation or support to obtain a CSID. The consequence of that finding is, as Mr Howells conceded, given the other findings of the FtT and AAH, that the appellant's claim for asylum was properly allowed.
18. First, simply because the appellant had been disbelieved in his primary asylum claim, namely based on his Christianity and relationship with a girl in the IKR, did not mean that the FtT necessarily had to reject all other parts of his evidence, including what he said about contact with his family in Iraq. Even if the FtT had made a specific finding that the appellant was lying and untruthful, providing that the FtT bore in mind its finding in relation to the credibility issue, it was properly open to the FtT if adequate reasons were given, to find that it accepted the evidence concerning his lack of knowledge of his family's whereabouts and, therefore, his inability to contact them to assist in obtaining a CSID or other support. Merely because the appellant lied about one aspect of his claim, did not require a finding that he had lied about every aspect of his claim. In fact, the FtT did not make a positive finding that the appellant was lying. Nevertheless, its reasons at paras 35 - 36 should, in all probability, be taken as an implicit finding that the appellant was being untruthful. However, there is no reason to assume that the FtT failed to have regard to that finding when, at paras 40 onwards, it found that it accepted the appellant's evidence about his lack of knowledge of his family's whereabouts. The determination has to be read as a whole and

there is no reason to consider that the FtT forgot its findings in paras 35 – 36 by the time it came to assess the other aspects of the appellant’s claim at paras 40 onwards.

19. Secondly, I do not accept Mr Howell’s submission that at para 41 the FtT wrongly shifted the burden of proof to the respondent. There the FtT said this:

“The Tribunal find that there is no evidence provided by the respondent to disprove the appellant’s case that he does not know where his family are and that therefore they cannot be relied upon to support the child, a minor, on his return”.

20. The FtT had previously clearly directed itself (at para 28) that the burden of proof lay upon the appellant. The reference to the absence of any evidence by the respondent is simply that: there was an absence of any evidence presented by the respondent to contradict the evidence of the appellant and, indeed, the social worker. It does not, in my judgment, reflect an impermissible shifting of the burden of proof.

21. Thirdly, the FtT was entitled to take into account that the Home Office had been unable to trace the appellant’s family. Whilst it is unclear, and I explored this at the hearing, what information the appellant told the Home Office in order for them to seek to trace his family, there is no suggestion in the decision letter or elsewhere that the appellant, in the words of Ms King, was obstructive and failed to provide appropriate information. At para 113 of the decision letter, the Home Office acknowledges that it was unable to trace the appellant’s family whilst noting that “other channels” such as the British Red Cross may be able to do so. Nevertheless, the Home Office’s failure to trace his family was a factor which the FtT has taken into account in reaching its finding that the appellant would not be able to contact male members of his family to assist him.

22. Fourthly, the evidence of the social worker was that the appellant had spoken to his father about a month before 11 December 2017. That evidence is set out at para 10 of the social worker’s witness statement as follows:

“On 11 December 2017, (the appellant) has informed the Local Authority that he has not had any contact with his family and the last time he had spoken to his father a month ago for a minute through the agent/smuggler [the appellant] stated that the agent/smuggler phoned his father to transfer more money.”

23. That witness statement is dated 20 September 2018, a week before the hearing. Whilst, of course, the FtT did not accept the appellant’s account of why he feared return to the IKR, he had told the social worker (perhaps in part to his disadvantage), that he had been in contact with his father a month before December 2017. If he had told the social worker of any subsequent contact, no doubt the social worker would have said so in her witness statement. The FtT was fully entitled to accept that the appellant had not done so. That, in itself, did not establish that he had not made

subsequent contact with his family. But, in para 41 the FtT did not conclude that, therefore, he had not had subsequent contact with his family. Having set out what the social worker said in para 10 of her witness statement, the FtT at para 41 said this:

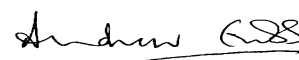
“The Social Worker, while silent on the issue, does not say that the appellant has been in contact with his family since this point and would be expected to have contradicted that point in a statement should the appellant have had any contact with her family that she was aware of”.

24. The important words were “that she was aware of”. Whilst it might not be a strong piece of evidence or, in itself, a convincing reason for the FtT’s finding, it was part of the evidential background that, having previously told the social worker of contact with his family, the appellant had not told her of any subsequent contact. It is worth nothing that even the earlier contact was not made directly by the appellant with his father but rather by the agent/smuggler.
25. In my judgment, the FtT was entitled to accept the appellant’s evidence that he did not know the whereabouts of his family in Iraq having taken into account the Home Office’s unsuccessful attempts to trace his family, the social worker’s evidence concerning what the appellant had, or had not subsequently, told her about his contact with his family, and having reached that finding having taken into account that the FtT had not accepted as credible his claimed fears on return to Iraq. Neither the FtT’s reasons nor its finding based upon those reasons was unreasonable or irrational.
26. In the light of that, as Mr Howells accepted, his second ground falls away. On the basis of the FtT’s findings, in the light of the sustainable finding that he does not know there whereabouts of his family, it is accepted that the FtT was entitled to reach its finding that the appellant would not be able to obtain a CSID and, as a result, he would likely face destitution on return to Iraq as a member of a PSG (namely a child).
27. Consequently, for these reasons the First-tier Tribunal did not err in law in reaching its decision to allow the appellant’s appeal on asylum grounds.

Decision

28. For the above reasons, the decision of the First-tier Tribunal to allow the appellant’s appeal on asylum grounds did not involve the making of an error of law. That decision stands.
29. Accordingly, the Secretary of State’s appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

Dated 23, April 2019