



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-
000309
First-Tier Tribunal No:
PA/51864/2023
LP/02196/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 23rd April 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR B A N

(anonymity order made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms Rachel Evans of Broudie Jackson Canter.

For the Respondent: Ms Tipi Rixom, Senior Home Office Presenting Officer.

Heard at Field House on 2nd April 2024

DECISION AND REASONS

Introduction

1. The appellant, Mr B A N, has been given permission to appeal the decision of First-tier Tribunal Judge Mcall who, in a determination dated 13 November 2023, dismissed his appeal.
2. His account was that he was born in February 2005 and is from the Duhok Governate in the IKR, Iraq. He is Kurdish. He said he left in May 2021 and entered the United Kingdom illegally on 11 July 2021 and sought protection the following day.
3. He said his father had a wife and then married the appellant's mother. The appellant had six half-brothers and five half-sisters from his father's first marriage and a full brother and sister from the second union . The two families lived in the same household. He said his half-brothers treated him unkindly and made him work from an early age and took his earnings. He said they were members of a criminal gang with influence throughout the IK R. He had complained about the situation to his maternal uncle who made arrangements for him to leave.
4. He said he had no contact with his family since arriving in the United Kingdom and was not aware of ever having documentation. A referral had been made to the Competent Authority who concluded he was the victim of slavery on reasonable grounds but no conclusive grounds decision had been made.
5. It was accepted on behalf of the appellant that his claim did not engage the Refugee Convention. The respondent had accepted he was mistreated by family members and forced to undergo unpaid labour. However, aspects of the claim were not considered to be credible and the respondent concluded he could return to his home area or to another part of the IK R.
6. Inconsistencies identified in the appellant's account had been attributed on his behalf to translation issues. However, the judge rejected this and found he continued to have contact with his mother who could provide him with evidence to support his claim, including his account that his father was now deceased.
7. The judge did not accept the appellant's claim that his half-brothers were involved in a criminal gang including drug dealing and carrying arms.
8. The appellant's representative had instructed Dr Ghosh, a consultant psychiatrist. The consultant concluded he was suffering from severe PTSD and was extremely vulnerable. The judge commented that the doctor had failed to explain how he was able to adapt so quickly to life in the United Kingdom. Further, the doctor had she considered how support from his mother and other family members and access to State services in the IK R would address his needs. The judge found Dr Ghosh based the diagnoses entirely on the facts as claimed by the appellant, including his claim of having lost all contact with his mother and that his father was now deceased.
9. The respondent's intention was to return him to Sulaimaniyah. First-tier Tribunal Judge Mcall accepted the appellant did not have an Iraqi passport when he left. However, the judge found, bearing in mind his claimed past admissions to hospital, that a CSI D card did exist and most likely it remained with his mother when he left.

10. The appellant accepted he was in contact with his mother after arriving in the United Kingdom but claimed this ended in 2022 when his phone was stolen. The judge rejected this and concluded he was not being honest about the level of contact with his family . The judge concluded this in turn undermined the weight to be placed upon the expert report from Dr Ghosh. The judge took the view that the information contained in the appellant's CSI D would enable him to obtain the necessary travel documents. The judge concluded that he would be able to return and could integrate and relocate if necessary.

The challenge.

11. Permission to appeal was granted on a renewed application by Deputy Upper Tribunal Judge Chapman. The challenge was on three fronts. The first was that First-tier Tribunal Judge McCall had gone behind accepted facts, namely, that his half-brothers were members of a criminal gang with influence in their home area and beyond. The second and third grounds relate to the evaluation of the psychiatric report from Dr Gosh and the appellant's ability to access his CSI D .

The Upper Tribunal hearing.

12. Papers for the appeal has been lodged on the C E system. I was physically present at Field House. The appellant and his representative and the presenting officer engaged remotely.
13. At hearing, Ms Rixom confirmed there was no rule 24 response.
14. Ms Rachel Evans appeared for the appellant as she did in the First-tier Tribunal. She relied upon the three challenges advanced. The 'going behind' argument was illustrated with the comment at paragraph 54 of the judge's determination that his half siblings were not in a criminal gang. The judge had not accepted they had influence outside their home area. She argued that the judge was required to give reasons why the appellant could not get protection from the State. I was referred to paragraph 55. Regarding the medical evidence the judge said the report was flawed. She submitted paragraph 43 of the determination indicated it was accepted his account was considered to be true. She argued that the judge failed to deal with the question of reasonableness of relocation. On the question of documentation the judge failed to consider the risk from his family . Reference was made to paragraph 53 and 54 and the suggestion he had contact with his mother.
15. In response, Ms Rixom argued that the respondent had accepted his half-brothers had mistreated him but there was no acceptance that they were engaged in criminal activity or were of any influence. I was referred to page 1002 of the bundle. She maintained that the report of Dr Ghosh relied on acceptance of the claim in its entirety. However, aspects of the claim had been disputed by the respondent. The judge had said the appellant had not given the doctor a full account . This undermined the reliability of the report.
16. In terms of documentation, Ms Rixom submitted that the appellant had changed his account about contact with his family. She submitted the judge had correctly applied the guidance in SMO and that the country information indicated that someone from the IK R would be able to return there.

17. In response, Ms Evans submitted that the appellant's account had not been disputed by the respondent. She submitted the respondent's acceptance included his brothers being involved in a criminal gang. She said that Dr Ghosh's report was based upon the facts presented. There was no dispute the appellant had mental health issues. She said this was not taken into account by the judge when considering the reasonableness of relocation. She disputed the claim that his mother could assist him with documentation, stating she is in the family home and is under the influence of his half-brothers.

Consideration

The first point of challenge

18. In relation to the first challenge I begin by considering what the respondent has accepted. The refusal letter is dated March 2023. In the preamble it accepts that from the age of six he had problems with his half-brother S who mistreated him. It specifically states that he had not demonstrated his half-brother had power or authority over the State. The respondent concluded from country information that there would be sufficiency of protection available to him. It was also considered reasonable to travel within the Kurdish region such as Sulaimaniyah. There is no reference in the refusal of the respondent accepting his half-brother had wider influence.

19. Further evidence was assembled for the appeal which included the appellant's statement where he comments on the refusal letter. He refers to mistreatment from his half-brothers S and A. In that statement he says his half-brothers are criminals and that he fears them and their ties and connections. At paragraph 23 of that statement he refers to fearing his half-brothers and that they have ties and connections. He refers to paragraph 31 of his asylum statement dated 10 August 2022 and said the police would be unwilling to protect him. He states his half-brothers are criminals and have friends who are criminals who deal in drugs and armed I have many connections in Iraq because of this and local people, the community and the authorities do not want to get involved. He states the police would be frightened of them and unwilling to help. He goes on to say his half-brothers are likely to have connections with the police and that the police are corrupt.

20. In his statement of evidence form dated 25 July 2022 reference is made to his statement of 10 August 2022. In it he refers to his half-brother S having a gun and having friends who are criminals and who deal in drugs. He was interviewed on 16 September 2022.

21. The respondent's review is dated 29 September 2023 and continued to rely on the reasons for refusal letter. Paragraph 8 repeats an acknowledgement of his problems with his half-brother. The paragraph would have been much clearer had it been broken down. It reads:

'... The R will maintain that there is not a reasonable degree of likelihood that the A will be persecuted because it is considered that the individual that the A fears, his half-brother, as a nonstate actor possesses sufficient power or authority over the state in Iraq and therefore sufficiency of protection would be available to the A on return...'

22. Reading the paragraph in context and the statement that sufficiency of protection would be available, it is my view the writer meant to indicate that his half-brother does *not* possess power or authority over the State.
23. Paragraph 11 of the review refers to the appellant's statement at para 23-24 'my half-brothers are criminals and have friends who are criminals... They have many friends, ties and connections in Iraq due to their criminal activities. Local people, the community and the authorities do not want to get involved with my brothers ... My brothers were like Mafia... The police would be frightened of them and scared and unwilling to help protect me. My half-brothers are likely to have connections with the police as some police in Iraq are corrupt.' The review submits that his claims about his half-brothers influence is entirely unsubstantiated.
24. I do not find it established that the respondent had accepted his brothers had any influence over the State protection. Consequently, I do not find the judge has not gone behind any concession on this point. I find no merit in this challenge.

The second challenge.

25. The challenge to how the judge dealt with the report from Dr Ghose is on the basis the judge was mistaken in stating his account was disputed. However, the respondent had only accepted a limited aspect of his claim, namely, that his elder brother made him work from an early age and was abusive towards him. It is legitimate to consider how his mental health would be away from his abusive brothers and in the assessment of the reasonableness of relocation.
26. The expert said that the appellant showed evidence of severe post-traumatic stress disorder using a diagnostic criteria manual. Reference is made to an oppressive childhood which the respondent has accepted. The doctor states that since coming to the United Kingdom his social life has been considerably enriched and more normal. He is attending college, learning to speak English, visit places with his friends and plays football. The doctor felt he was an extremely vulnerable adolescent, scarred by the brutal nature of his upbringing and the suffering caused by his half-brother.
27. The doctor goes on to consider the impact of relocation on his mental health. He indicates that the literature indicates if returned to the area where the trauma took place likelihood of this order would increase. The doctor found that the post-traumatic disorder meant his ability to find work and care for himself was limited and his childhood experiences make it very difficult for him to relate to adults the doctor said it was very important that he be allowed to live in safe environment. The doctor refers to the need for long-term support and counselling.
28. First-tier Tribunal Judge McCall makes the point that the appellant has been able to adapt to life in the United Kingdom developing a circle of friends and going to college and so forth. I found the judge was entitled to make these observations bearing in mind the history recorded in the papers.
29. The judge makes the point that the report has been prepared on the basis of the facts as claimed by the appellant, including his claim of losing contact with all of his family. I find the judge's comments about the medical report

legitimate. The judge has not specifically rejected the diagnoses but has questioned aspects of the factual background advanced. The judge refers to the acceptance by the respondent of his forced labour and unhappy childhood.

30. The doctor has not had an opportunity to consider how he would be in his home country with support from his mother and other family members and State services there. The judge referred to the absence of evidence about his father's death and as a finding of fact concluded he did have contact with his mother.
31. At paragraph 47 the judge commented that the expert had failed to consider his position if returned to a safe environment, where his brothers would be absent and there would be State protection and some family support and state services. The judge comments that the appellant has been able to learn English and his current level of the language in the IKR would not prevent him integrating and would improve over time. The judge noted that no claim is being made on his behalf on article 3 medical grounds.
32. The judge makes the point that if the appellant were removed from the past stressors, namely, his brothers, and relocated he could continue to improve. This was particularly so with the support of his mother and State services in Sulaimaniyah. This would be a relevant consideration to the reasonableness of relocation. My conclusion is that no material error of law has been displayed in how the judge dealt with the medical evidence.

The third challenge.

33. At paragraph 57 onwards the judge deals with the question of documentation. As a finding of fact he concludes the appellant did have a CSI D. One of the reasons advanced for this was his ability to obtain medical treatment in the past. The judge concluded that he could be returned via Sulaimaniyah. The judge found he could access a CSI D card through his mother. In Sulaimaniyah he would be able to integrate and would have State protection. These were findings open to the judge based upon a finding that the appellant had not always been honest in his account about lack of contact.

Conclusions

34. The judge has identified the issues arising in the appeal and dealt with them accordingly. The judge referred to the evidence and gave sustainable reasons for rejecting aspects of the appellant's claim and the making the findings in relation to documentation and relocation. In conclusion, I find no error of law demonstrated and the decision dismissing the appeal shall stand.

Decision

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge McCall dismissing the appellant's appeal.

Francis J Farrelly

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

3rd April 2024