



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02520/2020 (V)

THE IMMIGRATION ACTS

Heard by skype for business
On 29 April 2021

Decision & Reasons Promulgated
On 10 May 2021

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

YOH
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Cleghorn, Counsel

For the respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

1. The appellant, a citizen of Iraq, has appealed against a decision of the First-tier Tribunal ('FTT') dated 20 September 2020, which dismissed his appeal on international protection and human rights grounds.

2. The grounds of appeal were drafted by Ms Cleghorn, who appeared both before the FTT and at the hearing before me. The first ground of appeal contends that the FTT failed to consider how the appellant could safely make his way back from his point of return (Baghdad airport) to his home area in Kirkuk without possession of the requisite identity documentation. The second ground of appeal submits that the FTT made an error of fact which infected its overall adverse credibility finding. Mr Tan relied upon a rule 24 notice in opposing the appeal.
3. After hearing submissions I reserved my decision, which I now give with reasons. I deal with each ground of appeal in turn, but in reverse order. This is because if the ground seeking to impugn the overall credibility finding is made out, then it will be unnecessary to examine the alternative ground based upon a claimed lack of access to documents.

Mistake of fact – credibility finding

4. This ground of appeal was drafted in such a way as to only impugn one aspect of the FTT's numerous adverse credibility findings. Although, Ms Cleghorn initially attempted to challenge another aspect of the FTT's credibility findings at the hearing, she did not make an application to amend her grounds of appeal and focussed her oral submissions entirely upon the pleaded grounds.
5. The appellant's claim that he was obliged to leave Kirkuk was based upon his fear of his neighbour, a man called Salah Ahmed. The appellant explained in his witness statement that Salah worked for the Badr organisation which was part of the Shia militia. After 16 October 2017 Kirkuk was overtaken by the PMF. This led to the withdrawal of the peshmerga forces and the increased power of the PMF. The appellant claimed that Salah "became high in the intelligence of the Shia militia" and wielded his power to kidnap and attack others. The appellant further claimed that Salah became embroiled in a land dispute with his family and this led to his detention and ill-treatment.
6. The respondent regarded the appellant's account of these difficulties as "fundamentally inconsistent" for the reasons set out in her decision letter dated 1 March 2020 at [33-46]. As part of his response to this, the appellant relied upon photographs from Facebook said to show Salah in his full uniform, which indicated he had "Colonel status".
7. The FTT addressed these photographs at [18] and found them to "have no probative value" because: they are publicly available online and do not establish any connection between Salah and the appellant / his family; they purport to show Salah as a Colonel in the Iraqi Army, which contradicts the appellant's claim that he was a member of the Shia militia. The grounds of appeal take no issue with the former reason and focus entirely upon the latter.

The grounds claim that the FTT was wrong to find a contradiction because the Shia militia were incorporated into the Iraqi army and a person could therefore be a member of both.

8. Mr Tan drew my attention to the pages within the appellant's bundle containing translations of the Facebook photograph entries. These refer to a Colonel Salah and give specific times and dates (20 August 2015 and 17 October 2015). Mr Tan pointed out that as at those dates the Shia militia had not been incorporated into the Iraqi army and as such the FTT was correct to make the observations it did.
9. I therefore invited Ms Cleghorn to take me to the specific evidence said to support this ground of appeal. Ms Cleghorn acknowledged there was no evidence to undermine the dates provided in the Facebook photographs. She therefore needed to establish that it was plausible, in the light of the country background evidence, for Salah to have been a member of the Shia militia as well as part of the Iraqi army in August 2015. In this regard, Ms Cleghorn simply relied upon the references to SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) in the grounds. She submitted that although the law incorporating the Shia militia into the Iraqi armed forces was not passed until December 2016, they were already well-integrated prior to this. Ms Cleghorn took me to no evidence to support this proposition. Whilst I accept that the Shia militia had been working alongside the Iraqi army for many years, in the absence of firm evidence I am not prepared to accept that they were working so closely that a member of the Shia militia was an integral part of the Iraqi army in August 2015.
10. Ms Cleghorn sought to argue that the FTT made a mistake of fact that gave rise to unfairness and therefore constituted an error of law. The burden fell upon the appellant to establish that the existing fact or evidence (said to be mistaken) was "established", "in the sense that it was uncontentioned and objectively verifiable" - see MM (unfairness; E & R) Sudan [2014] UKUT 105 (IAC). I am not satisfied on the evidence available to me, that the FTT made a mistake of fact in the sense required by the authorities to give rise to an error of law.

Documentation

11. Mr Tan acknowledged that the FTT erred in finding that this appellant (i) who did not originate from the KRI, would not be returned to Baghdad and (ii) could obtain a replacement identity document whilst in the UK. This is because SMO makes it clear that non-KRI residents would be returned to Baghdad (headnote 7) and that as a former resident of Kirkuk, the appellant would not be able to obtain a replacement document without attending the office in Kirkuk himself - see [431] of SMO. Mr Tan submitted that these errors were not material because the FTT found in any event that the appellant

would be able to call upon his family's assistance to help him to obtain his old CSID, which he could use to travel from Baghdad to Kirkuk, and once in Kirkuk he could make an application for a new identity card.

12. Ms Cleghorn submitted that the errors were material because the FTT's focus was upon "replacement documents", when this was simply impossible from the UK. Although the FTT was wrong to refer to the possibility of "replacement" documents at [32-34], [38] and [41], its other un-appealed findings of fact are such that I agree with Mr Tan's submission. The appellant was issued with a CSID in Iraq and left this in his house in Iraq, when he fled in 2018 (Q 22). Although the appellant claimed that this was inaccessible (Q 23), the FTT rejected this evidence, finding at [37] and [38] that his family remained in Kirkuk and would be able to assist him. Although the FTT did not specifically say so, this must have included sending him his CSID.
13. I note the assertions in the grounds at [2] that the appellant's claims regarding his family contact and their inability to assist him regarding documentation have not been challenged. However, those matters were clearly disputed before the FTT and the FTT made adverse findings of fact contrary to the appellant's case, which have not been the subject of any challenge in the grounds of appeal. The suggestion in Ms Cleghorn's skeleton argument that the appellant's claim that his family left Kirkuk is plausible and consistent with the country background information, is probably correct. However, the pleaded grounds of appeal completely omit to challenge the clear adverse findings at [37] and [38], beyond stating (correctly) that the family could not assist the appellant to obtain "replacement" documents. Contrary to the submission in the grounds that the "only alternative is for him to return to Kirkuk and obtain a replacement card there", I accept Mr Tan's submission that there was a further alternative: his family could send him his CSID card. Whilst the FTT made errors of law when making findings as to replacement documentation and route of return, these were not material for the reasons I have provided.
14. It follows that the two grounds of appeal relied upon by Ms Cleghorn do not identify material errors of law and I therefore do not set aside the decision of the FTT.

Notice of Decision

15. I dismiss the appellant's appeal because the grounds of appeal do not disclose a material error of law.

Signed: *UTJ Melanie Plimmer*
Judge of the Upper Tribunal

Date: 30 April 2021