



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001882
First-tier Tribunal No:
PA/54558/2022
IA/11152/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 November 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

MR T A K

(anonymity order made made)

Appellant

and

The Secretary of State for the Home Department

Respondent

For the Appellant: Ms A Everett , Senior Home Office Presenting Officer

For the Respondent: Mr R Spurling, Counsel, instructed by Logan Kingsley Ltd, Solicitors.

Heard on 30th August 2023 at Field House

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent and any family member the Tribunal considers should not be identified 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 nor other person. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge O'Garro to the Upper Tribunal by First -tier Judge Hollings-Tennant.
2. The appellant claimed protection on arrival at Heathrow airport in July 2019. His said he was born in Kirkuk, Iraq and is Kurdish. He claimed he was found as an infant and unofficially adopted. Because he did not have documentation he was

unable to attend school. He claimed his adoptive parents were abusive. He described injuring his hand playing football. They refused to take him to hospital. He said that in October 2018 he had another football accident when he swallowed his tongue. The team members arranged for him to be taken to hospital where he remained for three days. He said his adoptive parents did not visit. In June 2019 when he expressed his unhappiness about his own circumstances his adoptive father made arrangements with an agent for him to leave. He claims that if returned he would have no family support. He also says that he cannot be returned because he has no documentation.

3. The respondent refused his claim on credibility grounds. His account of being unofficially adopted and subsequently abused was rejected. The respondent made the point that if undocumented he would not have been able to go to hospital for treatment. The claim to fear his family did not engage the Refugee Convention and there was the option of internal relocation.
4. On appeal the appellant was represented by Counsel, Mr Spurling, as he is now. A new matter was raised in relation to his relationship with a Ms M, a British national. The presenting officer took instructions and agreed to the inclusion of this in the claim. The judge concluded however by finding no evidence of family life in the United Kingdom existed and rejected the claim on this basis. No breach of private life was seen.
5. The judge referred to the completed SEF statement. At that stage he was a minor. He was interviewed in July 2022. At question A5:3 he was asked 'do you have any documentation which can confirm your identity...' He said he had. He was then asked, 'what are these documents?.' The answer was 'Iraqi ID.' He was then asked, 'are they in the UK?' And his response was 'No.'
6. The judge commented that this evidence about documentation was very pertinent to his claim and called into question his account of being adopted and unable to attend school. The judge noted the appellant said he had been able to access medical treatment following accidents playing football and on one occasion spent three days in hospital. The judge referred to the Country Policy and Information Note which indicated the absence of documentation prevented access to basic services and health facilities often required some form of documentation. The report went on to say that children without documents faced being unable to travel within the country, to attend school and access healthcare or welfare programs. Any subsequent marriage was at risk of not being recognised nor would they be able to own or rent property or secure employment.
7. The judge concluded that the fact the appellant was a hospital inpatient indicated he had an identity document which he had also admitted to having when he completed his SEF form. The judge went on to say that having documentation was not consistent with the claim made and the judge concluded by rejecting a claim is not credible. The judge went on to conclude the appellant had a CSI D card in Iraq and that his parents could arrange for it to be sent to him and he can then use it to return to Iraq.
8. Permission to appeal was granted on the basis the appellant had not been given an opportunity to comment on an apparent contradiction between his claim and the SEF form recording that he has identity documents. It was also arguable the

judge failed to give adequate reasons for finding the appellant was not credible. It was arguable the judge failed to consider the possibility he could have received healthcare treatment in the circumstance without identity documents.

The Upper Tribunal

9. At hearing, Mr Spurling referred to the judge's comment at paragraph 45 that the answer the appellant gave when questioned about documentation in the SEF form was very pertinent. The judge went on to say that the fact he admitted to having an identification document threw doubt upon his claim that he was abandoned as a baby and that he had no documentation. He submitted that if the judge felt this was pertinent it needed to have been flagged up by the judge to the parties. He said that no point was put to the appellant. It is not mentioned in the refusal letter nor by the judge nor in cross examination.
10. He also submitted that the judge did not balance the content of the SEF form with the witness statement provided.
11. He also queried whether the documentation had been read back to the appellant. The SEF is a very brief document which would have been completed by a third party and contains corrections. Elsewhere he had consistently said he had no identification documents. He submitted that fairness required the appellant to have been specifically asked on this issue.
12. He also questioned the consistency of the judge approved. If there was a tension between the content of the witness statement and the SEF the judge was obliged to explain why.
13. The judge had also said that he must have had identification documents as he was able to get medical treatment in the hospital. However the CPIN report did not say it was impossible to get treatment. In the appellant's case he was taken to the hospital as an emergency case and only receive treatment on one occasion.
14. It was pointed out that when he travelled from Kirkuk he was only a baby.
15. Ms Everett referred to the documents in the appeal bundle and the points taken by the respondent had been highlighted as contra indicators of his claim. For instance he was able to access healthcare and had been able to move around and attend football and go to the mosque and so forth.
16. Both representatives were in agreement that if I found an error of law the matter should go back to the First-tier tribunal.

Consideration

17. I find merit in the points made by Mr Spurling. The content of the SEF in relation to documentation was something which influenced the judge's decision. The issue in the appeal was not whether he could access documentation for return. Rather, the question of documentation was fundamental to his claim about events in his home country. The claim was that as a child there was an informal adoption and he never was documented. It was suggested because of this he could not access

medical care or attend school and so forth. The judge rejected this claim and highlighted the entry in the SEF. In the determination she did not balance this against the content of his witness statement. In the circumstance I find it was incumbent upon the judge to refer the appellant's representative to the specific concerns relating to the SEF and to give an opportunity for comment. Whilst the judge cannot enter the arena as it were and the appellant was represented, fairness would require they be alerted to this concern which was described as significant. This is particularly so as it was not highlighted elsewhere in the papers.

18. This point links into the second ground advanced and the lack of an explanation between the differing accounts in the witness statement and the SEF. Regarding the third point the argument on his behalf was that treated in hospital as an emergency but otherwise could not avail of treatment. He had indicated he could only pursue his footballing interest to a certain level because of his lack of documentation. It was necessary for the judge to have explored in greater detail the appellant's account about these issues to avoid unfair inferences .

Decision

Material errors have been demonstrated in the decision of First-tier Tribunal Judge O'Garro. That decision is set aside with none of the findings preserved. The appeal is to be reheard de novo by a freshly constituted First-tier tribunal.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber