IAC-AH-SAR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07781/2019

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 21 February 2020	**On 18 March 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

SORAN OMAR SALIH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Schwenk, instructed by Bankfield Heath solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 1 January 1996 and is a male citizen of Iraq. He is of Kurdish ethnicity. By a decision dated 1 August 2019, the Secretary of State refused the appellant's application for international protection. He appealed the First-tier Tribunal which, in a decision promulgated on 27 September 2019, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Mr Schwenk, who appeared for the appellant before the First-tier Tribunal and at the initial hearing in the Upper Tribunal, submitted that there were,

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in essence, two bases of the appeal to the Upper Tribunal. First, the judge had made errors in his fact-finding exercise and assessment of credibility. Secondly, confusion over the home area of the appellant and whether internal flight within Iraq would be unduly harsh had led the judge to a confused application of the relevant country guidance. The judge had rejected the appellant's account of past events, found that the appellant still in contact with family members in Iraq who would be able to assist him, before he left the United Kingdom, with finding his CSID identity document or a replacement and who would be able and willing to provide him with accommodation and support from their own home within the IKR at Kalar.

3. At [58], the judge found that the appellant had been 'unable to provide any reason that the security forces would be interested in him.' Mr Schwenk submitted that this was a misunderstanding of the evidence. At [34], the judge had recorded the appellant's evidence that he had been questioned by three individuals and had been 'accused of being a spy.' The appellant submits that it was for that reason that security forces were interested in him.

4. I state at the outset that, in my view, the decision of the judge is characterised in many places by what may politely be described as an infelicitous use of language. There are, at times, inaccuracies in expression which admit more than one possible interpretation. The question is whether these infelicities amount to an error of law so serious that the decision should be set aside. As regards this first challenge, I find that, whilst it is strictly not the case that the appellant failed to provide *any* reason why the security forces would be interested in him, it is absolutely apparent from a reading of [58] that the judge considered that the appellant had not provided *any credible* reason for such interest. In a detailed analysis at [58], the judge highlights an inconsistency in the appellant's evidence between what he said at his screening interview and in subsequent evidence. At the screening interview, appellant said that a militia group had attacked his town, that he had fought against them and then run away. He later said that is father had told him that the militia group were nearby and that the appellant and the family should travel to the IKR to stay with an uncle. The judge's analysis does not suggest that the appellant had provided no reason why the security forces would not be interested in him; the judge found that there was no credible reason given the inconsistencies in his evidence. I am well aware of the dangers of completing a judge's decision or straining to clarify a confused analysis. However, I consider in this particular instance that the judge's reasoning is tolerably clear.

5. At [60], the judge observed that the appellant's evidence was that he been released after 20 days detention, felt unable to go to his uncle's house in Kalar, notwithstanding that he would be safe there, but instead exposed himself to the risk of further detention and harm. Mr Schwenk submitted that the judge's conclusion ('*This is simply incredible'*) amounted to an assertion rather than a reasoned finding. I disagree. It is

entirely clear from the preceding analysis of the judge did not accept that the appellant would rationally have behaved in the manner which he described. For that reason, he found that the appellant's account of his conduct was not credible.

6. At [74], the judge has written a single line paragraph; 'I found the appellant is in fact an economic migrant.' Mr Schwenk complained that this was another assertion unsupported by reasoning. I agree that the form of expression employed is unhelpful. However, the comment does follow the judge's thorough analysis of the appellant's evidence. It neither adds to nor detracts from that analysis. The comment had no effect on the outcome of the appeal.

7. At [80], the judge moved on to consider the question of internal flight. At [77], he had observed that the appellant 'emanated from' Tuz Khurmatu that time a contested area. He did not consider it safe for the appellant to return to Tuz Khurmatu. At [83], judge notes that, if the appellant did not 'emanate from' the IKR that he would be unable to return there. However, he found that the appellant last lived in Iraq in Kalar which both parties agree is in the IKR. Consequently, the judge found the appellant could be 'return directly' to the IKR.

8. I acknowledge that this part of the analysis is problematic. The judge appears to find the appellant has two home areas, Tuz Khurmatu and the IKR. Notwithstanding that finding, the judge then appears to consider whether the appellant might exercise internal flight to the IKR. He has not considered whether the appellant has the necessary documentation to access the IKR directly from the United Kingdom or on transfer from Baghdad. The judge has considered the question of the appellant's possession of a CSID [86]. He finds that the appellant has not been truthful regarding possession of the card and expresses his view that he is satisfied that the appellant 'can reasonably obtain one, in all likelihood, by contacting his uncle who may well be in possession of the original or replacement from the appellant's redocumentation when he moved to Kalar and worked for his uncle (*sic*).' Whilst none of this is very clear (*'may well be in possession..'* is hardly an unequivocal finding of fact) any reader of the decision is left in no doubt that the judge considers that (1) the appellant is in contact with his family who are living in the IKR (2) that his uncle is a man of some wealth and influence who is previously assisted the appellant in finding work (3) that the uncle or other family members have the appellant's identity card (or a duplicate generated during the appellant's time living and working in Kalar) or (4) are in a position to obtain a replacement and to send it to the appellant in the United Kingdom before he departs for Iraq. The judge is well aware of the problems which the appellant my face living for any length of time in Baghdad but he has found that, in possession of his CSID, he would not be exposed to the risk of harm there but would be able to make his way safely to the IKR. Once again, I do not believe that I am completing the judge's analysis for him; these are findings which emerge from the sometimes unhappily expressed but detailed analysis which the judge has undertaken. I find that,

notwithstanding problems with his choice of expression, the judge has reached findings as regards internal flight to the IKR (for that is what it would be given that his home area is and remains Tuz Khurmatu) which were open to him on the evidence. In consequence, his conclusion that the appellant has failed to discharge the burden of proving that there are substantial grounds for believing that he would be at real risk of serious harm upon return to Iraq is also sound. Accordingly, the appeal is dismissed.

9. The First-tier Tribunal judge did not anonymize the proceedings and there no application for anonymity was made to me.

Notice of Decision

This appeal is dismissed.

Signed Date 17 March 2020
Upper Tribunal Judge Lane