IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004171

First-tier Tribunal No: PA/51228/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of December 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

RA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr McGarvey of Counsel
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Heard at Field House on 6 August 2024

DECISION AND REASONS

Anonymity Order:

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellant seeks international protection and is therefore entitled to privacy.

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Woolley ("the Judge"), promulgated on 26 April 2023. By that decision, the Judge dismissed the Appellant's appeal against the decision of the Secretary of State to refuse his protection and human rights claim.

Factual background

2. The Appellant is an Iraqi national of Kurdish ethnicity. His protection claim was made by way of further submissions, his first protection claim having been refused and the resulting appeal dismissed (by First-tier Tribunal Judge Whitcombe in 2016).

3. Insofar as is relevant to this appeal, the Appellant's protection claim was based on his political opinion, namely his active support for the New Generation Movement ("NGM") whilst in the United Kingdom ("UK"). He further submitted that, as somebody with (i) no contact with his family in Iraq and (i) without the necessary documentation, he cannot return to his home area of Salah-al-Din or relocate to the IKR.

Grounds of appeal and grant of permission

4. The grounds of appeal, in summary, plead that the Judge:

(1) proceeded on a factually incorrect basis in that she –
   (i) wrongly described the NGM as being an IKR party when in fact the party has members in the Iraqi parliament [ground 1(i)] and
   (ii) incorrectly stated that the Appellant's Facebook account makes no mention of the NGM when in fact "the NGM logo/crest, picture of Shaswar, and NRT TV which is the media outlet associated with MGM is shown on pages 94, 101, 111, 140, 182, 212, 222, 236" [ground 1(ii)];
(2) took into account an irrelevant consideration namely that, at the time of the decision of Judge Whitcombe, the Appellant professed no political interest [ground 2];
(3) adopted an inconsistent approach, in that she stated that she was not taking into account Facebook posts that had not been translated but also referred to there being English-language posts within the evidence [ground 3(i)];
(4) took into account an irrelevant consideration namely that the Appellant, in his on-line posts, had expressed no personal political view as opposed to re-posting the political views of others [ground 3(ii)];
(5) "failed to consider any objective evidence as to risk for either NGM members or risk associated with Facebook - Freedom House Freedom on the Net Report, Iraqi Judicial Council Report, etc" [ground 4];
(6) "… at [33] of the decision, makes a finding of the submissions being a disagreement. However, upon closer inspection of the ASA, at [67-74] which showed case law authority binding on the Judge by way of judicial precedent which was disregarded as '*disagreement*' (emphasis added) and objective evidence of human rights abuses in France, which were not before the previous Judge …" [ground 5];
(7) erred in her assessment of risk on return in that she departed from the finding of Judge Whitcombe that the Appellant could not return to his home area and, in so doing, failed to apply the country guidance case of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) [ground 6];
(8) failed to apply the country guidance case of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) when she

concluded that the Appellant's uncle could meet the Appellant at Baghdad airport and thereby provide him with his CSID card [ground 7].

5. Permission was granted, on 26 September 2023, by First-tier Tribunal Judge Bibi in the following terms:

> The grounds assert in summary that the Judge materially erred in his findings, the Judge stated that the Appellant can return to Salah-ud-Din province, Iraq even though the previous Judge accepted that the Appellant cannot. Both the Appellant and the Respondent did not seek to challenge this.
>
> There is an arguable error of law that has been identified which merits further consideration. There is a reasonable prospect that a different Tribunal would reach a different decision.

6. Judge Bibi did not address the other grounds but nonetheless granted permission on all grounds.

Upper Tribunal proceedings

7. Mr Diwnycz relied upon the Rule 24 response to the grounds and both advocates made oral submissions. During the course of this decision, I address the points they made.

Discussion and conclusion

Ground 1(i)

8. There is no merit in this ground. The Judge's description of the NGM as "an IKR party" [27] is an accurate short-hand description of a political party founded in the IKR, particularly given the context in which the Judge was referring to the NGM, namely the failure by the Appellant to explain why he supported the NGM. Indeed, in the skeleton argument before the Judge, those representing the Appellant described the NGM as a Kurdish opposition party (paragraph 9 of the Appellant's skeleton argument).

Ground 1(ii)

9. The grounds do not assert that the NGM is specifically mentioned in the Facebook posts; instead, the grounds identify that, in the 200 pages of Facebook posts in the Appellant's bundle before the First-tier Tribunal, the NGM is indirectly referred to on 8 of those pages (the NGM logo/a picture of Shaswar/mention of NRT TV).

10. It is perhaps unsurprising that the Judge either did not notice these posts or did not appreciate that they were connected to the NGM, given the limited and indirect nature of such references together with the fact that these pages were not specifically drawn to the attention of the Judge in the very lengthy Appellant's skeleton argument in the First-tier Tribunal. Nonetheless, this evidence is sufficient to demonstrate that the Judge's finding of fact is inaccurate.

11. However, the grounds are silent as to how such a mistake of fact is material. The context in which the Judge made her finding at [30] was when she was assessing the Appellant's claim to be a member and supporter of the NGM. The Judge's conclusion about the genuineness of the Appellant's claim was based on a number of sound reasons:

(1) The Appellant claims to have been politically active since his arrival in the UK (in 2015) but professed no political interest at the hearing before Judge Whitcombe in 2016 and his asserted connection to the IKR in the earlier proceedings was peripheral [27].
(2) He failed to give a coherent account of why he was a member of the NGM [27].
(3) The Judge placed little weight on the Facebook posts [29] having considered them in light of the guidance of the Upper Tribunal in XX (PJAK – sur place activities – Facebook) Iran CG [2022] UKUT 23 (IAC).
(4) The only document said to have originated from the NGM is a letter, some three years old, purporting to confirm that the Appellant joined the movement on 10 October 2019. The Judge found the claimed membership to be inconsistent with the fact that the Appellant is not from the IKR and had not explained his interest in the IKR [31].

12. In light of these reasons, even if the Judge had noted those few entries relating to the NGM, she would have inevitably reached the same conclusion in relation to the extent and genuineness of the Appellant's claimed political affiliation.

Ground 2

13. There is no merit in ground 2. That the Appellant professed no political interest at the earlier asylum appeal hearing, despite stating in oral evidence that he became politically active as soon as he arrived in the UK, was relevant to the assessment of the genuineness of the Appellant's current claim to be a political activist.

Ground 3(i)

14. It is difficult to discern what the error of law is said to be but, in any event, there is no merit in this ground because (i) the Judge was bound to take into account the fact that many of the Facebook posts had not been translated and (ii) the fact that the Judge observed that other pages of the Facebook account were in English is simply a matter of fact not a matter of the Judge being inconsistent.

Ground 3(ii)

15. There is no merit in this ground. The extent to which the Appellant posted his own thoughts and views, as opposed to re-posting the opinions of others/news reports, is a relevant consideration when assessing both the genuineness of the Appellant's claimed political affiliation and the risk arising from the fact of such posts.

Ground 4

16. Given that the Judge found that the Appellant is not a member or supporter of the NGM, any question of risk arising from him continuing such support on return to his home country did not fall to be considered. In any event, in relation to both identified risks, the Judge did consider the objective evidence, summarising it at [9-10 and 31]. No submissions were made that, given the Judge's findings in relation to the Appellant's profile, there was country evidence which demonstrated a real risk that the Iraqi authorities would have monitored his Facebook account. I note that the Appellant's skeleton argument in the First-tier Tribunal cited excerpts from the country evidence which supported the contention that some journalists and activists in civil society organisations had

had their social media pages monitored but this is not a category of person into which the Judge found that the Appellant falls.

Ground 5

17. As I understand it, this is a complaint that the Judge mischaracterised the Appellant's submissions, and evidence, in relation to the application of section 8 of the Asylum and Immigration (Treatment of Claimants, et cetera) Act 2004. However, this ground of appeal is in fact no more than an attempt to reargue the point made before the Judge, whose conclusions were properly open to her on the evidence adduced. Indeed, it is difficult to see how she could have reached a different conclusion.

Grounds 6

18. Ground 6, as pleaded, has no merit because the Judge was bound to consider the Article 15C risk in the Appellant's home area in light of SMO 2 and there is no error in the Judge's understanding and application of that Country Guidance case.

19. In his submissions, Mr McGarvey reframed the ground. He submitted that the Judge's finding that the Appellant could return to his home area was based on a mistake of fact. The Judge found that "it has not been established that Hashid y Shaaby still exists" [36] but the Respondent's CPIN, to which the Judge was not directed, confirms that this is a general name encompassing groups that are still in existence. Mr Diwnycz conceded this point but submitted that it was not material given the finding in relation to internal relocation.

20. It is important to consider the Judge's finding in full:

> It is now some 9 years since the Appellant claimed that he had been subject to any attack by Hashid y Shaaby. The reason for this attack … he says was because he was a Kurd and a Sunni. In those 9 years it is not credible that such a group would still be looking for the Appellant or even that they would be adversely interested in him. It has not been established that Hashid u Shaaby still exists. The motivation to attack a Kurd and a Sunni might have been in existence in 2014 but the changes in country conditions referenced by SMO No 2 now underline such a contention. He has been found not to be credible in his submissions that he is a Ba'athist or that he would express Ba-athist views on return …

21. In my judgment, the Judge's decision was not based solely on this group not existing; she also considered the alternative position but in the context of the nine years since the Appellant had lived in his home area and the prevailing conditions as set out in SMO 2. In these circumstances, the mistake of fact is irrelevant because there is no flaw in the Judge's assessment that the risk of persecution is not ongoing.

22. Even if I am wrong to reach that conclusion, I conclude that is immaterial because of my conclusion in relation to ground 7 (below).

Ground 7

23. I asked Mr McGarvey whether there was any evidence before the Judge that the Appellant's uncle could not meet the Appellant at the airport in Baghdad and thereby provide him with his CSID card (it having been found by the Judge that the Appellant was still in touch his uncle and the Appellant having accepted that

his uncle was in possession of his CSID card). Mr McGarvey confirmed there was no such evidence. It follows therefore that there was no error in the finding of the Judge.

Notice of Decision

24. The decision of the First-tier Tribunal did not involve the making of a material error on a point of law and so the decision stands.

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 November 2024