



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001361
First-tier Tribunal No: PA/51318/2023
FHI - LP/02871/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th October 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

SN (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood, Legal Representative, Immigration Advice Service

For the Respondent: Mr A Tan, Senior Presenting Officer

Heard at Manchester on 11 October 2024

ANONYMITY ORDER

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Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

Failure to comply with this Order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of First-tier Tribunal Judge CJ Williams ('the Judge') dismissing his asylum and human rights appeals. The decision was sent to the parties on 28 December 2023.

Anonymity Order

2. The Judge issued an anonymity order. Neither representative requested that it be set aside. I consider that at the present time the appellant's private life rights protected by article 8 ECHR outweigh the public interest in knowing his identity in these proceedings, as protected by article 10 ECHR, consequent to him seeking international protection. In these circumstances the anonymity order is properly to continue.
3. The order is detailed above.

Relevant Facts

4. The appellant is a national of Iraq and an ethnic Kurd. He is aged 19. He states that a man called Shamal, who was known to his cousins, attended the family shop and encouraged him to distribute leaflets (on occasion referred to as letters) on behalf of the Democratic Party of Iranian Kurdistan (KDPI). His father encouraged him to help Shamal, as his family had helped the appellant's family in the past.
5. He transported leaflets to the Iraq/Iran border where he handed them over to man called Halo. Subsequently, Halo was arrested by the

Iranian authorities and his belongings confiscated. The appellant believes Halo gave his name to the Iranian authorities. Two weeks after his final delivery of leaflets, his family were informed by Shamal that the Iranian authorities wanted to kidnap him.

6. The appellant believes the Iranian authorities consider him a spy working for the KDPI.

First-tier Tribunal Decision

7. The appeal came before the Judge sitting in Manchester on 11 December 2023. The appellant was represented by Mr Wood and gave evidence.

8. The Judge concluded:

- The appellant's claim to have been engaged in working for the KDPI by delivering leaflets was not consistent with background evidence, at [12]
- The appellant has not engaged in any activity on behalf of the KDPI, at [12]
- In the alternative, he could seek protection from the Iraqi authorities, as at most all he undertook was work to courier leaflets. He has never been to Iran, and is not politically active, at [13]
- The appellant remains in contact with his family and can arrange either for his document to be sent to him in the United Kingdom, or his family can meet him with it at the airport on return, at [16].

Grounds of Appeal

9. By grounds of appeal, and an attendant document responding to the refusal of First-tier Tribunal Judge Clarke to grant permission to appeal to the Upper Tribunal, the appellant advances four grounds of complaint.
 - i. The Judge failed to provide adequate reasons in not accepting the appellant's evidence that he distributed material on behalf of the KDPI.

- ii. The Judge failed to consider a material matter when assessing the likelihood of the Iranian authorities, and by extension their proxies in Iraq, holding an adverse interest in the appellant.
 - iii. The Judge failed to (1) consider an email from Ms Hill, and (2) provide adequate reasons as to why he did not accept the appellant's evidence that he had lost contact with his mother.
 - iv. The Judge acted irrationally in concluding that the appellant has an INID.
10. Upper Tribunal Judge Meah granted permission to appeal by a decision dated 31 July 2024.

Discussion

11. At the outset I express my gratitude to Mr Wood and Mr Tan for their focused and helpful oral submissions.

Ground 1

12. This ground is directed to [9] of the Judge's decision:

"9. ... The appellant claims that he worked for the KDPI, transporting leaflets from Iraq to the Iranian border. The respondent takes two issues with this claim in [her] refusal decision. First, objective evidence indicates KDPI material is produced in Iran and are only distributed through the internet, USB sticks, and other 'secret communication means'. This undermines the appellant's claim to have transported physical 'hard copy' leaflets for the KDPI."

13. My attention was drawn to the Danish Refugee Council report, "*Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran 30 May to 9 June 2013*" (September 2013), at section 2.1.2.2:

"KDPI's representative in Paris stated that KDPI flyers are produced in Iran by the party cells and distributed by sympathizers. The content of the flyers is decided by the KDPI leadership in Khoysanjak, KRI. The messages on the flyers are sent through the internet, using USB sticks as well as through other

unspecified/secret communication means. The same messages are spread via flyers all over Kurdish Iran.”

14. The challenge advanced by the appellant is that he was instructed to transport “letters” from Koya to the Iraqi border. It was not his case that he couriered them into Iran or that he distributed them to anyone other than Halo. The appellant contends that the background country objective material relied upon by both the Judge and the respondent does not relate to the same factual matrix.
 15. Mr Wood observed before me that references to “leaflets” and “letters” were interchangeable during the appellant’s asylum interview and also in his witness statement accompanying the ‘Unaccompanied Asylum-Seeking Children Statement of Evidence’ form dated 11 April 2022.
 16. With his usual candour, Mr Wood accepted that there was no reference to “letters” in the appellant’s witness statement prepared for the First-tier Tribunal hearing, dated 4 September 2023. The appellant stated, at §5:
 - “5. Regarding [7] **I do not agree that the KDPI does not use people to send physical leaflets from Iraq and Iran. I did take the leaflets from Koya to Halo at the border.** I understand from my representatives that the report that the Respondent relies upon states that the KDPI uses “unspecified/secret communication means”; I believe that that could refer to activity that I undertook. The Iranian authorities do attack people in Iraq who they believe are connected to the KDPI. I understand that there are militias loyal to Iran who are based in Iraq and I fear that they could target me.”
- [Emphasis added]
17. He also accepted that the interchange between “leaflets” and “letters” was not addressed in the appellant’s skeleton argument filed with the First-tier Tribunal.
 18. I am satisfied that the Judge was lawfully permitted to proceed on the basis that by the time of the hearing the appellant’s case was that he had transported “leaflets” on behalf of the KDPI, with the appellant having adopted his witness statement as his evidence addressing his personal history in Iraq.

19. Contrary to the appellant's alternate submission, the Judge's conclusion is not inconsistent with another paragraph of the Danish Refugee Council report, again at section 2.1.2.2:

"When asked about the procedure for production of flyers, KDPI's representative in Paris replied that firstly, the KDPI leadership in Khoysanjak conveys the message to the party cells in Iran. Secondly, the party cells print the flyers and the sympathizers as well as party friends distribute them."

20. Reading the section as a whole, the reference to party cells clearly relates to those situated in Iran, not Iraq.

21. In the circumstances, this ground is dismissed.

Ground 2

22. Mr Wood properly accepted that ground 2 was parasitic on ground 1, and that it would fall to be dismissed if the appellant could not succeed on his first ground. He was correct to adopt this position. This ground is dismissed.

Ground 3

23. The appellant contends that the Judge failed to take account of an email from his personal advisor, Amy Hill, a local authority employee, dated 7 November 2023, by which she confirmed, *inter alia*:

"I am [the appellant's] Leaving Care Personal Advisor.

[The appellant] said he has had contact with his mum 2 years ago when he first arrived in the UK but she told him it is not safe due to the war in his country. [The appellant] has not had contact with her or other family since then. He is very upset as he does not know if his family is still alive since he has had no contact.

[The appellant] said he originally contacted his mum on Facebook Messenger but doesn't have access to that account anymore."

24. The Judge concluded as to the appellant's contact with his mother, at [16]:

"16. ... The appellant claims contact with his mother ended because she was fearful of the Iranians finding him (p. 41 SB). Again, as I

have rejected his claim in its entirety, there would be no reason for contact with his mother to have ended. I therefore find the appellant remains in contact with his family and could arrange either for his document to be sent to him in the United Kingdom, or his family could meet him with it at the airport the respondent returns him to.”

25. Reliance is placed by the Judge upon §§8 and 9 of the appellant’s September 2023 witness statement:

“8. In response to [11] in January 2022 I lost contact with my family in Iraq. I was in contact with my mother via Facebook messenger, and **she told me not to contact her as she does not want the Iranians to find me**. She told me to live my life. **I told my support worker that this had happened.**

9. When my mother told me not call because I am somewhere safe. I tried many times to contact my mother afterwards but I could not find her account on Facebook messenger. Even if I were to be returned to Iraq I have no means of contacting my family to tell them to send my CSID or meet me at any of the Airports.”

[Emphasis added]

26. It is trite that a judge is not required to detail and address all elements of an appellant’s evidence presented at a hearing. Focus can properly be placed upon evidence central to the appeal.
27. I observe that Ms Hill’s evidence is not expressly addressed in the Judge’s decision. Mr Tan did not seek to persuade me that Ms Hill was not a witness of truth. However, I agree with Mr Tan that Ms Hill’s evidence only goes so far as recounting what she was informed. She has no personal knowledge as to whether the appellant has lost contact with his mother, and if so, the reason contact has been lost.
28. Mr Wood explained before me that the reference by Ms Hill to the appellant’s mother saying it was not safe “due to the war” related to Iranian missile and drone attacks on the KDPI in Koy Sanjaq (Koye), northern Iraq. It is said that the reasons given by the appellant’s mother for ceasing contact are unrelated to the appellant’s assertion as to his involvement with the KDPI and his fear of the Iranian authorities.

29. When considering the materiality of the Judge decision not to expressly address Ms Hill's evidence the insuperable problem for the appellant is that his evidence contradicts Ms Hill's. He is clear in his September 2023 witness statement that his mother did not want him to contact her to prevent the Iranian authorities locating him. He is also clear that this is what he informed Ms Hill. On his own evidence, Ms Hill is inaccurate as to her recollection of their conversation. As the Judge gave cogent reasons in concluding that the Iranian authorities have no interest in the appellant, no material error of law arises. This ground is dismissed.

Ground 4

30. The appellant contends that the Judge reached an irrational finding as to his having possessed an INID. The Judge found at [16]:

“16. I start by noting the appellant has previously been issued with a CSID, and there is a possibility he was also issued with an INID prior to his exit from Iraq.”

31. The finding as to the existence of an issued INID appears to be drawn from the respondent's decision letter, dated 9 February 2023, which in turn relies upon questions in the “minor asylum interview” where the appellant was asked as to identity documents. I observe that the identity card discussed at this interview from Qs 8 - 11 was initially issued when he was born in 2005 and then reissued “a long time ago”. The interviewer does not seek to ascertain whether the appellant is referring to an INID or a CSID. As the appellant does not reference his biometrics being taken, it may be that he is referring to his CSID, but I make no firm finding on the point.
32. It is unfortunate that the Judge simply adopted a speculative approach rather than ascertaining at the hearing whether the appellant had been issued with an INID. Such speculative approach is erroneous in law.
33. However, I accept Mr Tan's submission that it is not a material error. The relevance of the INID is solely in respect of re-documentation and return to Iraq. As the Judge has lawfully concluded that the appellant can secure his CSID through his mother, the existence or otherwise of an issued INID does not impinge on the conclusion reached in respect of return.

Postscript

34. I observe in respect of grounds 1 and 2 that if an error of law had been established, such error would not have been material as there is no challenge to the Judge's alternative finding from [13] onwards that the appellant could seek protection from the Iraqi authorities.
35. I observe the approach properly to be adopted where alternative findings are not challenged: *OK (PTA; alternative findings) Ukraine* [2020] UKUT 44 (IAC).

Notice of Decision

36. The making of the decision of the First-tier Tribunal sent to the parties on 28 December 2023 did not involve the making of a material error on an issue of law.
37. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.
38. An anonymity order is confirmed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
11 October 2024