



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003819
First-tier Tribunal No:
PA/53924/2022
(IA/09538/2022)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MNG
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ell, Counsel

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

Heard at Manchester Civil Justice Centre on 19 October 2023

DECISION AND REASONS

1. The Appellant is a national of Iraq, date of birth 12 March 1989, who on 25 September 2019 claimed asylum. The Respondent refused his application in a decision dated 9 September 2022.
2. The Appellant appealed this decision, and the appeal was listed before Judge of the First-tier Tribunal CJ Williams (hereinafter referred to as the FTTJ) on 4 August 2023 who in a decision promulgated on 8 August 2023 dismissed the Appellant's appeal on all grounds.
3. Permission to appeal was granted to the Appellant by First-tier Tribunal Judge Karbani on 7 September 2023 who found it arguable:

“2. The appellant appeals the decision on the basis that (i) the FTTJ made a material error of fact when considering the appellant’s location when he was accused of spying, by not considering the supporting background evidence and (ii) the FTTJ failed to consider the evidence of the appellant’s desertion as a risk factor on return.

3. Both grounds are a fair reading of the decision and amount to arguable material errors of law.”

4. Mr Ell adopted the grounds of appeal and submitted there were two grounds of appeal. The first ground centred around the FTTJ’s handling of the country evidence which he submitted fed into the FTTJ’s finding the Appellant was not a credible witness. There was country evidence of where he was working as a military police officer. He was accused of having spied for Hashd Al Shaabi. Whilst the FTTJ identified the evidence in paragraph [22] of her decision this related to areas outside of Kurdistan whereas the refusal letter referred to Erbil. Mr Ell submitted the decision related to where he operated and not where he lived and the FTTJ failed to consider this risk. Linked to this was the second ground of appeal as the risk he faced by deserting was connected to his reason for leaving. Mr Ell referred me to an extract from the European Union Agency for Asylum, Country Guidance, Iraq June 2022. He submitted that someone who deserted could face death which would breach article 2 ECHR.
5. No Rule 24 reply had been filed, but Mr Tan submitted when considering the grounds of appeal the FTTJ’s findings on both the Appellant’s primary claim and his failure to mention his fear of the authorities in his screening interview should not be overlooked. The FTTJ had considered the background information and paragraph [40] of refusal letter which showed partnership between Turkmen and Hashd Al Shaabi group. Mr Tan pointed out that in October 2017 the oil fields were taken back by Turkmen and it therefore followed that since October 2017 the Appellant had not been guarding them so must have been working and living in the IKR.
6. Mr Tan submitted the FTTJ considered the Appellant’s work at paragraph [22] and concluded the only evidence that he was suspected of spying came from the Appellant himself who had been found to be a witness lacking credibility. As his claim was not believed the risk from any perceived link to Hashd Al Shaabi group did not exist regardless of where he was.
7. Having rejected his reason for leaving then Mr Tan submitted there was only the Appellant’s claim he would be considered a deserter. He did not fall within the “at risk” categories and in any event there were no examples of death penalty being applied. No evidence to show he had deserted or that articles 2 or 3 were engaged. The fact the FTTJ did not mention this was therefore not material.

8. Mr Ell reiterated that just because the Appellant's credibility had been rejected for part of his claim did not mean his whole claim lacked credibility. The FTTJ had failed to properly consider the country evidence and failed to make findings over risks posed by desertion.
9. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DISCUSSION AND FINDINGS

10. Having heard submissions from both representatives I found there was no material error in law.
11. The Appellant's claims, as set out in the skeleton argument (paragraph [7] of the ASA) were two-fold namely (a) his claim to have been involved in sexual acts in public and (b) whether the KDP were looking for him because he had been accused of spying for Hashd Al Shaabi. The question of desertion was raised in the Appellant's statement at paragraph [33] in which the Appellant stated, "in addition to everything else I will be arrested for absconding from the military on return".
12. The grounds of appeal took no issue with the FTTJ's rejection of the Appellant's claim to have been involved in sexual acts in public, but concentrated on the FTTJ's approach to his claim to have been wanted by the KDP for spying and to the FTTJ's alleged failure to consider whether he would be arrested for absconding from the military.
13. The argument advanced is that whilst the FTTJ did consider the issue of spying between paragraphs [19] to [26] the FTTJ failed to consider that his evidence (and the country evidence) related to events that happened where he worked rather than where he worked. It is submitted the FTTJ erred by failing to take into account that his military role was outside the IKR and in an area where Turkmen attacked the KDP as part of Hashd Al Shaabi.
14. The question of his suspected involvement with Hashd Al Shaabi whilst guarding the oil fields was rejected by the FTTJ who considered his claim separately to his claim that he had been involved in sexual acts in public.
15. The Appellant claimed he left Iraq over his sexual encounter which was a claim emphatically rejected by the FTTJ and it was only when he arrived in Germany that he discovered he was in trouble for not turning up to work. He claimed that his family had told him the KDP had come to his home address looking for him accusing him of sharing information with the

Turkmen and Hashd Al Shaabi. He claimed his family from then on disowned him and his father threatened to kill him over the photograph and for sharing information. He also received a threat from his uncle on Facebook in late 2018. He claimed in his statement that he had not mentioned his fear of the KDP in his screening interview because he was told to give brief reasons.

16. The FTTJ considered his claimed fear of the KDP and his explanation for not mentioning the same in his screening interview. The FTTJ concluded the Appellant was not at risk over this and it is these findings that form the core of Mr Ell's submissions.
17. Paragraphs [19] and [20] of the decision simply set out the respective positions. At paragraph [21] the FTTJ found it lacked credibility he was suspected of passing on information to Hashd Al Shaabi and between paragraphs [22] and [26] provided the following reasons for this conclusion that the Appellant had ever been accused of supporting Hashd Al Shaabi:
 - a. The Appellant's ethnic group was working in partnership with the KDP in the IKR prior to him leaving Iraq which undermines his claim to have been accused by one of the groups as spying for the other.
 - b. Turkmen work alongside Hashd Al Shaabi.
 - c. His explanation for failing to mention his fear of the KDP was rejected for the reasons given.
18. Mr Ell's submission is that the FTTJ considered the wrong country evidence as to whether a threat was made, but such a submission in my view overlooks the key findings made by the FTTJ that his account of having been accused of sharing information lacked credibility.
19. The grounds of appeal imply that if the FTTJ looked at the wrong country evidence then this impacted his findings on the Appellant's account. Even if there is country evidence suggesting attacks did take place outside the IKR that evidence would not on its own mean the Appellant was at risk. Such evidence is often described as objective or country evidence and on its own does not demonstrate an event occurred but simply confirms that something similar to that described by the Appellant has occurred which may then support an account advanced by an Appellant.
20. Whilst the FTTJ did not specifically refer to this evidence I am satisfied she gave detailed reasons for rejecting his claim and the grounds of appeal do not specifically take issue with any of the findings in paragraphs [24] and [25] of the decision.
21. The second argument ground advanced was the FTTJ's failure to consider the Appellant's evidence of desertion from his military role and the country

evidence of the consequences of such a risk. It is submitted that the FTTJ did not consider whether desertion from military service would place him at risk, but at paragraph [19] the FTTJ noted the Appellant did not know whether any kind of warrant for his arrest had been issued.

22. The FTTJ does not make any specific findings on desertion but for the error to be material the country evidence would have to demonstrate that he would be at risk. Both parties, in their submissions to me, referred to the same article which was contained on pages 55-57 of the Appellant's bundle. Unless a person fell within a risk category the country evidence suggests the Military Penal Code is not strictly enforced to its full extent and no court cases against deserters are known.
23. Given the FTTJ's finding on his evidence which I have found was open to her and as there was no evidence before the FTTJ to suggest the Appellant fell into a risk category I am satisfied that even if the Appellant had deserted, he would not face either persecution or serious harm contrary to articles 2 and 3 ECHR. It therefore follows that any failure to mention desertion would not amount to a material error in law.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on points of law. I uphold the decision.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
6 November 2023