



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004380

First-tier Tribunal Nos: PA/50162/2023
LP/00998/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th December 2023

Before

UPPER TRIBUNAL JUDGE OWENS
DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

AAA
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik, of Counsel

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 8 December 2023

DECISION AND REASONS

1. The Appellant was born in Erbil and later moved to Kirkuk. His date of birth is recorded as 4th February 1989. On 22nd December 2015 he made application for international protection as a refugee on the basis of a blood feud. On 25th September 2017 a decision was made to refuse the application. The Appellant appealed. In a decision promulgated on 7th March 2018 First-tier Tribunal Judge Hollingworth dismissed the appeal. It does not appear that that decision was challenged.
2. On 25th July 2022 the Appellant, in reliance upon **SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) (“SMO 1”)**

made further submissions on the basis that he was undocumented, had lost contact with his family, and could not return to Mosul.

3. On 19th October 2022 a decision was made to refuse that application based on those further submissions. The Appellant appealed and on 12th July 2023 his appeal was heard by First-tier Tribunal Judge Dixon sitting at Nottingham. His decision is dated 17th August 2023. He dismissed the appeal on all grounds.

4. Judge Dixon defined the issue before him at paragraph 6 of his decision and reasons as follows:

“The issue before me is whether I accept that the appellant does not have access to his CSID as claimed. Part and parcel of this issue is whether he has contact with, or could contact, family members in Iraq”.

5. Noting that the decision of Judge Hollingworth made no finding with respect to documentation, which Judge Dixon found, “surprising”, Judge Dixon nevertheless, having regard to the guidance of **Devaseelan (Second Appeals, ECHR, Extra-Territorial Effect) [2002] UKIAT 702** took as his starting point the earlier findings of Judge Hollingworth who had made adverse credibility findings against the Appellant.

6. Judge Dixon then went on to explain why he did not accept the Appellant’s case, including at 11(ii) of his decision, finding that the Appellant had not taken reasonable steps to make contact with “his claimed lost family members”.

7. Not content with that decision the Appellant made application for permission to appeal to the Upper Tribunal. The grounds are dated 31st August 2023. There were two grounds. It was contended that the judge had:

(i) “unfairly made the fulcrum of the appeal the efforts made by the Appellant to locate his family when those efforts were not challenged by the Secretary of State for the Home Department”;

(ii) erred in his approach to **Devaseelan**.

8. On 5th October 2023 First-tier Tribunal Judge Monaghan granted permission on the second ground stating:

“The Judge has arguably made a material error of law in failing to recognise that the previous Judge had made findings in respect of documentation and therefore has arguably erred in assessing the starting point for his own findings”.

9. Permission was not granted however in respect of Ground 1 and there has been no challenge to that decision.

10. The grounds are rather more than the summary of Judge Monaghan which is set out above. In asserting that First-tier Tribunal Judge Dixon misapplied **Devaseelan** the Appellant contends that First-tier Tribunal Judge Hollingworth had found as a fact by inference that the Appellant had left his CSID card behind in Iraq, that the Tribunal did not reject that evidence, proceeded on the basis the Appellant no longer had his CSID card, would require to re-document himself with the information the authorities in the IKR already held. It was submitted that that was the proper starting point for Judge Dixon who it is contended wrongly

concluded that First-tier Tribunal Judge Hollingworth had made no findings in respect of the documentation.

11. In oral submissions Mr Karnik accepted that there was in fact no express finding that the Appellant had lost his documents. His submission was that on a fair reading of that decision it was apparent that that was what the judge accepted.
12. The second ground had a second part to it which was that even if the Appellant had not shown that there was a real risk that he was no longer in contact with his family in Iraq, Judge Dixon had failed to consider properly or at all the chances that irrespective of contact with his family the real risk remained that his ID documentation had been destroyed during the ISIL occupation of Mosul and its surroundings.
13. We looked with care at the decision of Judge Hollingworth. What is abundantly clear from a reading of that decision is that Judge Hollingworth did not find the Appellant to be a reliable witness. We went line by line with Mr Karnik through that part of the determination of Judge Hollingworth in which it was being contended on behalf of the Appellant that findings of fact had been made and we did not find them despite Mr Karnik's urging, save that it was clear that Judge Hollingworth, as we have already said, did not find the Appellant to be a witness whose evidence could be relied upon. Indeed, we note that at paragraph 15 Judge Hollingworth noted that the Appellant in screening interview had mentioned that he had memory loss but that this was not supported by evidence. It is clear that Judge Hollingworth did not accept that some of the evidence given by the Appellant which was deemed to be unreliable could be explained away so easily.
14. That the Appellant was found not to have proved his case before Judge Hollingworth does not necessarily lead to the conclusion that findings had been made, rather that findings had *not* been made. We do not accept the submission made on behalf of the Appellant that we should infer that the starting point should be as set out in the ground, namely that the Appellant had left his CSID card behind but rather the Appellant simply had not established his case on the point.
15. Insofar as we should have regard to the guidance in **Devaseelan** the starting point we find was that the Appellant was an unreliable witness. It would have been perverse if Judge Dixon had started having read the decision of Judge Hollingworth by saying, "I find that this Appellant is a witness whose evidence I can rely upon without more". That would have been a matter for challenge, and it certainly cannot be said that the starting point was an affirmative finding that the Appellant had lost his CSI documents in Iraq. What Judge Dixon did do was to reject the Appellant's account and give sufficient reasons for doing so and as the Secretary of State's response points to, and Mr Melvin amplified, one only needs to look to the final paragraph of the determination of Judge Dixon at paragraph 12 which summarises the position in which he says, "I am not persuaded that the appellant has given a credible account of matters even to the lower standard of proof". He says that he does not accept that the identification documents were lost and he did not accept that the Appellant did not have contact with family members in Iraq, nor that he would be able to contact them.
16. In our view the judge gave adequate reasons for not accepting the Appellant to be a witness of truth. Indeed, it was accepted that in earlier findings the

rejection of the Appellant's blood feud it was open to the judge to make adverse findings.

17. As we have observed Mr Karnik invited us to make inferences. We invited him to comment on the guidance given by McCombe LJ in the case of **VW (Sri Lanka) [2013] EWCA Civ 522**:

"Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact".

18. Mr Karnik retorted that the guidance in that particular case referred to where a matter had not been dealt with more fully but that is met by the guidance by the Supreme Court in **HA (Iraq) [2022] UKSC 22** at paragraph 72 in which it was said:

"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 particular:

(i) ...

(ii) *Where a relevant point is not expressly mentioned by the Tribunal, the court should be slow to infer that it has not been taken into account - see **MA (Somalia) -v- Secretary of State for the Home Department [2010] UKSC 49**; at paragraph 45 per Sir John Dyson".*

19. In our view when one stands back from the decision of Judge Hollingworth it is clear that he did not find the Appellant to be a witness whose evidence could be relied upon, we have already made that point. When one stands back from the decision of Judge Dixon it is perfectly clear too that he did not accept that the Appellant's evidence was evidence that could be relied upon, he has given sufficient reasons for doing that and in those circumstances, there is no legal error. The decision will stand and the appeal to the Upper Tribunal is dismissed.
20. An anonymity order is not made in this appeal. Judge Dixon did not find it appropriate to make an anonymity order in respect of this Appellant and we are in agreement. There is no risk from the state authorities and therefore it does not serve the interests of justice for an anonymity order to be made.

Decision

The appeal to the Upper Tribunal is dismissed.



Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber

12 December 2023