



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

Appeal Number: PA/01766/2019

THE IMMIGRATION ACTS

**Heard at Birmingham
On 7 February 2020**

**Decision & Reasons Promulgated
On 16 March 2020**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**Randjar Khalid Mohammed
ANONYMITY NOT DIRECTED**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms R Pennington (Counsel)

For the Respondent: Mrs H Aboni (Senior Home Office Presenting Officer)

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DECISION AND REASONS

1. On 11 February 2019 the Secretary of State refused the claimant's application for international protection which he had made on behalf of himself, his wife and the couple's two infant children. He appealed to the First-tier Tribunal (the tribunal) but in a decision of 6 May 2019 it dismissed the appeal. Permission to appeal to the Upper Tribunal was subsequently granted and, on 30 December 2019, I set aside the tribunal's decision because it contained errors of law and I gave directions for the decision to be remade by the Upper Tribunal after a further hearing. In doing so, I preserved nothing of the tribunal's findings and conclusions. That hearing took place

on 7 February 2020. What follows amounts to my explanation as to how I have remade the decision.

2. Shorn of all but the essentials, the background circumstances are as follows: the claimant is a national of Iraq and is Kurdish. He was born on 1 November 1983. His home area in Iraq is Kirkuk. He is married. His wife is also both Iraqi and Kurdish. She was born on 1 January 1987. The children were born on 12 August 2014 and 14 November 2017 respectively. The eldest was born in Iraq and the youngest was born in the United Kingdom (UK). Both children are nationals of Iraq and neither is a UK national.
3. The claimant, his wife and the child who had then been born, left Iraq in August of 2016 and travelled to Turkey and then to Italy. There is a record of the claimant having been fingerprinted by the Italian authorities on 7, 19 and 22 September 2016. He and his family left Italy on 22 September 2016 and travelled by train to France and then by lorry to the UK. The claimant says that during his journey he was under the control of an agent. He entered the UK illegally on 1 December 2016, along with his family, and he claimed international protection. As to why he asserted a need for such protection, he explained that he had been educated at a University in Erbil (which is located in the part of Iraq under Kurdish administrative control and which I shall now call the IKR) and that he had then worked as a lawyer in Kirkuk. Whilst doing so he was instructed to assist a man called Abdullah who was embroiled in a land dispute with a man called Kattaf. Kattaf is not Kurdish, is a member of the Jubur tribe and is closely related to a former Iraqi vice-president. On 27 July 2014 some men came to the office where the claimant worked and told him it would be in his interests to withdraw from the case. Indeed, he says he was told that if he did not do so he and his family would be killed. He also says he was severely beaten on that occasion (paragraph 13 of his witness statement of 17 April 2019). He initially decided to withdraw from the case but resumed working on it because he needed the money and because given the instability then prevailing in the area due to the activities of the organisation sometimes called ISIL, work was in short supply. But on 1 October 2015 armed men raided his home. He says he and his family were able to flee via the rooftop of his house and that he went to the home of a friend before going to Erbil.
4. The claimant says that, in due course, he started to work as a lawyer in Erbil. Whilst doing so, he started to assist a man who was embroiled in a land dispute with a man called Fatim who he describes as a high-ranking member of the Kurdish Democratic Party (KDP). But at the time, he says, he did not fully understand the seniority of Fatim's position. On 3 August 2016 his friend told him not to go to his office because a group of men had raided it and had been looking for him. They were threatening. They returned the following day, when they were armed, and they beat others and took away the office manager. The claimant says he realised he was at significant risk and so obtained the services of an agent so that he and his family could leave Iraq.
5. Additionally, the claimant says he has annoyed various politicians in Iraq through his writing of articles which complain about corruption and injustice. He would put his written views on his Facebook page under an alias but there came a time when his Facebook account was hacked.
6. The above represented the claimant's position before me. At the hearing, he adopted witness statements of 17 April 2019 and 31 January 2020. He said his close family members had left Iraq. His eldest child is now at school in the UK. He could not relocate to the IKR because the persons who wish to harm him have contacts there. He had studied in the IKR but not in Baghdad. He has his CSID card (an important Iraqi identification document). He had not

claimed asylum in Italy because he had been under the control of the agent and because he thought those who wish to harm him might find him there. The same was true of France.

7. In addition to the claimant's account of the events said to underpin his claim for asylum as given orally and in writing, I have had the benefit of 3 bundles of documents prepared by his representatives (including the helpful consolidated bundle sent on 29 January 2020); a bundle prepared by the Secretary of State for the purposes of the original hearing before the tribunal but relied upon before me; and helpful oral submissions from each representative.
8. Ms Pennington told me that it was her case that the claimant was entitled to international protection on asylum grounds; on humanitarian protection grounds (including under article 15c of Qualification Directive 2011/95/EU; and was also entitled to leave under article 3 and article 8 of the European Convention on Human Rights (ECHR) albeit that she did not rely on any of the provisions of the Immigration Rules in an article 8 context. I have approached the case accordingly.
9. In considering the international protection issues, I have reminded myself that the burden of proof is located with the claimant and that the standard of proof is the lower standard often described as the "real risk" test. That is so with respect to asylum, humanitarian protection and article 3 of the ECHR. As to article 8, I have assessed matters on the basis that, once again, the burden is located with the claimant and that the standard is one of a balance of probabilities.
10. As to my approach to the evidence and the way in which I must make my factual findings, I have considered all of the evidence as one composite whole before making any findings, notwithstanding that certain of the considerations are (inevitably) set out sequentially below. I have reminded myself throughout, of the lower standard of proof applicable in the context of international protection. I have reminded myself that I should be cautious in rejecting as incredible an account offered by an inexperienced and anxious asylum seeker.
11. Having done all the above I have concluded that I am not able to accept the claimant as a credible witness. I shall now explain why I have reached that view.
12. The claimant, as noted above, has said that notwithstanding some delay and hesitation on his part, he resumed work on Abdullah's case against Kattif because of a pressing need to earn and because of the scarcity of other work. According to his account, the decision to resume work on the case was made against a background of his having been threatened and severely beaten and a threat having been made against his family. However, I do not accept that he would have done so if he had actually been beaten and if his family had been threatened. Even if not so concerned about his own safety he would surely have been concerned for his wife and child. Further, the fact he had been severely beaten would, if true, have demonstrated that those seeking to harm him were prepared to follow up threats with action. In those circumstances I conclude that he did not receive such threats from Kattif, persons associated with him, or the tribe of which Kattif is said to be a member. I appreciate the claimant has provided some photographs of himself which do show some physical injuries. But there is no independent confirmation as to when they were taken and injuries such as those shown can arise through numerous causes. So, that evidence attracts only limited weight. The claimant's contentions in this regard are not credible.
13. The claimant says his family home was raided by "five masked armed men" (paragraph 16 of the witness statement of 17 April 2019). Nevertheless, he says he, his wife and his then very young child were able to escape unscathed. He seeks to explain this by pointing out that houses

in Iraq including his and neighbouring houses, have rooftops attached to one another and that they were, therefore, able to make their way to a neighbour's house (paragraph 5 of the witness statement of 31 January 2020). However, taking an overview, it is really not credible that three people including a young child would be able to escape, with such ease, a determined effort to harm them (or to at least harm the claimant) by five armed individuals. I do not find this part of the claimant's account to be credible and, even to the lower standard, I reject it.

14. The claimant then recounts not dissimilar difficulties whilst working as a lawyer in Erbil. To my mind, someone who had had such acute difficulties consequent upon involvement in land disputes would be most cautious in getting involved in further litigation of a similar nature. I do note the claimant says that he did not appreciate the extent of Fatim's importance and influence as a high-ranking member of the KDP at the time he became involved in the litigation. But I do not believe him. He is clearly an intelligent man and, according to his account, sufficiently interested in political affairs to write articles and/or express views about corruption and injustice on his Facebook page. He was living in the IKR at the time and, of course, that is where the KDP has influence. Against that background I believe that he would have known, when invited to get involved in the litigation, who Fatim was and what influence he had. I believe he would, therefore, have declined to get involved in light of his earlier claimed experiences. Further, if Fatim and those associated with him had intended to harm the claimant I do not think they would have chosen to raid the office where he worked at a time when he was not present, thereby warning him of the danger he was in and alerting him so that he could contemplate an escape. It would not have taken much for them to verify whether he was there or not and, if not, when he would be there, before taking action. Again, this part of the account is not credible.
15. The claimant attended a screening interview. According to the record, he was asked to briefly explain all the reasons why he was seeking asylum. He said "I cannot return as me and my family are unsafe. We face persecution. It's all political issues. We fear people in authority". He did not, according to the record, say anything about being at risk due to his work as a lawyer and his consequent involvement in land disputes. It is right to be cautious when considering the content of a screening interview as part of an assessment as to credibility. There are good reasons for that. A claimant might be tired and unprepared when such an interview takes place. The purpose of such an interview is not to afford an opportunity to set out the basis for a claim in any detail. But nevertheless, the lack of reference to land disputes is surprising. This is far from a determinative point but I do regard the claimant's credibility as being damaged to an extent by his failure to refer to such matters at all.
16. The claimant did not seek international protection in either Italy or France. That is behaviour which potentially falls within the scope of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Section 8 does not require disbelief and is not at all determinative with respect to a credibility assessment. But behaviour specified therein must be taken into account. The claimant accepts that he did not claim in either country. His explanations for not doing so have been set out above. But I do not accept them. One reason he gave was that the people he fears might track him down in one or other of those countries because they are "Schengen countries" so he could be pursued. But even if his claimed enemies might be able to gain access to Italy or France with ease, it is very difficult to see how, in such large countries with such large populations, they could even begin to make realistic efforts to track him down. It might be said he would have a subjective fear of such happening even if it were not objectively likely but, again, he is an intelligent man and I find that, having reached Italy and then France, he would have felt safe. The other explanation was that he was under the control of an agent and that, as I understand it, the agent did not want him to claim in either country

because the further he was taken the more money he would have to pay. But I do not accept that. If the agent was as controlling as claimed and wanted more money he could have simply taken it from the claimant without transporting him any further, and absent any financial incentive, it is difficult to see why an agent would be bothered whether the claimant ceased his journey in Italy or not. So, the claimant's credibility is damaged by his failure to claim in France or Italy and by his willingness to provide misleading explanations about why he did not do so.

17. I do appreciate the claimant has provided some photographic and documentary evidence and I have considered that along with and at the same time as the various other considerations I have mentioned. I have already referred to the photographs showing injuries. As to other items, it does not seem to me that the photographs of the houses take matters further because whatever the setting out of the houses the claimed escape from five armed men is incredible. Whilst court documents have been provided, the content does not make it clear that the claimant was involved in any proceedings and in any event, his lack of general credibility impacts adversely upon the weight which can be given to them.
18. Having found the claimant not to be credible, I will now set out and where necessary explain my relevant factual findings.
19. I find the claimant is Iraqi, is Kurdish, is from Kirkuk, has been educated at a University, and has worked in Iraq as a lawyer. Such is accepted by the Secretary of State. But I find the claimant has not encountered any difficulties as a result of his becoming involved in litigation concerning land disputes. As such, he is not at risk at the hands of Kattaf, the Jubur tribe, Fatim, the KDP, or any other individual or organisation. I find that whilst the claimant might have expressed views anonymously through social media, there is no reason to suppose he has been targeted for this, still less that he would upon return now, given the passage of time. As to matters relevant to article 8, I find he and his family have resided in the UK since December 2016, that his eldest child is now at school, that the youngest child was born in the UK and has not known any other country, and that the claimant and his wife have obtained a number of ESOL qualifications since coming to the UK.
20. Having made my findings, I must now remake the decision in the case in light of them. It follows from the above findings that the claimant has failed to establish entitlement to international protection on the basis of claimed risk at the hands of the individuals and any associates either tribal or political, referred to above. That leaves any risk under 15c. As to that, the claimant is from Kirkuk. It had been previously decided in an earlier Country Guidance decision of the Upper Tribunal that Kirkuk was in a "contested area" and that there was a 15c risk because of that. But in *SMO, KSP and IM (Article 15c; identity documents) Iraq* CG [2019] UKUT 00400 (IAC) which replaces all previous country guidance on Iraq, it was decided that, generally speaking and subject to specific exceptions not including Kirkuk, the internal armed conflict which continued in Iraq was not so intense, as a general matter, to lead to a conclusion that there are substantial grounds for believing that any civilian returned to Iraq would, solely on account of his or her presence there, face a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of article 15c. It was said that the situation in Kirkuk did require a fact-sensitive sliding scale assessment and it was said certain considerations might be relevant to such an assessment. But it was not specifically argued before me that any of those considerations weighed in favour of this claimant in his particular situation. Anyway, in looking at them, there is nothing to suggest he would be thought to have links with ISIL, he would not obviously fall within an ethnic minority category in Kirkuk given that he is Kurdish, he is not an LGBTI individual nor a member of the humanitarian or medical staff of a Western organisation, and it is not asserted that he or any family member has any

significant disability. Whilst he may once have made criticisms of those in authority via Facebook, that was done anonymously and some years ago. So, I find he will be able to return to Kirkuk without any 15c risk arising for himself or any family member. As to article 3, it was not argued that he could rely upon it due to prevailing social or economic conditions. And in the decision of the Upper Tribunal in what I shall now simply call *SMO*, it was said that, generally speaking, circumstances were not such as to lead to an article 3 breach even in the formerly “contested areas” of which Kirkuk is one. I am sure that life can be very tough in Iraq but the claimant is well educated and it is accepted he has worked as a lawyer in the past. He has his CSID card so will be able to travel within and access services in Iraq., I would conclude, therefore, that he is not able to successfully rely upon article 3 of the ECHR on the basis of prevailing country conditions in Iraq generally or specifically in Kirkuk.

21. The above means I must conclude the claimant is able to return to his home area of Kirkuk with his family without the risk he claims to fear arising and that he has not shown entitlement to international protection on any basis. Since he can return to Kirkuk I do not need to consider internal flight.
22. That leaves only article 8 of the ECHR outside of the Immigration Rules. Ms Pennington reminded me of the content of section 55 of the Borders, Citizenship and Immigration Act 2009. She says, and I agree, that I must consider that provision and consequently what is in the best interests of the children, as a key component of my article 8 assessment.
23. As to more general considerations, the claimant and his wife have been in the UK since the end of 2016. They have, however, spent most of their lives in Iraq. They speak Kurdish-Sorani which is widely spoken amongst the Kurdish population in Iraq. They are familiar with life in Iraq. Further, given my general credibility finding I am not able to accept that they will be entirely without family support upon return. Turning then to the children, it cannot be said they have put down extensive roots independently of their parents though I do take account of the fact that the eldest child is attending school. Given the ongoing instability in Iraq as compared to the stability of life in the UK I would accept that it would be in the best interests of the children, if making a simple comparison, to remain in the UK so long as their parents do so too. But the point of real importance is that it is in their best interests to remain with their parents. In looking at the factors mentioned in section 117B of the Nationality, Immigration and Asylum Act 2002, the maintenance of immigration controls is in the public interest, and neither of the children fall within the definition of “qualifying child”. I would accept that on the facts of this case article 8 is engaged but, ultimately the matter boils down to an assessment as to proportionality and taking all the above into account I would conclude return to Iraq would be proportionate.
24. In light of the above, in remaking the decision, I must dismiss the claimant’s appeal from the Secretary of State’s decision of 11 February 2019.
25. Finally, I have not directed anonymity. The tribunal did not do so and I was not invited to do so by the claimant’s representative.

Decision

The claimant’s appeal is dismissed.

Anonymity is not directed.

Signed:

Dated: 12 March 2020

Upper Tribunal Judge Hemingway