IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000783
First-tier Tribunal No:
PA/50669/2023
LP/02765/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

DMS
(ANONYMITY DIRECTION IN FORCE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: In person
For the Respondent: Ms S. Simbi, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 14 June 2024

DECISION AND REASONS

1. The First-tier Tribunal made an order for the appellant's anonymity. In light of the nature of the appellant's protection claim, and the fact it remains outstanding, it is necessary to maintain that order.

Factual background

2. The appellant is a citizen of Iraq. He claimed asylum in March 2019 on the basis that he was at risk of being persecuted on account of having been involved in a blood feud. On 24 January 2023 his claim was refused. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002. The appeal was heard by First-tier Tribunal Judge C. L. Taylor ("the judge") and dismissed by a decision dated 11 January 2024. First-tier Tribunal Judge Tribunal Judge Sills granted permission to appeal on

The hearing before the Upper Tribunal

3. The appellant appeared before me as a litigant in person, participating in the hearing through a Kurdish Sorani interpreter. I provided him with appropriate assistance throughout the hearing on that account.

My decision

4. I explained to the appellant at the Upper Tribunal hearing that the appeal would be allowed, that the decision of the First-tier Tribunal would be set aside with no findings of fact preserved, and that the appeal would be remitted to the First-tier Tribunal to be heard by different judge. I now give my brief reasons for reaching that decision.

The appellant's claim for asylum

5. The appellant claimed that he was involved in a blood feud after his father killed three members of the family of a prominent local individual, M, in 2012. A tribal agreement later resolved the ensuing blood feud through the promise of a transfer of disputed land which succeeded in resolving hostilities. However, in 2015 a member of M's tribe killed the appellant's father. Another tribal agreement managed to secure peace until January 2017, at which point the appellant was targeted for attack in which his brother was killed and he was seriously injured. The apparent attributes that attack to the blood feud, and contends that he would not be safe upon his return to Iraq.

6. The judge dismissed the appellant's appeal on account of a number of plausibility-based concerns arising from his account. He accepted some parts of what the appellant had said.

7. The judge said at para. 37 the appellant's PTSD had been taken into account. The appellant had experienced significant PTSD following the incident. The judge said that that was taken into account in the assessment of the appellant's evidence by reference, including by reference to the impact on his ability to recall and recount details relating to traumatic events which had taken place in the past. Nevertheless, the judge considered that the appellant's inconsistencies could not be explained by reference to his mental health conditions. For example, at para. 38, the appellant had both given the names of the people he claimed had attacked him and simultaneously said that he did not know who had attacked him, but that he was sure they were members of M's family. The judge said:

> "The appellant either knew the identity of at least some of his attackers, or he did not. The appellant has stated both and I find that this inconsistency is not explained by poor memory or PTSD."

8. The judge also considered that the appellant had been inconsistent in his account of what took place immediately after the incident, at para. 39:

> "The appellant has also stated both that he left Iraq immediately after leaving hospital and that he stayed with his sister for 6 to 7 months. This is a significant inconsistency which has not been explained. Even taking into account poor memory and PTSD, I would expect the appellant to know when he left Iraq. This discrepancy relates to a period of months, it is not minor. I find that it is material and I find that the appellant did stay with his sister for 6-7 months after leaving hospital and that is earlier assertion that he left straightaway was to bolster his asylum claim."

9. Against that background, the judge found that the appellant had been able to remain in Iraq for around 18 months without issue following the attack by M. It was not credible that M, if he was as powerful as the appellant contended, would not have been able to find him in Iraq. The judge also said that the periods of three and then two years peace between the tribal factions "do not make much sense" (para. 41). The judge added in the same paragraph:

> "…there is also the implausibility of medical records being produced in Iraq in English…"

10. In the course of reaching those and other findings, the judge concluded that the appellant would not get a real risk of a repeat attack in Iraq, and that the appellant would be able to re-document himself, as he had accepted.

Reasons for allowing the appeal

11. In summary, I consider that the judge failed adequately to address a central principle inherent to the assessment of asylum and humanitarian protection claims, namely that past persecution or serious harm is a serious indicator of future risk. Bearing in mind the low standard of proof applicable to protection proceedings, gave insufficient reasons for ruling out the prospect of future harm against a background of past serious harm.

12. Many of the judge's findings were based on concerns about the plausibility of the appellant's account. Plausibility can be a useful tool as part of a broader assessment, and judges are not required to suspend belief. However, plausibility-based analysis should be anchored to objective evidence addressing the issues concerned. The judge did not say which objective evidence supported the plausibility-based rejection of the appellant's evidence. For example, there does not appear to have been evidence (or if there was, the judge did not mention it) about the likely approach of an individual such as M in a situation such as that the appellant claimed to be in (e.g., paras 12, 33, 40), or the approach taken to the resolution of tribal disputes and blood feuds (e.g., para. 41).

13. A key part of the judge's findings when dismissing the appeal was the fact that the appellant's medical records have been prepared in documents that were partly in English. It is not clear on what evidential basis the judge was able to reach that conclusion; there was no evidence before the First-tier Tribunal that hospitals in Iraq never issue any documents that are partly in English. I asked the appellant about this. He told me that the hospital in question was run by "foreigners". It is not clear whether the judge or the presenting officer made enquiries on that basis with the appellant, but if the judge had in mind some evidence concerning the practice of hospitals in Iraq concerning the languages used in official documentation, the judge did not say what that evidence was.

14. Finally, I note that the judge considered whether the appellant's inconsistencies and memory problems could be attributable to PTSD, such that those inconsistencies did not affect his credibility. Ordinarily, of course, that is an evaluative decision which is the paradigm example of a first-instance tribunal's fact-finding function. However, in this case, bearing in mind the lower standard of proof, and the very serious injuries to which the appellant has been subject (and for which he continues to receive treatment), I consider that the judge gave insufficient weight to this aspect of the appellant's history, such that I respectfully consider that, when taken with the remaining considerations, the judge's analysis was not rationally open to the judge.

15. It was clear to me when attempting to take the appellant through the appeal as a litigant in person that his comprehension levels are low. In addition to the language barrier, he was plainly incredibly distressed by the process, and re-traumatised by exposure to the photographs of his injuries and the immediate aftermath of the attack. He struggled to engage with comprehension and recall questions that I put to him about what took place in the First-tier Tribunal. I respectfully consider that the judge failed to give sufficient weight to this aspect of the appellant's history.

16. In conclusion, I adopt and endorse what Judge Sills observed when granting permission to appeal:

> "At [37] the Judge accepts that the Appellant has been attacked, that he was unconscious directly following the attack and that he has symptoms of PTSD which can have an impact on memory. Despite this, the Judge did not find other aspects of the Appellant's account to be credible. However, the basis on which the Judge accepted these elements of the Appellant's case is entirely unclear. There is no reference to any UK medical evidence in the decision. Little weight is attached to the many pages of medical evidence from Iraq on plausibility grounds as it is in English, though the evidential basis for this finding is unclear. There is no reference to any concession by the Respondent. In the absence of reasoning or explanation, it is unclear why certain aspects of the account are accepted, when other aspects are not. The absence of reasoning or explanation concerning the matters that are accepted in my view means that it is arguable that the Judge has failed to consider the evidence in the round and given adequate reasons for the decision."

17. Drawing this analysis together, I conclude that the decision of the judge involved the making of an error of law.

18. I therefore set the decision aside and remit the appeal to the First-tier Tribunal to be heard by a different judge. I do not preserve any findings of fact.

Notice of Decision

The appeal is allowed.

The decision of the First-tier Tribunal involved the making of an error on a point of law, and is set aside, with no findings of fact preserved.

The appeal is remitted to the First-tier Tribunal, to be reheard by a judge other than Judge C. L. Taylor.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 August 2024