



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005060

First-tier Tribunal No: PA/56140/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 May 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

AOM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Masih of Lotus Chambers; instructed by Optimus Law
For the Respondent: Ms Rushforth, a Senior Home Office Presenting Officer.

Heard at Birmingham Civil Justice Centre on 9 May 2023

Order Regarding Anonymity

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.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Hawden-Beal, ('the Judge'), promulgated following a hearing at Birmingham on 17 August 2022 in which the Judge dismissed the appellant's appeal on all grounds.
2. The appellant is a citizen of Iraq born on 10 February 1993. He claimed asylum on the basis of a fear of persecution if returned to Iraq as a result of his political opinions, his religion, and his sur place activities.

3. It was not disputed before the Judge that the appellant is an Iraqi Kurd from the IKR.
4. It was not disputed that in 2020 a previous appeal brought by the appellant was dismissed by First-tier Tribunal Judge Gribble ('Judge Gribble') because of a lack of credibility in relation to a claimed blood feud. Judge Gribble did not consider the appellant to be at risk as a result of his involvement with the Gorran party. Although Judge Gribble accepted the appellant was a convert to Zoroastrianism who had been subject to harm from his family she found the appellant could obtain protection from the State and to relocate within the IKR to Erbil. The appellant's home area is in Sulamaniyah Province.
5. The Judge's findings are set out from [26] of the decision under challenge. At [31] the Judge finds the appellant had produced nothing new to persuade her to depart from Judge Gribble's findings in relation to the claimed fear of persecution based upon his conversion to Zoroastrianism.
6. The Judge considers risk to the appellant as a result of his online activities, finding the appellant had no political profile when he left Iraq in 2018. The Judge accepts the appellant has been prolific in his Facebook activities but correctly notes that the question was whether those activities are likely to have brought him and his account the attention of the authorities in Iraq such that, if returned, he will be at risk of persecution. The Judge notes photographs the appellant claims show him attending demonstrations, but did not find anything in the photographs, posted on his online account, that would enable the appellant to be identified. The Judge finds there was no reason for the authorities to have been alerted to the appellant and his posts against the government [33].
7. At [34] the Judge was not satisfied the appellant would attract adverse attention if returned to Iraq and finds the appellant was trying to make himself more important than he really is. It was found he is not an activist, not a member or supporter of any well-known Iraqi opposition party or groups and was not found to be involved with the Gorran party by Judge Gribble [35].
8. The Judge finds no reason to depart from the findings of Judge Gribble in relation to the protection issues and finds the appellant had not discharged the burden upon him to show he had a well-founded fear of persecution for a Convention reason [37]. The Judge does not find the appellant is entitled to a grant of Humanitarian Protection under paragraph 339 C and that the claims under Articles 2 and 3 ECHR fail in line.
9. In relation to documentation, the Judge noted Judge Gribble did not accept the appellant had been truthful in his evidence about his documents and was satisfied he had a passport in Iraq as well as his CSID and INC and that, since he was in contact with his cousin, who was also a Zoroastrianism convert and his maternal uncle who had helped him flee, he would be able to make contact with them and get those documents sent to him [39]. At [42] the Judge finds the appellant had not successfully challenged the finding of Judge Gribble that the family will not hand over his documents and that the appellant had not satisfied the Judge that he could not obtain them.
10. Thereafter the Judge considered and dismissed the human rights claim under both the Immigration Rules and Article 8 ECHR.
11. The appellant sought permission to appeal which was granted by First-tier Tribunal Judge Hatton on 26 October 2022, the operative part of the grant being in the following terms:
 2. In essence, the grounds assert the Judge erred in failing to consider the totality of the Appellant's case.
 3. In particular, I note the Judge took no discernible issue with the Appellant's overriding contention that he was subjected to harm by his family in Iraq on account

of his conversion from Islam to Zoroastrianism. Indeed, this was accepted by the preceding Judge in 2020 [3].

4. Correspondingly, the Judge took no discernible issue with the Respondent's acceptance at [40] that to obtain a new biometric Iraqi National Identity Card ("INID") the Appellant would need to physically attend his local CSA office. Indeed, this is made explicit at [headnote 12] of SMO and KSP (Civil status documentation, article 15) (CG)) Iraq [2022] UKUT 110 (IAC).
5. Accordingly, it is unclear on what basis, if any, the Judge found at [42] that the Appellant would be able to obtain an INID, given this would inevitably entail returning to his home region occupied by those family members who previously harmed him, on the undisputed factual nexus before the Tribunal.
6. I am also mindful that although the Judge found there was no evidence the Appellant's undisputed sur place activities had come to the attention of the Iraqi authorities [34], thereafter, there was no discernible examination of the degree of likelihood of the Appellant coming to the adverse attention of the authorities on return to Iraq if he were to continue such activities in his home country. This is arguably problematic, especially given the absence of issue taken with the Appellant's claimed profile as an active campaigner against the Shia militia and government corruption in Iraq, and as a person who has been subjected to online threats and abuse as a direct consequence of his involvement in evangelising Zoroastrianism [16]. Given that the ideological integrity of the Appellant's sur place activities was not challenged, it is difficult to establish on what basis, if any, he would cease such activities on return to Iraq. Correspondingly, if he were to continue with these activities on return, in the conspicuous absence of any examination thereof, it is difficult to establish on what basis, if any, such activities would not come to the adverse attention of the authorities in Iraq.

12. The Secretary of State opposes the appeal.

Discussion and analysis

13. We do not find the submission the Judge considered only the historic information and not the current evidence made out, as it is clear that the Judge was required to consider both, and did so, when assessing whether the evidence warranted departing from the previous findings of Judge Gribble.
14. It was asserted on the appellant's behalf that his conversion to Zoroastrianism had been accepted as credible. It was submitted that there was evidence of the appellant evangelising in his sur place evidence, and that the Judge did not consider the impact upon the appellant if he was to evangelise on return to Iraq.
15. We have been referred to a number of pages of the appellant's bundle, including pages 85 - 97 which contain a translation of messages purportedly sent by the appellant and their responses, threatening him as a result of his beliefs and comments which are taken to be an insult to Islam.
16. It is asserted there is adequate evidence to show where the appellant was protesting and that the Judge fails to make sufficient findings in relation to the appellant's claim that such activities will put him at risk on return to Iraq.
17. We find no merit in the assertion that Judge did not consider the issue of the appellant's political profile and she makes a clear finding as noted above that it was not sufficient to create a real risk for him on return.
18. We accept the submission that the Judge does not appear to have considered risk on return if the appellant was to evangelise although there does not appear to be sufficient evidence to show that it is an obligation or requirement upon a member of the Zoroastrianism faith to evangelise or that the appellant did so previously or that this specific issues was raised before the Judge. The core finding of the Judge is that the appellant had not established he will be at risk on return as a result of his beliefs within the IKR.

19. At [28] the Judge noted the appellant's claim in relation to religion was that he would be at risk because he will be considered to be an apostate. The Judge examined the country evidence referred to in that paragraph before concluding the IKR is more tolerant of converts than is the rest of Iraq with no reported cases of anybody being prosecuted for changing their religion, contrary to the appellant's assertion in the skeleton argument before the Judge that the Personal Status laws forbid conversion from Islam. The findings of Judge Gribble and the Judge show there was no evidence to show the appellant's cousin, who had also converted to Zoroastrianism, suffered persecution from the state or nonstate actors, and at [31] that the appellant had produced nothing new to persuade the Judge it was appropriate to depart from the findings of Judge Gribble in relation to his fear of persecution based on his conversion or activities in relation thereto. Ms Masih was not the advocate before the Judge and whilst she may have raised this issues if she was, it is not made out the advocate who did appear did so.
20. The Judge is criticised for adopting to narrow an interpretation of whether a person will be classed as an activist at [35]. We find no merit in such a claim. The Judge gives adequate reasons for why it was not found the appellant has the profile that he is claimed to have and did not have a profile that will create a real risk for him on return to Iraq.
21. The Judge properly applied the Devaseelan principles as a starting point, considering whether, on the basis of the evidence, she was able to depart from the earlier findings of Judge Gribble. On the material provided it is not made out the Judge's decision not to depart from the earlier findings is not a finding reasonably available to the Judge on the evidence.
22. In relation to documentation, it is asserted the Judge failed to consider, in light of the risk from his family, that even if contact could be made he was unlikely to receive documents from his family or any form of assistance.
23. The position now is that the appellant will be returned directly to the IKR. It was not made out the appellant could not obtain a laissez passer from the Iraq Embassy in the UK which he could use to return to either Erbil or Sulaymaniyah airports. It was not made out the appellant would not be to pass through the airports and there was no evidence he would experience any difficulties even if a security check was made.
24. It was noted by Judge Gribble that there was an issue as to which CSA offices were still issuing INID cards. Latest information available from the authorities in Iraq is that CSA offices in the IKR are only issuing the INID which require the personal attendance of an individual to provide their biometric data.
25. The appellant has not established that he will not be able to access his CSA office. It was not made out the appellant had established as credible an entitlement to international protection based upon nonstate actors or otherwise if returned to Iraq. The finding the appellant was in contact with his cousin, also a convert, and his uncle who helped him, has not been shown to be finding outside the range of those available to the Judge on the evidence. The Judge's finding that close family members could assist the appellant has not been shown to be finding infected by material legal error. There was insufficient material to show that the Judge's finding that family would support the appellant and that he could obtain the necessary identity documents are findings outside the range of those available to the Judge on the evidence. This is no longer a case of the appellant being returned to Baghdad where he would be required to travel to his home area to obtain replacement documents which he could not safely do without such documents.
26. There is merit in the submission made by Ms Rushforth that a number of the grounds are disagreement and that the Judge did deal with the points taken adequately. It important to remember that findings need to be adequate, not

perfect, when finding the appellant is, at best, and low level individual expressing a view with no adverse profile sufficient to create a real risk on return, a finding in accordance with the evidence and case law, including XX (PJAK), sur place activities, Facebook) (CG) [2022] UKUT 00023 in relation to the appellants social media accounts.

27. The appellant has religious freedom in the IKR.
28. In relation to the HJ (Iran) point, the Judge does make a finding in relation to whether the appellant's activities represent a genuinely held adverse political view where it is found at [35] the appellant is trying to create an inflated profile for himself. Whilst we accept that such activities, even if disingenuous, could create a real risk of harm if viewed adversely in the eyes of any potential persecutor, the Judge also finds that the appellant is not an activist and not a member of supporter of any of the groups that will create a real risk for him. The Judge refers to Judge Gribble's findings in the determination promulgated on 11 March 2020. In relation to political involvement Judge Gribble wrote:
 34. The claim is also that the appellant was part of the Gorran party. I have considered the evidence carefully in respect of his element of the appeal. There are some significant inconsistencies in the account he has given. For example, he said he was a supporter not a member of the party in the AIR. However, he also said he had a membership card (AIR 1 q 97). He said in the SCR that he was detained for 4 days during the national election and threatened not to continue supporting the Gorran party (SCR 5.4). However, in the AIR 1 he makes no mention of this and in fact he says clearly that he was not arrested (q 64) but that he was beaten. These 2 accounts cannot be reconciled.
 35. The account of membership/support is supported by the letter from Mr Salam however he appears to have never met the appellant. The man who it is said did meet him, Mr Awat, did not attend to give evidence and provided no evidence about his meeting with the appellant and any enquiries he made. Mr Salam's letter does not explain how his own or Mr Awat's involvement came about and does not mention Mr Awat. It does not explain who Mr Salam is and what enquiries he has made in Iraq; nor does it mention the claim made by the appellant that he had been detained for membership, highly significant and likely to be recorded by the party if true.
 36. The letter says the appellant was an active member. If so, and if indeed Mr Salam had contacted people in Iraq about this, it is unclear why no information at all is contained in this document; for example, his membership number, a sample membership card, the names of who he spoke to in conducting his investigation. So, bare assertions in that context cannot be given weight. I did not find I could place any reliance on the letter. It bore all the hallmarks, as indeed accepted by the appellant, as having been written to order. I did not find it was reasonably likely the appellant had been involved with the Gorran party. He is not at risk from the government on return.
29. In relation to risk from family Judge Gribble wrote.
 47. I am satisfied this appellant would be able to practise a recognised religion without persecution from the state. The background evidence (EASO page 74) notes that as of 2015 there were an estimated 100,000 Zoroastrians living in the IKR and according to reports from the political representative of Kurdish Zoroastrians in December 2017, around 4000 people in Erbil Governate had filled out forms expressing a desire to convert to Zoroastrianism. This tallies with the appellant's account of visiting an official in Sulaymaniyah to fill in a form to confirm his conversion and shows in my view that there is no official persecution (AIR 2 q 5).
 48. It is accepted the appellant's family took the news of his conversion badly and subjected him to physical violence. I accept he has a fear of them. His account of trying to harm himself in Iraq as a result of his treatment has been accepted. If he returned could he get protection from the state if he was threatened by his family?

The CPIN notes that the government in the IKR is able to provide protection within the requirements of the Qualification Directive (9.1.13) unless there were individual circumstances at play including those perceived as being associated with ISIL; LGBTI individuals or those involved in honour based and domestic violence. This appellant is not in that category. He could in my view get state protection if he returned to the IKR. I do not consider however he could return to his family home which is accepted to be in a village close to Qalladeze city. 49. The Secretary of State says that the appellant could relocate elsewhere in the IKR, for example to Erbil, and would it be reasonable for him to do so. This would not leave him at risk of serious harm from his family. I considered this, or whether he could relocate to Sulaymaniyah City; where the Temple is and where the appellant had to register to convert to Zoroastrianism (AIR 1 q5).

50. The appellant has a relative who is a convert; Peshawa Ahmed. Peshawa lives in Qalladeze like the appellant, which is 2 hours by road north east from Sulaymaniyah and around 2 hours east of Erbil. He has a friend too, Yousif. He also has a maternal uncle who helped him leave Iraq. I am satisfied he remains in touch with Yousif and Peshawa; and most likely he is in touch with Shamal who he mentioned too.
30. As noted by Judge Gribble, the appellant will have support on return and the finding he can redocument himself has not been shown to be affected by material legal error.
31. It was not made out on the evidence that there will be any breach of the HJ (Iran) principles if the appellant chose not to behave as he did in the UK when he returns to Iraq. There is no finding his conduct represents a genuinely held political view forming part of a fundamental aspects of the appellant's personal identity which he would not express solely for reasons of avoiding persecution.

Notice of Decision

32. There is no material error of law in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 May 2023