



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000886
First-tier Tribunal No:
PA/51479/2021
IA/03434/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

KQA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C. Soltani, solicitor advocate instructed on behalf of the appellant.

For the Respondent : Mr A. McVeety, Senior Presenting Officer

Heard at Bradford (IAC) on 12 July 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection and human rights appeal in a decision promulgated on the 20 January 2022. Permission to appeal the decision of the FtTJ was sought and on 27 September 2022 permission was granted by UTJ Sheridan on 9 May 2022.
2. Anonymity had been granted by the FTT and was granted because the facts of the appeal involved a protection claim. Neither party applied for or made any submissions that the order should not continue. 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.

3. The background to the appeal is set out in the decision of the FtTJ, the decision letter and the bundles provided including his substantive interview. The appellant is a national of Iraq of Kurdish ethnicity. The basis of his protection claim related to an incident that took place during his work as a taxi driver in Kurdistan. On 25th of June 2018 he collected a passenger by the name of O. He was directed by the passenger towards a destination but en route the car was stopped by another vehicle and unknown persons in the vehicle with guns approached him, pulled the passenger out of the car and attacked and killed him.
4. In interview the appellant stated that he had called the police and they attended and after he told them what had happened he was handcuffed and taken to the police station. He was arrested and imprisoned the same day and the reason for that was that they were investigating to see if the appellant was involved in the murder or not. Whilst in custody he communicated with his family, and he was told by his brother that the man who died belonged to a powerful tribe and his brother had threatened to kill the appellant upon release because he believed him to be responsible for the murder.
5. Following his release, the appellant's house was shot at by unknown people and that he was sure this incident related to the family of O who belonged to a powerful tribe named the Shwankara tribe who were powerful in Kurdistan and to had links with the PUK authorities.
6. The appellant therefore left Iraq as he feared the family and would be involved in a blood feud (see ASA). The appellant also claimed that he had engaged in political activities against the Iraqi authorities and the ruling parties in Kurdistan by his attendance at demonstrations and been active on Facebook and social media.
7. The respondent refused his claim in a decision taken on 25 March 2021 not having accepted that he had problems with the tribe, or that he had received threats or been targeted in the way claimed. His claim to be at risk on account of activities in the UK were also rejected.
8. The appellant appealed that decision. In a decision promulgated on the 20 January 2022, the FtTJ dismissed his appeal against the respondent's decision. The FtTJ did not accept the account given of events in Iraq and that he was pursued by members of the tribe in Kurdistan and whilst he accepted that the appellant had attended demonstrations, he did not undertake a leading or permanent role and in any event they were not carried out from sincerely held views.
9. Permission to appeal was sought and was granted by Upper Tribunal Judge Sheridan on 9 May 2022.
10. At the hearing before the Upper Tribunal, Ms Soltani appeared on behalf of the appellant and Mr McVeety, Senior Presenting Officer appeared on behalf of the respondent. Ms Soltani had made a request for the hearing to be by way of a remote or hybrid hearing. This had been granted. As a result Ms Soltani appeared by remote means using CVP with the presenting officer at the tribunal. There were no problems or difficulties in hearing and seeing Ms Soltani give her oral

submissions or for the submissions made by Mr McVeety to be heard by Ms Soltani.

11. Ms Soltani relied upon the written grounds and supplemented them with her oral submissions. Mr McVeety on behalf of the respondent made submissions in reply.
12. I intend to consider the grounds by reference to the parties submissions. On first reading of the grounds, the impression is that they seek to do no more than provide a disagreement with the FtTJ's findings on plausibility and credibility. The reference in the grant of permission to the principal finding at paragraph 39 being irrational is a high threshold to meet. Nonetheless having had the opportunity to hear the oral submissions from both advocates, which have sought to put the findings into their factual context, the grounds do identify a material error of law in the assessment of the plausibility and credibility of the claim.
13. The background to the claim as identified in the ASA that the appellant was at risk of persecution because the issue that the appellant had with the family member of O and the Shwarkar tribe amounted to a blood feud as they believed to be responsible for the death of O, a member of their tribe.
14. The context of the blood feud was that it began due to the appellant working as a taxi driver and having been stopped and pulled over when men pulled out his passenger and killed him. According to the appellant's account the police became involved because he called them (Q90 AIR) and that he was arrested. In interview the appellant gave reasons for the arrest stating they were unsure who the murderer was, and they were investigating to see if he was guilty or not (Q 100 - 101). Those are the reasons that he gave in answer to Q 102. It was during the time that the appellant claims that O's brother began the feud as he believed the appellant to be responsible.
15. The grounds seek to challenge the principal finding at paragraph 39 . Ms Soltani referred to paragraph 39 as the main finding which related to his release from prison. She submitted that the finding was not a credibility finding but a plausibility finding given that the word "plausible" was used and it was incumbent on the FtTJ to set out why it was implausible when considering the claim. She submitted that the finding made was not sufficient to bring his claim to an end. She submitted that the grant of permission raised questions of the impact on the remaining credibility findings but as this formed the core or principle finding it made a difference and was material to the outcome as it was at the core of the claim and therefore affected the other findings.
16. Mr McVeety relied on the rule 24 response which set out that whilst the grounds asserted that the judge was wrong to find the appellant's account not credible that he had been released, it was a finding made in the context of the appellant's own evidence that his accusers controlled both the police and law enforcement and thus the FtTJ properly reached a finding open to him on the evidence. He submitted that the appellant's claim was that his accusers controlled the police and law enforcement and if it were the appellant's own account that the judiciary were controlled by the PUK it was not plausible that he would be released "scot-free," and this was not an irrational finding.
17. Whilst the FtTJ found it plausible that the appellant during his course of work as a taxi driver could become embroiled in part of the incident as described, the FtTJ did not accept his account was plausible and found it lacked credibility. The was because, as the appellant claimed, that the person killed belonged to a powerful

tribe that had links with the ruling PUK party and had control of the authorities including the police and law enforcement, despite this the appellant was freed from detention and declared innocent. The judge found that it lacked credibility that if the appellant were accused of murder of a member of a powerful tribe, who was claimed to have links and influence over the PUK party, that he would simply be released in the manner he claims (paragraph 39).

18. However as Ms Soltani submits in her oral submissions, the effect of the finding made by the FtTJ was that although the appellant was found to be innocent it was incredible that a person who was not guilty of an offence in Iraq would be released. In other words as UTJ Sheridan stated when granting permission that it was arguably irrational to find it not credible that an innocent person, who maintained that he was innocent, would be released after two months.
19. Whilst Mr McVeety submits that it was the context of the claim made by the appellant that led the FtTJ to reach an adverse conclusion, that is, against the appellant's account that the PUK had control over the authorities including the police and law enforcement, it is not credible that the appellant would simply be released in the way claimed, Ms Soltani in her oral submissions referred to the appellant's evidence in answer to this point. In his witness statement at paragraph 6, his evidence was that he was not released "scot-free" using the words of Mr McVeety but that he had been released on a temporary release and that he was still under investigation. The file was still open and not closed and he was supposed to stay in Kurdistan. Whilst that point was not set out in the grounds, it arose in answer to the Rule 24 response and the oral submissions made by Mr McVeety. In the finding made at paragraph 39, the FtTJ did not address that part of his evidence which was relevant to the circumstances of his release and could be viewed as an answer to that plausibility point made as Ms Soltani submits.
20. Ms Soltani submits that the adverse finding formed a central part of the claim and points to paragraph 39 where the FtTJ referred to it as "central part of the claim" and therefore if the finding were made outside the factual context of all the evidence, I would accept the submission that it was a material finding that went to the core of his claim.
21. There were other findings, and it is important to consider these. The other main finding related to a document (police letter) provided in support of the claim. The decision letter considered this document at paragraph 48 and took the view that the main content was consistent with his account of the attack on the property but set out that it referred to the person who was arrested as O which is not consistent with O being killed. It appears that that was an error in the translation as when the new translation was provided, the name of the person who had been arrested had been given in error and in fact referred to the appellant as stated. The FtTJ appeared to accept that there had been a translation error (see paragraph 40). However because the appellant did not seek to rely on it, he considered that this undermined his credibility. The FtTJ found that his efforts to locate the document together with his distancing himself from the document and comments about authenticity cast doubt on whether or not it was genuine. The judge stated that it led to the conclusion that it was non-genuine document therefore undermined his credibility.
22. Ms Soltani submitted in her oral submissions that the appellant by not relying on the document, on its own was not sufficient as a finding adverse to his credibility and for the dismissal of his appeal. The written grounds refer to the appellant

being penalised for not wanting to rely on a document. Mr McVeety submitted that it was finding open to the FtT to make as he sought to distance himself from the document and was entitled to say that it affected his credibility. The FtT set out the appellant's witness statement. The appellant said he did not wish to rely on it without evidence of authenticity. I take that to mean some official or expert authentication. Whilst that was recorded as his explanation, there was no reasons given as to why that explanation given and as recorded, was not credible. The judge would have been entitled to reject his explanation provided reasons were given. Given that the finding about a document that did not form part of the appellant's case took up 3 paragraphs of the credibility assessment I accept the submission made by Ms Soltani that it formed a substantive part of the assessment. Her submission made at the hearing has force that on its own this would not be sufficient to undermine the claim.

23. Mr McVeety points to finding at paragraph 43 that the appellant had speculated about the shots fired at his home and at paragraph 44 that there was no evidence that O was a member of the tribe, although the respondent did accept that the tribe did exist and was powerful in Kurdistan. However for the reasons set out above the 2 principal findings whether taken together or on their own, were not sufficient findings to wholly reject the appellant's account and in the circumstances where the principal finding is unsafe, and the requirement for anxious scrutiny, they are likely to have had an effect on the overall credibility of the claim and the assessment as a whole (and also see paragraph 48 by reference to the sur place claim and paragraph 50 where the FtT referred to his concerns in relation to the appellant's overall credibility).
24. Whilst Mr McVeety pointed to the alternative findings as to internal relocation, however, those findings did not take account of the appellant's claim to be in fear of the tribe which formed part of the assessment of internal relocation as set out in the last ground of challenge. Whilst it is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal, in the light of those errors which relate to the assessment of credibility, which was the principal feature of this claim, I accept the submission made by Ms Soltani that the assessment of credibility was flawed and thus the decision shall be set aside.
25. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."
26. I have considered the submissions of the advocates. Ms Soltani submitted that the appeal should be remitted to the FtT and Mr McVeety submitted that it would depend on the error. I have considered the issue in the light of the practice statement recited and the recent decision of the Court of Appeal in AEB v

[SSHD \[2022\] EWCA Civ 1512](#) and the decision in [Begum \[2023\] UKUT 46\(IAC.\)](#) As to the remaking of the decision and having heard from the advocates I am satisfied that in light of the fact findings which will be necessary, the appeal falls within paragraph 7.2 (b) of the practice statement as a full assessment of the evidence will be necessary which includes an assessment of issues of credibility. I therefore remit the appeal to the First-tier Tribunal for that hearing to take place.

Notice of Decision

27. The decision of the FtT is set aside and shall be remitted to the FtT for rehearing.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

24 August 2023