



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06841/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
Working Remotely by Skype for Business
On 28 January 2021

Decision & Reasons Promulgated
On 19 February 2021

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

A O A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Dieu, instructed by Qualified Legal Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Iraq who was born on 2 August 1990. He is a Kurd who comes from Jalawla in Dyala Province. His religion is Kakai.
3. The appellant left Iraq in November 2018 and, travelling through a number of countries, arrived in the United Kingdom on 7 December 2018. He claimed asylum. He claimed to fear the Iraqi government, Daesh, the Peshmerga and the PMF. In particular, he claimed that he had been seriously mistreated in the Peshmerga by a commander, "MS".
4. On 7 July 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal. In a determination sent on 3 December 2019, Judge G Solly dismissed the appellant's appeal on all grounds.
6. Before the judge, the appellant's claim focused on his account that he had been seriously ill-treated when he had joined the Peshmerga and that he feared a commander, MS. He claimed that he had been mistreated because of his religion. Judge Solly made an adverse credibility finding and did not accept the appellant's account that he had been seriously mistreated on the basis of his religion and would be at risk on return.
7. Further, the judge rejected the appellant's claim based upon any risk arising from the Iraqi government, Daesh or the PMF.
8. The judge also rejected the appellant's claim under Art 15(c) of the Qualification Directive.
9. In addition, the judge found that the appellant could, in any event, internally relocate to the IKR or Baghdad.
10. As regards documentation, the judge found that the appellant would be able to return to Iraq with the necessary documentation in order to avoid any risk of serious harm contrary to Art 3 of the ECHR.

The Appeal to the Upper Tribunal

11. The appellant sought permission to appeal to the Upper Tribunal on a number of grounds. On 8 January 2020, the First-tier Tribunal (Judge Grant-Hutchison) granted the appellant permission to appeal to the Upper Tribunal.
12. Following the issue of Directions in the light of the COVID-19 crisis, the appeal was listed for a remote hearing by Skype for Business. That hearing took place on 28 January 2021 at the Cardiff Civil Justice Centre working remotely. Mr Dieu, who

represented the appellant, and Mr Howells, who represented the Secretary of State, also joined the hearing remotely by Skype for Business.

The Issues

13. Mr Dieu relied upon his skeleton argument dated 23 August 2020 which reflected the grounds of appeal. He supplemented that skeleton argument in his oral submissions. I also heard oral submissions from Mr Howells.
14. In the course of his oral submissions, Mr Howells accepted that, on the basis of para 8 of the grounds, the judge had erred in law in finding that the appellant could internally relocate to Baghdad. Mr Howells did not therefore, seek to uphold the appeal on the basis of internal relocation to Baghdad.
15. Further, Mr Howells accepted that, although the judge's finding in para 77 that the appellant could internally relocate to the IKR, had not been challenged in the grounds of appeal, nevertheless that finding could not stand if I concluded that the judge's finding that the appellant had not established he was at risk from MS could not be sustained. He accepted that was the position because the judge's finding in para 77 was premised on her rejection of the appellant's claim to fear MS.
16. Likewise, Mr Dieu, at the outset of his submissions, indicated that he no longer pursued para 7 of his grounds which criticised the judge's reasoning in para 69 of her determination in relation to the issue of whether the appellant could obtain a laissez-passer from the Iraqi Embassy. He accepted that that was now irrelevant to the appellant's claim.

Discussion

17. Mr Dieu relied upon five grounds set out in paras 2-6 of his skeleton argument. Each of these grounds challenges the judge's adverse credibility finding. I will take each of these in turn.

Ground 1

18. Ground 1 contends that the judge, in effect, misstated the appellant's evidence in paras 39, 49 and 50 of her determination. Those paragraphs are as follows:

"39. He does not practise [h]is religion in the UK. He was asked to clarify his written statement which said he was persecuted because of his religion in the Peshmerga. He said that he was not made to walk on broken glass because of his religion. He was told to walk through some mud and he stood on something sharp. He accepted that this injury and the injury to the fingers were not due to his religious beliefs but due to his military training although saying that his commander hated him. He also said he did not know why his commander was tough on him. He said it was not just him that was put on frontline when fighting ISIS but a list of names were put up and he was put on it. The person in charge was put in place by [MS], this person was tough on him and he fears both.

...

49. He left the Peshmerga on 15 November 2018 with [N] who was also of the Kakai religion. His Kalashnikov was given to the traffickers and he fears the Peshmerga. There is no evidence that he fled in fear.

50. He left because his name was on a list of people to fight in a very dangerous area, because of his religion he says in his witness statement, however in oral evidence he contradicted this saying that he was just one of several people on the list and his religion was not material. I accept his oral evidence that his scarring was not due to his religion and neither was him being placed on a list to fight in a dangerous area."

19. Mr Dieu submitted that the judge had failed properly to take into account that in cross-examination the appellant had referred to the commander as being "racist" and that the judge had drawn an unnecessarily narrow distinction between religion and racism. The point, Mr Dieu emphasised, was that the appellant had said in his witness statement (at pages 1-7 of the supplementary bundle) that he had been treated differently. Mr Dieu referred to the appellant's evidence in cross-examination in his own records which he agreed was substantially the same as the judge's Record of Proceedings which I consulted and read out at the hearing.
20. Mr Howells submitted that the judge's conclusions were properly open to her on the evidence. The appellant had accepted that his injuries were due to military training and not religion. The judge was entitled to find there were inconsistencies in his evidence in assessing the credibility of his claim.
21. Whilst the appellant did, in his oral evidence during cross-examination, refer to him being treated "differently", when asked whether he agreed that he had not been targeted, his answer was that you would have to ask the person who was being tough on him. The appellant did refer to the individual as "racist" in his oral evidence and that the person "hated" him but he also conceded that he had not been made to walk on broken glass - as he had claimed - but that he had been told to walk through mud and that he had stood on something in that mud. He was asked whether he accepted that what had happened was due to military training and not religion and he replied "yes. I treated like that. He was racist. He hated me. okay to other Muslims. Don't know why he tough on me".
22. In my judgment, Judge Solly properly represented the appellant's evidence not least in para 39 of her determination. The appellant's evidence was inconsistent both as between his witness statement and oral evidence but also in his oral evidence at the time of the hearing. He clearly said at one point that his mistreatment was not due to his religion and that he did not know why his commander was tough on him. He also accepted that the reason why he was put on a list of people to fight on the frontline was not because of his religion. That contradicted what he had said in his witness statement.

23. It was well within the bounds of a primary fact-finder, faced with this inconsistent evidence, to take the inconsistency into account in assessing whether the appellant's account was credible and to be accepted. For these reasons, I reject ground 1.

Ground 2

24. In Ground 2, Mr Dieu contended that the judge had failed, in para 51 of her determination, to give proper weight to an expert report by Dr Monroe (at pages 8-31 of the supplementary bundle). In that report, at paras 75-77, Dr Monroe states that the appellant's scarring is either "typical" or "highly consistent with" its claimed attribution whilst the appellant was engaged in military training.
25. At para 51 of her determination, Judge Solly said this:

"The appellant relies on a medical report from Dr Alexander Monroe dated 25 September 2019 when considering that scarring on his finger and foot were typical of the attribution he gave them. The appellant had told the expert that he was required to walk barefooted across a muddy area in which there was broken glass which Islamic Peshmerga were not required to do, paragraph 23. The injury to the fingers occurred when he fell after running onto a sharp-edged object. In his oral evidence to me the appellant denied that either element of the training was because of his religion. It therefore follows that I give little weight to the medical report on scarring."

26. Whilst Dr Monroe's report could assist in establishing a cause or connection between the physical aetiology that the appellant claimed, it could not assist in establishing that any such injuries were due to mistreatment of the appellant in the Peshmerga *because* of his religion. The latter issue was central to the appellant's asylum claim. Mr Dieu did not specifically address this ground of appeal in his oral submissions. In my judgment, in relation to whether or not the appellant had established the religious motivation for any injury he claimed was caused to him whilst in the Peshmerga, the judge was entitled to note that the appellant, in his oral evidence, denied that there was any religious motivation and to give "little weight" to the medical report so far as it related to the cause of the scarring. Even if it assisted in connecting the scarring to the appellant's claimed cause of the injury, it provided no assistance in determining whether the appellant was to be believed that his injuries were caused as a result of religious motivation by his commander. For this reason, I reject ground 2.

Ground 3

27. Ground 3 also relates to the judge's treatment of Dr Monroe's report, this time in relation to his evidence concerning the appellant's mental health. Mr Dieu submitted that, in para 52 of the determination, although the judge had taken into account the appellant's diagnosis that he suffered from mild generalised anxiety and moderate depression in assessing whether his evidence was affected by his mental health, the judge failed to take it into account as support for the appellant's claim that he had been mistreated in Iraq which had affected his mental health.

28. Mr Dieu relied upon paras 86 and 88 of the expert's report. In para 86 Dr Monroe states that the appellant: "suffers mild generalised anxiety and moderate depression in response to his experience and current situation." Then at para 88, Dr Monroe says that the appellant's

"anxiety and depression are attributable to the violent loss of his closest relatives; his parents, his adverse experience while serving in the Peshmerga, and his foreboding of imprisonment or being killed if he is returned to Iraq."

29. Mr Howells submitted that the appellant did not suffer from serious mental health issues and the judge had found that his evidence was not affected by that mental health. He submitted that the judge had the medical evidence well in mind. It was, in any event, unlikely to have had any material effect on the outcome of the appeal given the judge's reasons for not accepting the appellant to be credible.

30. In fact, in para 52 the judge does refer to Dr Monroe's view concerning the appellant's mental health. The judge said this:

"Dr Monroe contributes [the appellant's mild generalised anxiety and moderate depression] to the violent loss of his closest relatives and his adverse experience while serving with the Peshmerga together with his foreboding of imprisonment or being killed returned (*sic*) to Iraq. The appellant indicated that he was fit and well before he gave his evidence. I find that his evidence is not affected by his mental health, indeed Dr Monroe does not suggest it has been. He is not being treated for anxiety and depression at the time of the hearing."

31. As will be clear, the judge does refer to Dr Monroe's evidence set out at paras 86 and 88 of his expert report. The judge was not bound to find, as a result, that the appellant had established that his account was a truthful one. The expert evidence was relevant and was taken into account by the judge. It had to be considered in the context of all the evidence. The judge plainly did consider all the evidence in her extensive reasons given at paras 43-63 of her determination and in reaching her adverse credibility finding in relation to the appellant's account. I am wholly unpersuaded that the judge materially erred in law by failing to properly take into account in para 52 Dr Monroe's evidence. I, therefore, reject ground 3.

Ground 4

32. Ground 4 relied upon by Mr Dieu concerned the judge's assessment of the evidence that led her not to accept the appellant's account that his documentation, which he had when in Iraq, had been destroyed because his home had been destroyed by the Iraqi Army. In para 54, the judge said this:

"His witness statement at paragraph 24 says that he has been told by a friend that his home has been destroyed by the Iraqi Army/PMF. I note this is vague and without independent corroboration. My findings concerning identification document and where it is thus depend on my assessment of the appellant's credibility."

33. Mr Dieu submitted that the judge had been wrong in that paragraph to take into account that there was no “independent corroboration” of what the appellant had been told by a friend, namely that his home had been destroyed.
34. Whilst it is uncontentious that it would be a legal error not to accept evidence simply because it was not corroborated, that is not the proper understanding of the judge’s reasoning in para 54. As Mr Howells submitted, the key feature of what the judge says is in the final sentence in para 54, namely that without any supporting documentation of what the appellant was told by his friend, whether the appellant is to be believed that his home has been destroyed “depend[s] on [the judge’s] assessment of the appellant’s credibility”. Absent supporting documentation, which if the judge found to be reliable could assist in establishing whether the appellant’s home had been destroyed, the only basis upon which the judge could find that the appellant’s home had been destroyed was if she accepted the appellant’s evidence which, in turn, turned upon whether his evidence was credible and was to be accepted as truthful. Consequently, I reject ground 4.

Ground 5

35. In Ground 5, Mr Dieu submitted that the judge had been wrong in para 62, when assessing whether the appellant had been credible in his evidence concerning what identification documents he had or could access, to refer to “background evidence that Iraqi’s (*sic*) do produce documentation on return in reaching that assessment”. In his oral submissions, Mr Dieu submitted this was a significant factor taken into account by the judge in making her adverse credibility findings, in particular on the issue of documentation and it was not clear what “background information” she was referring to.
36. In his submissions, Mr Howells took me to Annex A of the *CPIN*, “Iraq: Internal Relocation, Civil Documentation and Returns” (February 2019) at pages 264-332. At Annex A (at page 325) is a letter from the Iraqi Ambassador to the United Kingdom dated 5 September 2018 in which it is said:

“please note that most of them may be in possession of copies of their National IDs which they may have not been not disclosed previously.”
37. Mr Howells submitted that this document, which was in the bundle available to the judge, was “background information” which supported what the judge had said in para 62 of her determination.
38. In the light of this, Mr Dieu accepted that evidence seemed to be consistent with the judge’s remark and he did not seek to pursue the point further.
39. In my judgment, the document in Annex A is consistent with (and can properly be seen as the basis for) the judge’s observation in para 62 that some Iraqis do produce documents on return even though they have previously not disclosed them. The judge has not, therefore, relied on background information which was not before her or made a statement that does not find support in the background information. She

was entitled to take that into account, albeit only as one of many factors, in reaching her adverse credibility finding in relation to the appellant, in particular in relation to his evidence that he had no identification documents nor would be able to access them. For these reasons, I also reject ground 5.

Conclusion

40. As a result, I reject each of the grounds relied upon by Mr Dieu challenging the judge's adverse credibility finding and her conclusions that the appellant had not established a real risk of persecution on return to Iraq or that he would be exposed to a real risk of serious harm contrary to Art 3 as he would lack the appropriate documentation.
41. It follows, therefore, that the judge's decision to dismiss the appellant's international protection claim did not involve the making of a material error of law.
42. Further, it follows that, to the extent required, the judge's finding that the appellant could internally relocate to the IKR also stands.

Decision

43. For the above reasons, the First-tier Tribunal's decision to dismiss the appellant's appeal on all grounds did not involve the making of an error of law. That decision stands.
44. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
29 January 2021