Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04052/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 21st August 2018	**On 26th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

H H H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Greer (Counsel)
For the Respondent: Mr A McVeety (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Shergill, promulgated on 11th May 2018, following a hearing at Manchester on 25th April 2018. In the decision, the judge dismissed the appeal of the Appellant, whereupon the Appellant, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 1st July 1975. He appealed against the decision of the Respondent dated 9th March 2018, refusing his application for asylum and humanitarian protection contrary to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that he is a Kurd, working for the Peshmerga, with the specific duty of guarding the President's Palace in Baghdad. He claims to have arrived in the UK on 11th September 2017 and claimed asylum on account that he was at risk from Daesh, because he reported a member of a sleeper cell. The person was a local *mullah*, in the hometown where the Appellant lived part-time (during his leave) with his family. He now fears reprisals. He fled for Turkey with his wife and children, whose whereabouts are unknown in Turkey.

The Judge's Findings

4. The judge did not find it plausible that the Appellant, who claimed to have served at the President's Palace, would not be protected by the Peshmerga. He did not accept that the Appellant was at risk. He took into account the fact that there was a letter from Colonel Shafigh which stated that the Appellant was no longer working in the military service for the Peshmerga but was not persuaded by this letter. The judge, more importantly, came to the conclusion that, "The objective evidence does not support specific danger in the IKR from Daesh" (paragraph 19). The judge concluded that the Appellant managed to live peaceably in his home area as a Peshmerga throughout the height of the troubles. He observed the Kurds are weary of infiltration by Daesh sympathisers entering and operating in the IKR. However, the IKR was generally safe (paragraph 19). By the Appellant's own admission there was no specific threat to him until he had long fled his post (paragraph 20). Finally, as far as return to Iraq was concerned the Appellant had a copy of the of the CSID and there was no reason why he could not approach the United Kingdom based Iraqi or IKR authorities to obtain a replacement enabling him to return back to Iraq (see paragraph 24).

5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge had failed to have proper regard to the material evidence. He had also wrongly approached the issue of "plausibility" and used this as a basis upon which to make findings against the Appellant. Finally, the judge had departed from the country guidance cases in a manner that was not permissible.

7. On 7th June 2018 permission to appeal was granted. Notably this was on two distinct bases. First, there was a document from the Chwarqurma

Security Office, dated 29th February 2018, and was in the small bundle of documents submitted on 24th April 2018. The judge made no reference to this document from the Iraqi Security Services. It was relevant to the assessment of the credibility of the Appellant's claim. Second, the judge made references to the plausibility of the account given. The assessment was dependent in part, on the reliability of the Security Services' document, upon which no finding was made. Consequently, if the Appellant were to succeed on the basis of the failure to make a reference to a document from the Iraqi Security Services, namely, from the Chwarqurma Security Office, which was dated 29th February 2018, then it would follow that the findings made with respect to the plausibility of the Appellant's account, would also become material.

Submissions

8. At the hearing before me on 21st August 2018, Mr Greer, appearing on behalf of the Appellant, submitted that the Appellant was a high ranking Peshmerga official. He not only fought for Peshmerga, he guarded the Presidential Palace. The core of this appeal was based upon a supplementary bundle, to which the judge had referred, but where he had neglected to draw attention to page 2, which was a key document, because it was issued from a reliable source (and officer), who had made it quite clear that the Appellant's complaint about not having protection for his family, had been raised. The judge makes no reference to this. The essence of the Appellant's claim was that he had sought an assurance that, as a high ranking member of the Peshmerga protecting the Presidential Palace, and having now exposed a local mullah as a member of the Daesh, that not only would he not be protected from the risk of being targeted, but also his family would not be protected. He had been told that the family would not be protected. It was this concern, and borne out by written evidence, that had led him to make his claim.

9. Second, the judge had proceeded to draw attention to the Appellant's account on the basis that it was not "plausible". I accept that "plausibility" is not the same as "credibility" which is the basis upon which protection claims are to be determined. Nevertheless, the claim still had to be made good, as the grant of permission made clear. Mr Greer drew attention to three examples. First, the Appellant had given an account of how he left his army service because they could not offer him appropriate protection for his family. He had said that he had received a threat by social media from Daesh. The judge, in the face of this account, had stated, "I found the circumstances of how the Appellant fled after many years of service in the Peshmerga to be rather odd" (paragraph 13). Mr Greer submitted that there was no explanation as to why this account would be considered to be "rather odd". It was the account given by the Appellant. It was important not to judge it from the vantage point of a decision making authority far removed from the place of activity in the United Kingdom. In itself, it was difficult to see why this was not "plausible".

10. Second, there were the letters recently supplied from Colonel Shafigh, and the judge had said that these letters had a "curious turn of phrase", when there was a reference to "at the present time he is not in military service". Judge Shergill had said that if the Appellant had left in the way that he claimed to have done, he would have expected the letter to have said "he is no longer in service" or "he left his service". However, the manner of English language used was a matter which had its own peculiarities and idiosyncrasies in various parts of the world, and although this was a translation from the Arabic into the English, the literal translation of it did not suggest that the Appellant had not left his service in the manner that he claimed to have left it.

11. Third, and no less importantly, the Appellant had left Iraq and then gone to Turkey, a safe place, but where he had received a threat from Daesh to his family, and he had left Turkey to come to the UK to claim asylum. The judge had said of this that:-

> "The situation was not plausible and in particular, the claimed threat whilst he was in Turkey did not have the ring of truth to it. He has abandoned his family in Turkey despite a specific threat being made to find him there, and that was inconsistent behaviour given that he took them there for safety …" (paragraph 16).

12. Mr Greer submitted that the fact was that the Appellant's family were at a safe place, as far as Turkey was concerned, especially when compared to in relation to Iraq, from where they had fled, out of fear of Daesh. It was not clear why it was implausible a scenario and why it had no ring of truth to it.

13. Finally, Mr Greer submitted that the country guidance suggested that the Appellant could not be returned. He would have to go to Baghdad. From Baghdad he would then go to the IKR. However, even the latest country guidance case of **AAH (Iraqi Kurds – internal relocation) (CG) [2018] UKUT 212 (IAC)** which was handed down on 26th June 2018, makes it quite clear that relocation to Kabul is not an option because thereafter a relocation to the IKR is not a reasonable possibility for someone such as the Appellant.

No Error of Law

14. I am satisfied that notwithstanding Mr Greer's valid and determined efforts to persuade me otherwise, that the decision of Judge Shergill did not fall into a material error of law (see section 12(1) of TCEA 2007) such that it falls to be set aside. The reason for this is notwithstanding the fact that there was a supplementary bundle which contained a document from Chwarqurma Security Office, dated 29th February 2018, to which the judge did not have regard, which it is said created the possibility that the Appellant and his family would be at risk from Daesh, in the way that they could not be protected as a family unit. The reason for my coming to this conclusion is that the objective evidence does not support, as Judge

Shergill made clear, the idea that there is a specific danger in the IKR from Daesh. The Appellant had, after all, lived peaceably in his home area as a Peshmerga throughout the height of the troubles. The Appellant admitted that there was no specific threat "until he had long fled his post" (paragraph 20).

15. The judge accepted that the Appellant had informed on the local *mullah* and:-

> "that may well be a cause for concern in the home area, but only in the immediate home area where people who would know him personally and what went on. He is not going to be at risk passing through en route to some other place. Outside of his home area it is implausible that he will be identifiable and I do not accept he has an objectively justifiable fear throughout IKR" (paragraph 20).

16. As far as the country guidance cases are concerned, the case of **AAH (Iraqi Kurds – internal relocation) (CG) [2018] UKUT 212 (IAC)** does not suggest that the Appellant, upon return to Baghdad, could not then make his way to the IKR. He has a CSID. This is not usually the case with many people who flee from Iraq. He can, as Judge Shergill noted obtain a replacement and pre-clear his entry to the IKR (see paragraph 24).

17. There has been a delay in sending out this Determination to the parties concerned, because although it was dictated on the day of the Hearing, and typed up shortly thereafter, it appears to have been held up in the system, before promulgation.

Notice of Decision

18. There is no material error of law in the original judge's decision. The decision shall stand.

19. An anonymity direction is made.

20. This appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date

Deputy Upper Tribunal Judge Juss 25th February 2019