



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/09185/2019(P)
PA/09248/2019(P)

THE IMMIGRATION ACTS

Decided under rule 34 (P)
On 17 August 2020

Decision & Reasons Promulgated
On 24 August 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

K Q S
K Q S
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation (by way of written submissions)

For the appellant: Fountain Solicitors
For the respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Background

1. This appeal comes before me following the grant of permission to appeal to the appellants by First-tier Tribunal Judge Neville on 2 March 2020 against the determination of First-tier Tribunal Judge Fenoughty, promulgated on 23 January 2020 following a hearing at Birmingham on 13 January 2020.

2. The appellants are brothers and nationals of Iraq born on 3 October 1993 and 2 May 1988 respectively. They appeal against the decision of the respondent on 13 September 2019 to refuse to grant them asylum. They entered the UK illegally by lorry and subsequently claimed asylum on the basis that they would be at risk from the PUK. They maintained that their father had been abducted by the PUK in 2006, that the family (consisting of their mother and five brothers in total) had received threatening letters and had left Iraq in 2018. The appellants' father had been a PUK member and when he returned to Iraq in 2005 after the failure of his own asylum application, he was given the rank of major which he held until his retirement. They claim that their father was taken from the house one night in February 2006. Their uncle told them the PUK had been responsible. The appellants were 8 and 12 at the time and did not witness the event. Four years later the uncle told the newspapers what had happened to his brother. The first appellant continued to attend school until 2009 when he turned 16 and the second appellant attended until he was 17 or 18 in 2016. On his way to school in 2016 he was involved in a hit and run accident and a friend said that it had looked deliberate. In 2018 a shot was fired from a car as they stood outside their house and injured the first appellant. When he had recovered from his injuries they left the country with their family.
3. Judge Fenoughty, in determining the appeals, found that the appellants' father had been a major in the PUK and had retired, that he had been taken from the family home in February 2006 and that his whereabouts were unknown, that his brother told the media that he believed he had been taken by the PUK, that the appellants attended school until aged 16 and 17/18, that an older brother had set up a take away shop in 2012 in which the appellants worked, that the second appellant had been injured in a hit and run accident, that the appellants' mother was granted a court order to manage her husband's property, that the first appellant had been injured by a gunshot in 2018, that the family left Iraq in 2018 and were separated in Turkey, that the appellants' mother has their passports and identity documents and that the appellant remain in contact with a neighbour. She did not however accept that the evidence had shown that the PUK had been responsible for the appellants' father's disappearance or the incidents involving the appellants. She considered that they would be able to return safely to their home area in the IKR. She found that they would be able to obtain evidence of identification from their mother with the neighbour's help as he was also in touch with her. Accordingly, she dismissed the appeals.
4. The appellants sought permission to appeal which was granted by the First-tier Tribunal on 2 March 2020. Judge Neville found that the judge had been entitled to reject the argument that the media reports confirmed the involvement of the PUK in the appellants' father's abduction but he considered it arguable that the judge had erred in not placing weight on the uncle's opinion. He also considered she had erred in her conclusions on how the appellants would obtain identity documents.

Covid-19 crisis: preliminary matters

5. The matter would ordinarily have then been listed for a hearing but due to the Covid-19 pandemic and need to take precautions against its spread, the

hearing was adjourned and directions were sent to the parties on 17 June 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

6. The Tribunal has received written submissions from both parties. Both parties are agreeable to the matter being decided on the papers. I now consider whether such a course of action is appropriate.
7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
8. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers, that the arguments for and against the appellants have been clearly set out and that the issues to be decided are narrow. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellants and consider that a speedy determination of this matter is in their best interests. I note that the appellants have not raised any objections to the determination of the error of law issue on the papers. I am satisfied that I am able to fairly and justly deal with this matter in that way and I now proceed to do so.

Submissions

9. The respondent's submissions are dated 25 June 2020. They are prepared by Ms Isherwood who opposes the appellants' appeal. She submits that the appellants' ground that the judge failed to link the documentary evidence with the oral evidence with regard to their father's kidnapping is misconceived. She submits that when the determination is considered as a whole it was clear that although the judge accepted that the appellants' father had been taken from the family home, she did not accept that the evidence showed that the PUK had been responsible. The judge took account of all the newspaper articles. At its highest, the evidence showed that the uncle believed that the PUK was responsible for his brother's disappearance. The judge was not, however, satisfied that the evidence supported that claim. Additionally, the judge did not accept that the appellants left their schooling because of the threats received, given that they had remained in school for several years after their father's disappearance and that their older brother had established a business

during that time. It is submitted that these were not the actions of people who consider themselves at risk. Moreover, the claim that the second appellant was targeted in a hit-and-run accident relied solely on the opinion of one of his friends.

10. With respect to the issue of identity documents, Miss Isherwood submits that the judge found that the appellants' mother had their passports and identity documents. Given the evidence of the appellants that they were in touch with a neighbour who was also in contact with their mother in Turkey, it was open to the judge to find that they could obtain their passports from her or at the very least obtain enough information to re- document themselves. The judge considered the country guidance and was entitled to find that they could either access documents for identification prior to their return or alternatively would be able to obtain identity cards from their home area.
11. The appellants' written submissions are undated but were emailed to the Tribunal on 30 June 2020. They submit that the appellants' accounts and evidence were considered consistent and credible by the judge. It is argued that if the judge was able to place reliance on the evidence then it followed that she had erred in failing to find that the evidence established the link between the father's abduction and the PUK as made out by the documentary evidence. It is submitted that the judge's findings show that she accepted that the evidence established that the family of the appellants became victim of their father's kidnappers and subsequently left Iraq. Further, the evidence also established that some powerful actors within the IKR were behind the attacks on the family. It is submitted that the appellants discharged the burden of proof on them to show that they remain at risk from the kidnappers of their father namely the PUK.
12. It is also argued that the judge's credibility findings mean that the requirements of paragraph 339L of the immigration rules are met. It is argued that the judge failed to apply the rules at all.
13. On the issue of CSID documentation, it is submitted that the judge failed to anxiously scrutinise the evidence with regard to the current situation following country guidance. It is submitted that the judge made assumptions and relied on possibilities that such documentation could be obtained. It is submitted that the appellants do not have any family members living in the IKR to whom they could turn to for help and that in the absence of such documentation they were entitled to humanitarian protection. The Tribunal is urged to set aside the decision and remit the matter for a fresh hearing to the First-tier Tribunal.

Discussion and conclusions

14. I have considered all the evidence, the grounds for permission and the submissions made by both parties.
15. I consider first the argument that the media articles established that the PUK was responsible for the appellants' father's disappearance and that the judge erred in not making the connection when she had accepted the appellants' account. I note that in granting permission, Judge Neville found no merit in

this argument and indeed found it was hardly surprising that the judge found as she did on this issue.

16. Nothing in the media articles confirms the contention that the PUK had taken the appellants' father. It is difficult to comprehend how the grounds and further submissions can maintain that they do. At best they report the belief of the appellants' paternal uncle but no other source is provided for this belief. There was no "link" established by the newspaper articles between the PUK and the abduction. The judge took the articles into account, had regard to the submissions of the appellants' representative but properly concluded that link had not been shown by the articles relied on.
17. Although Judge Neville considered it arguable that the judge had not given weight to the views of the appellants' uncle, the determination shows that she had considered this matter and of course whether or not she gave weight to that was a matter for her. It is not a matter that she disregarded or failed to consider. It was noted in paragraphs 5, 6, 11, 28, 31(iii), 32, 33, 35 and 39. Contrary to what the grounds and submissions argue, it was entirely open to the judge to find that although the appellants were consistent in their claim that they had been told by their uncle that it was his belief that their father had been taken by the PUK, there was nothing other than the uncle's belief that they were responsible to support that claim. No reason had been given for why the PUK would kidnap one of its own members and there was no country evidence to suggest that they would act in that way. Whatever reason the uncle had for believing the blame lay with the PUK, the judge was entitled to conclude that the evidence did not support that assumption. No error of law has been shown in that respect.
18. The judge was also entitled to find that if the appellants and their family had been receiving threats for the 12 years they remained in Iraq following their father's abduction, they would not have been able to continue attending school until their late teens and their brother would not have been able to set up a business. She found that there was no evidence other than a friend's opinion that the appellant had been directly targeted in a hit and run accident and nothing to suggest that the PUK was behind it. Nor was there any supporting evidence to ascribe responsibility for the shooting of the first appellant to the PUK.
19. It is also argued in submissions that the judge did not apply the Immigration Rules. This was not a ground raised previously and no application to amend the grounds has been made. In any event, I note that only paragraph 276ADE of the rules had been relied on at the hearing and that the judge did indeed consider this at paragraph 55 of her determination. Paragraph 339L sets out the matters an applicant must address to substantiate his claim. It is not explained in the submissions why a failure to refer to this rule (which was not referred to before the judge) is material to the outcome of the appeal. It takes matters no further given that the correct standard and burden of proof was applied.
20. That leaves the issue of identity documents. The submissions maintain that the appellants never had a CSID document but also maintain that such a document is crucial for everyday living. The argument therefore that the appellants never had one is thus contradictory. Moreover, it is the appellants' evidence that they had passports which remain with their mother in Turkey. Some evidence of

identification would have been required for passports to be issued. The judge found that the appellants were in contact with a neighbour in Iraq who was in contact with their mother and she considered that the appellants would therefore be able to obtain their passports or at least the information necessary to obtain replacement documentation.

21. In reaching her decision, the judge considered SMO and others (article 15(c): identity documents) Iraq CG [2019] UKUT 400 (IAC) (at 43 of her determination). She noted that the appellants had been issued with passports. She noted that they had given little information about any steps they had taken to obtain documentation (at 44). She considered there were options available to them to obtain documentation (at 45-47, 49 and 50). In reaching that conclusion she had regard to the country guidance and to country information. No errors of law have been established.
22. The judge also considered whether the appellants would be entitled to humanitarian protection and for sustainable reasons found that they would not (at 52-54).

Decision

23. The decision of the First-tier Tribunal does not contain any errors of law and it is maintained. The appeals are dismissed.

Anonymity

24. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I continue the anonymity order made by the First-tier Tribunal judge.
25. Unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of any form of publication thereof shall directly or indirectly identify the appellants. This direction applies to, amongst others, the appellants and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellants from the content of the protection claim.

Signed

R. Kekić

Upper Tribunal Judge

Date: 17 August 2020

