



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

Appeal Number: UI-2021-001720
(PA/52458/2020); IA/02497/2020

THE IMMIGRATION ACTS

**Heard at Manchester Civil Justice
Centre
On 1 September 2022**

**Decision & Reasons Promulgated
On 9 December 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MHM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms Young, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq whose date of birth is recorded as 1 January 1997. He arrived in the United Kingdom on 3 December 2018 and claimed asylum the following day. His application was considered by the Respondent but refused for the reasons set out in her letter dated 11 November 2020. He appealed to the First-tier Tribunal which in a decision dated 8 December 2021, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the initial hearing in the Upper Tribunal, the appellant (who was assisted by an interpreter) appeared in person. I explained the nature of the proceedings to him and told him that he should let me know if he did not understand anything which was said.
3. Judge Moon granted permission as follows:
 2. The Judge dismissed the claim for asylum because the fear of persecution is not for a reason that engages the Refugee Convention. At the end of the decision, the Judge also considers whether the appellant is entitled to Humanitarian Protection but this consideration is limited to whether the appellant is at risk on account of indiscriminate violence. The Judge has not considered whether the appellant is at risk of serious harm as a result of one of the reasons set out in Article 15 (a) or (b) of the Qualification Directive. The failure to fully consider the claim for Humanitarian Protection is an arguable error of law.
 3. It is also not clear that the correct standard of proof has been applied because the credibility of the appellants account has not been considered in the context of his claim for Humanitarian Protection but in the context of his Human Rights claim. This is also an arguable error of law.
4. For the respondent, Mr Tan, Senior Presenting Officer, has filed a Rule 24 reply:
 3. The grounds make one simple argument that the FTTJ failed to take in to account the principles outlined in *Chiver* that an asylum seeker may embellish an account. A broad claim to be at risk of ill treatment contrary to Article 3, makes no specific reference to a particular reason. In granting permission, FTTJ Moon raises the issue of failing to consider HP (Article 15 (a) or (b)). It is submitted that this goes well beyond any point raised by the appellant, and on perusal of the skeleton argument relied on by the appellant the claim made reference only to the Convention and Article 3- it being latterly conceded that the claim did not engage the Convention [17].
 4. FTTJ Moon also refers to grounds arguing that the incorrect 'burden' of proof being applied, but it would seem that it is being suggested that the incorrect standard of proof was applied. Nevertheless, both the correct standard and burden are identified at [15]. There is no indication that the FTTJ considered that a different standard applied having considered the background evidence being supportive to a degree of his account, and making allowances for general anxiety. The FTTJ conducted a holistic assessment of the evidence and gave adequate reasons for rejecting the account. Having rejected the claim that the appellant was at risk, it is unclear why any consideration under Article 15 (a) or (b) would be relevant to the appeal, nor was any argument made that as an able adult returning to the IKR (where he has avenues of support) that he would face general violence or severe humanitarian conditions.
5. In my opinion, Mr Tan is entirely correct. For reasons which are not clear, the grant of permission goes beyond the very limited scope of the pleaded grounds. There is, as Mr Tan says, no suggestion that the judge applied an incorrect standard of proof or attributed the burden of proof to the incorrect party. The challenge to the judge's thorough and detailed

decision via the authority of *Chiver* is unfounded; that ground amounts to nothing more than a disagreement with findings of fact manifestly available to the judge on the evidence.

6. Even if one accepts that the appellant had advanced any argument under Article 15 of the Qualification Directive, the judge's findings as to the appellant's lack of credibility at [23] are , as Ms Young submits, wholly sufficient to dispose of that aspect of the appeal. Judge Moon observes that the judge dealt only with sub-paragraph (c) and omitted any reference to (a) and (b). However, those sub-paragraphs deal with '(a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin'. The judge's analysis of the appeal on Article 3 ECHR grounds effectively covered both those parts of Article 15; the judge did not err in law by failing to state in terms that his findings led him to reject that aspect of the appeal.
7. I gave the appellant every opportunity to address the Tribunal in response Ms Young's submissions and in support of his own appeal. I am satisfied that the appellant understood what had been said in court. He told me that he could not obtain a CSID and that 'everything I say is the truth.' Those are both matters considered by the First-tier Tribunal in a manner which was legally sound. In the circumstances, I dismiss the appeal.

Notice of Decision

This appeal is dismissed.

Signed

Date 30 October 2022

Upper Tribunal Judge Lane

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.