



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/14116/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 13th June 2019

Decision Promulgated Before
On 22nd July 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR R A M
(ANONYMITY DIRECTION MADE)

Appellant

AND

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr F Aziz, Solicitor from Lie Dat and Baig, Solicitors.

For the respondent: Mr C Bates, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant has been given permission to appeal to the Upper Tribunal the decision of First-tier Tribunal Judge LSL Mensah. In a decision promulgated on 27th February 2019 the judge dismissed his appeal against the respondent's refusal to grant him protection and to find no breach of a protected human rights.

2. The appellant is a Kurdish national of Iraq, born in December 1991. He lived with his parents and brother in Erbil and made a living as a tiler. He arrived in the United Kingdom in February 2017 and made a claim for protection. He said his difficulties arose following an incident on 16 June 2015. He was with his friend who became involved in the fight with another man, S, with whom there was previous bad feeling. He intervened in the fight but S now has a grievance against him. He said that he feared S because of his connections, including the fact that his father-in-law was a senior official in the KDP.
3. He claims after the incident he and his friend were heading towards the hospital for treatment when three vehicles intercepted them. They started to attack them. The appellant managed to escape and went to the police who did not want to become involved. Shortly after this, four police took the appellant away and he was charged with assault. He was produced before a judge and detained. His father then arranged his release.
4. He stayed at his brother's house for a while and then left Iraq. He travelled to Turkey, Bulgaria and Serbia. He then crossed into Austria and then Germany, where he remained for a year and eight months. He made a claim for protection there which was unsuccessful. He then travelled to Belgium and then onto France before arriving in the United Kingdom.
5. His claim was refused on 4 December 2018. The truth of the underlying claim was not accepted. Inconsistencies in his account were referred to. Furthermore, reference was made to his failure to claim after Germany in other safe countries. Even if there were any truth in the claim he could relocate to a different part of the IKR.

The First tier Tribunal

6. First-tier Tribunal Judge Mensah heard from the appellant and the representatives at the appeal. His identity was not disputed. Under the heading 'Findings' the judge referred to the various inconsistencies in his account as referred to in the reasons for refusal letter. There was a discrepancy as to when the key incident occurred between what the appellant said at screening and the substantive interview. There was also an inconsistency over whether it was S who was the high-ranking KDP official or his father-in-law. There was also discrepancy about the length of his detention.
7. The judge referred to the very specific details the appellant gave as to when the incident took place. The judge did not accept there was any room for misunderstanding. On the timeframe given it would mean the incident took place around March 2015, which was also replicated in his witness statement. However, at interview he said it

was June 2015. The judge made the point that the appellant had already been through the asylum process in Germany and had made the same claim there. The judge concluded that the inconsistencies undermined his credibility.

8. The judge went on to refer to other inconsistencies and the discrepancies with the timeframe. His explanation was that he was suffering from memory loss but there was no medical evidence to support this. The judge also referred to the discrepancy as to how long he was detained for. The judge then referred to his not claiming in other countries after Germany.
9. The appellant produced photographs said to be of the man who fears. He describes how these were sent by a friend who found them on Facebook. The judge found his account in this regard lacked credibility and was introduced an attempt to bolster his claim.
10. There was an inconsistency between whether the appellant's primary fear was S or his father-in-law. At screening he said this was a high-ranking officer in the KDP. In his substantive interview he said as was in fact the bodyguard of his father-in-law who was a senior officer in the KDP. The appellant said the substantive interview was correct but the screening was incorrect. The judge then referred to the appellant's account of going to stay with brother some 9 km away. The judge found his evidence inconsistent with checks he said were made on his own home.
11. The judge concluded by finding the appellant's evidence unreliable and rejected his evidence in its entirety. The judge found he was not wanted by the Iraqi authorities.
12. Permission to appeal was granted on the basis it was arguable the judge unduly focus upon discrepancies and did not have regard to reasonable explanations, including fatigue at screening interview.
13. The judge then turned to the question of documentation. The appellant had told the judge that his identity documents, including his national identity certificate, were with the German authorities. The appellant told the judge he could not obtain replacement documents. The judge rejected his claim that he had no access to documents and found that he could be returned.
14. The second ground upon which permission was granted was that it was arguable the question of return was not adequately reasoned.

The Upper Tribunal.

15. Mr Aziz argued that the judge was wrong to rely upon inconsistencies arising from the screening interview. At that stage

the appellant was tired and he did not have a representative. The screening was conducted using an interpreter of the telephone and he was told to keep his answer short.

16. He also submitted that the judge erred in relation to the question of documentation. He said that paragraph 36 the judge simply said she did not accept he could not obtain replacement documents. There was no evaluation of what family members there were to assist. The appellant has said he was no longer in contact with his family and that his original CSID card was with the authorities in Germany.
17. In response, Mr Bates said that the screening interview was only part of the overall assessment. The judge did not simply refer to discrepancies between the screening and the substantive interview but also referred to discrepancies in the witness statement and in the appellant's oral evidence. An example of inconsistency related to the statement about his family home is being monitored and the account he was staying with his brother.
18. Mr Bates made the point that the appellant's screening in fact contains detailed responses. The appellant made no complaint of being tired, either before or afterwards. Furthermore, on three occasions the appellant referred in his screening interview to having been detained for 30 days. This can be seen at 3.2, 4.1 and 5.4. He was legally represented when he made his witness statement and all he said was that he simply made a mistake about the length of his detention. In his statement he said mistakes in his substantive interview were because he could not mentally focus at the time. The judge did take into account the possibility of memory loss but observed the appellant has submitted no evidence to support this. The judge observed the appellant had already been through the asylum process in Germany. The appellant had confirmed orally to the judge that his claim in Germany was the same as that which he was making before the judge.
19. On the argument over documentation Mr Bates made the point that the judge had not found the appellant credible in respect of his substantive claim. This lack of credibility could be carried over in relation to his claims about documentation and having no family support. On the basis his underlying claim had been rejected he did not have to leave in the great haste and could have organised documentation. In fact, he accepted he had documentation on his journey but said he no longer possessed it. Furthermore, if the underlying claim was not true there would be no reason for his family to move.
20. Mr Bates argued that there was no error in how the judge dealt was the route of return. If he were returned via Baghdad then with

documentation there would be no difficulty with onward travel to Erbil as stated in AAH. Alternatively, it was possible he could be returned directly to the IKR.

21. In reply, Mr Aziz noted the comment by the presenting officer that the interview ended shortly after 9 AM. The appellant had made his claim the evening before and he submitted this supported his contention he was tired. Furthermore, the judge made no allowance for the fact that an interpreter over the telephone was used with the increased possibility of mistakes. The presenting officer had suggested that the German authorities would have returned the appellant's documentation to him after they rejected his claim. However, Mr Aziz made the point that the UK practice is that documents are not returned until the person is boarding the flight for their home country.

Consideration

22. The respondent had rejected the appellant's claim on credibility grounds. Various inconsistencies were highlighted. On appeal the judge considered these. A screening interview is not meant to go into the substantive claim in any great detail. The appellants would be advised to give short answers and it would be indicated he would have the opportunity later to provide details of the claim. It is also possible that someone having recently arrived in the country a be particularly anxious, especially after it difficult journey overland. In the appellant situation however there had been substantial break in Germany as a judge reflected upon by his claim in Germany.
23. Notwithstanding these points it is reasonable to expect consistency between the basic information given at screening and the claim ultimately made. Paragraph 19 of YL (China) [2004] UKAIT 00145 states that asylum seekers are still expected to tell the truth and the answers given in screening interviews can be compared fairly with answers given later.
24. As Mr Bates points out, the judge did not focus solely upon inconsistencies arising from the screening. Rather, there were a number of credibility points and multiple examples of inconsistencies. It is not for me to interfere with the fact-finding exercise carried out by the judge unless there has been some clear deficiencies in the process. I do not find this to be the case here. I find the judge has carefully analysed the evidence and the various stages of the claim and drawn conclusions that were open.
25. It is also logical for the judge to evaluate the appellant's claim about documentation and lack of family contact in light of the adverse credibility findings in the underlying claim. The two are very closely linked albeit someone may tell lies about one aspect of their

claim and be truthful in other parts. It is clear the appellant did have documentation because he said he gave his CSID to the German authorities. In his substantive interview he repeated this at question 49. He also states that he had a passport which he posted back from Turkey. Consequently, the information exists to establish his identity and documentation.

26. Paragraph 9 of the grounds may have been drafted by the appellant himself but they introduce a circular argument. He states if he does not have the original documentation then the Embassy cannot authorise a proxy. However he had the original documentation he would not need to approach the Embassy. The evidence indicates the documentation can be obtained. It would seem likely that if the German authorities had his CSID this representative could have corresponded seeking return or for details so replacements could be obtained. I was advised at hearing the had been no correspondence.

27. It relation to return it would have been preferable for the judge to have focused upon the specific evidence relating to the appellant's law is quoted extensively and much of it does not apply to the appellant, he is from the IKR. However, the conclusions made about documentation and the rejection of the appellant's account of having no one to assist are sustainable. There is no material error in relation to how the judge dealt with documentation and the practicalities of return.

Decision.

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

Sighed

Deputy Upper Tribunal Judge Farrelly.
July 2019

Date: 16