IAC-FH-CK-V2

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04237/2020**

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams	**Decision & Reasons Promulgated**
On the 8 February 2022	**On the 21 March 2022**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

HA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr F Ahmad of Hanson Law LTD
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant claims to be a national of Iran, but the Secretary of State does not accept this and considers that he is a national of Iraq. He appealed to a Judge of the First-tier Tribunal against a decision of 15 August 2020 refusing his claim for asylum and humanitarian protection.

2. The appellant claimed to be of Iranian nationality and of Kurdish ethnicity. He said that he used to help his father distribute leaflets in support of the KDP. He had provided an expert report from a Dr Ghobadi and also oral

evidence from a witness, SIA, in support of his claim. He had had previous appeals against two earlier decisions, in November 2016 and January 2020, and in each case the judge did not accept his claim to be from Iran and concluded that he was from Iraq.

3. The essence of the appellant's claim is that he has been involved in sur place activities, attending demonstrations against the Iranian regime and that he is active on social media and posts against the Iranian regime which activities he fears will place him at real risk of ill-treatment on return to Iran.

4. The judge rightly reminded himself that the starting point was the decision of Judge Broe in 2016. The subsequent decision of Judge Watson in 2020 did not depart from Judge Broe's findings of fact that the appellant was a national of Iraq and not Iran.

5. The judge set out in some detail the findings of Dr Ghobadi, who the judge accepted had the necessary qualifications, knowledge and experience to comment upon the matters in the case. He noted that Dr Ghobadi said that the appellant speaks Kurdish Mukri, which is a subdialect of Kurdish Sorani and is spoken in both Iran and Iraq. Dr Ghobadi said that whilst the phenology and morphology satisfied that the appellant spoke a language from Iran, when he considered his lexicon he found he used words spoken in Iraqi Kurdistan and gave six examples from the appellant's interview, responses which he said were consistent with Mukri as spoken in Iraq. These included the words, for example, car, woman, birthday and culture. Dr Ghobadi did not say how many words of Mukri as spoken in Iraq the appellant had used during the interview, the judge noted.

6. The judge went on to consider the conclusion of Dr Ghobadi in stating that the appellant answered most of the questions correctly but either failed to answer a number of questions or only demonstrated limited knowledge. It was reasonably expected from the appellant to have answered almost all the questions on Kurdish/Iranian culture and society. He had displayed mixed lexical features in his speech. Taking this into consideration and given that he managed to answer most of the questions on Iran and the area from which he claims to come correctly, he was assessed to be more likely from Iran than Iraq. In an addendum report Dr Ghobadi said that the appellant was unable to answer some questions but taking into consideration that he used missed (sic - mixed) lexical features and answered about two thirds of the questions correctly he had concluded that he was more likely to be from Iran than Iraq.

7. The judge's comment on this was to conclude that Dr Ghobadi had failed to provide any explanation as to whether he did or did not explore with the appellant why he was using Mukri words spoken specifically in Iraqi Kurdistan when he claimed to be from Iran. He found that Dr Ghobadi ought to have explored these features of the appellant and that he had failed to explain in his report what weight was given to the appellant's

incorrect responses and lack of response to questions put to him, given that he had said it was reasonably expected from the appellant, who claimed to be from Iran, to have answered almost all the questions on Kurdish/Iranian culture and society correctly.

8. As a consequence and having considered the evidence in the round, the judge attached very little weight to Dr Ghobadi's conclusion that the appellant was a national of Iran.

9. The judge went on to consider the evidence of the appellant's friend SIA. SIA is an Iranian national and was granted refugee status in the United Kingdom. In his witness statement he said that he used to meet the appellant at his workplace once or twice a month. On one occasion they met in his orchard in Zuran. His uncle was present during the appellant's visit. The appellant had given him a pair of trainers but would not take any money for them. He said that neither he nor the appellant had been to each other's home.

10. In his statement of 11 February 2021 the appellant said that he met SIA in an orchard which belonged to the shop owner. He said that sometimes the shop owner would send SIA to look after the orchard while he would look after the shop. He could not remember if anyone else was there as he was very young at the time.

11. The judge found there was a discrepancy in the evidence about meeting in the orchard and to whom it belonged. He also noted that their evidence was that neither had visited the other's home. They both said they met once or twice a month when the appellant was passing through and the appellant also said that sometimes they did not meet at all. The judge accepted the Secretary of State's submission that, given the porous nature of the border separating Iraq and Iran in the Kurdish region, and given that the appellant was a passing traveller and SIA did not know where the appellant actually lived, the appellant could equally be from Iraq.

12. The judge did not find credible the appellant's evidence that he was not in touch with his family. He said in cross-examination that he had now asked the Red Cross for help to locate them but had produced no evidence in support. It was also unclear why he had not approached any community groups for assistance as they might have contacts to establish contact with his family and get his ID documents, which he had said he left behind and which might satisfy the issue of his nationality.

13. The judge went on to say that given his issues with Dr Ghobadi's report, he found SIA's evidence without more not to support the appellant's claim to be from Iran. He found, having considered all the evidence in the round and on balance, that the appellant did not satisfy that he was a national of Iran and found that on balance he was a national of Iraq.

14. The judge went on thereafter to consider the feasibility of the appellant's return to Iraq and concluded that he would be able to travel back and that he was not a refugee. The appeal was dismissed on all grounds.

15. In his submissions Mr Ahmad relied on and developed the points made in the seven grounds of appeal.

16. Ground 1 was concerned with the expert report of Dr Ghobadi and the argument that the judge applied a higher standard of proof. The judge had accepted Dr Ghobadi's expertise. That report was not available to the previous judges. It was to be taken along with the interview and witness statements. The appellant had correctly identified seventeen matters, as set out at paragraph 17 of the skeleton argument before the judge. At interview he had answered more than 22 questions correctly. Thus, along with the evidence of SIA, the appellant had proved he was Iranian. Dr Ghobadi had concluded that the appellant was from Iran and not Iraq and had said that the phenology and morphology satisfied him that the appellant's spoken language showed that he was from Iran.

17. Ground 2 was concerned with errors as it was contended in the judge finding that there was a discrepancy between the evidence of SIA and the appellant. He was required to put inconsistencies to the witnesses. It was unclear whether there was a discrepancy in any event.

18. Ground 3 argued that the judge had failed to reason his decision adequately in finding that he did not find the appellant's evidence credible that he was not in touch with his family. This element of the decision was unreasoned. It appeared that the judge had just accepted what the earlier judges had found. The burden was on the appellant but he was not required to provide corroborative evidence. What the judge said went beyond a mere finding of fact.

19. In ground 4 it was argued that the judge had erred in fact with regard to the activities of the Red Cross. The appellant had told the judge he had asked the Red Cross for help and the judge should have been aware that the Red Cross did not actually look for families but rather provided a photograph on the Trace the Face Migrants in Europe website and it was the responsibility of the family to approach their local Red Cross organisation. Also, the Red Cross did not engage in legal proceedings and due to the pandemic might not have been actively open or have provided any relevant documents to the appellant.

20. In ground 5 it was argued that the judge did not give proper consideration to the evidence of the witness SIA. The evidence was unchallenged, so it should have had appropriate weight attached to it. It was accepted that he was an Iranian national and had been granted asylum. The issue concerning the orchard was irrelevant with regard to the overall credibility assessment.

21. Grounds 6 and 7 concerning failure to consider the country guidance in respect of Kurds, and the appellant's Facebook and sur place activities, could be taken together. The judge had automatically erred in law and he failed to consider country guidance and there was ample evidence on the risk issue here and the judge had failed to consider the expert report properly. It was necessary for the appeal to be remitted for a full rehearing.

22. In his submissions Mr Lindsay relied on the Rule 24 response. The overarching submission was the question of nationality. There had been two earlier, effectively unchallenged, decisions in 2016 and 2020 where it had been found that the appellant was Iraqi. On the basis of the Devaseelan guidance the question was whether the fresh evidence warranted a departure from the earlier findings. The judge had given legally adequate reasons. No higher standard of proof had been applied to the expert evidence. The judge had set out the correct standard at paragraph 4 of his decision and there was no indication that he had applied any higher standard of proof at any point. It was a matter of disagreement only.

23. As regards the expert's evidence, the dialect spoken by the appellant was spoken in both Iran and Iraq. The appellant was from the porous border region and that went to the substance of the reasons for attaching little weight to the expert report. The judge had given clear and sound reasons as to why the conclusions were not supported by the reasons given in the expert report. The appellant was unable to answer a third of the questions about Iran and that was not addressed by the expert in the report. It was for the judge to assess credibility and the weight to be given to the items of evidence.

24. With regard to ground 2 and the point made as to the discrepancy not being put to the appellant, it could strictly be an error by the judge as to who owned the orchard but more relevant to that, as Mr Ahmad accepted, was the fact that nothing really turned on the point. The judge had said why he was not persuaded by SIA's evidence and even if taken at its highest it did not show the appellant was Iranian. The border was porous and he was a passing traveller and the judge was entitled to find that he had not produced evidence to support a departure from the earlier judges' findings.

25. With regard to ground 3 and ground 4 and the family tracing issue, the judge had addressed this at paragraph 28 of his decision. The appellant had not shown any real efforts to contact his family and that was unarguably relevant, given that he was trying to show he was from where he said he was from. It was relevant to remark as to the ability of the family to obtain ID documents. There was a lack of clear efforts to trace his family and this was unsupportive of his case. As to whether the Red Cross were not doing family tracing, Mr Lindsay was not aware of this and no evidence had been provided to support that submission and Mr Ahmad

had sought to give evidence on it. The other grounds effectively fell away in light of the sound findings in respect of the appellant's nationality. The appeal should be dismissed.

26. Mr Ahmad had no points to make by way of reply.

27. I reserved my decision.

28. The judge, as he noted at paragraph 14, properly relied as his starting point on the decision in 2016 that the appellant was a national of Iraq and not Iran. This was the context for the evaluation of the more recent evidence, first of the expert, Dr Ghobadi, and secondly of SIA. It is clear, as the judge said for example at paragraph 25 and paragraph 29 that he took the evidence in the round, having given individual consideration to the evidence of those two witnesses.

29. As regards Dr Ghobadi's evidence, it was clearly relevant to note that the appellant had used various everyday words spoken in Iraqi Kurdistan and gave responses which were consistent with Mukri as spoken in Iraq. It was relevant also to note that Dr Ghobadi did not say how many words of Mukri as are spoken in Iraq the appellant had used during the interview. It was relevant also to have a concern as to why Dr Ghobadi had not said whether or not he had explored with the appellant why he was using Mukri words spoken specifically in Iraqi Kurdistan when he claimed to be from Iran. The judge bore in mind what Dr Ghobadi said about the appellant answering about two thirds of the questions correctly with regard to Iran, and it was a proper matter of concern that Dr Ghobadi had failed to explain in his report what weight was given to the appellant's incorrect responses and lack of response to questions given to him, bearing in mind that he had said it was reasonably expected that the appellant, who claimed to be from Iran, would have answered almost all the questions on Kurdish/Iranian culture and society.

30. As a consequence, I consider that although there clearly were elements of the appellant's evidence to Dr Ghobadi which were consistent with him being from Iran, equally there were matters which indicated that that might not be the case and that he was from Iraq, and the judge's concerns about the report were proper ones to have. Again, it is relevant to bear in mind that this evidence was considered in the context of the evidence as a whole as well as the earlier findings.

31. As regards the evidence of SIA, I agree with Mr Lindsay that a clearly relevant point here, rather than issues about discrepancies in the evidence or whether those were put to the appellant, is the porous nature of the Iraq/Iran border in the Kurdish region, as noted by the judge at paragraph 27 of his decision. The appellant was also, as he noted, a passing traveller and SIA did not know where the appellant actually lived and it was open to the judge to find that the appellant could equally be from Iraq. Again, this evidence, together with Dr Ghobadi's evidence and the evidence as a

whole, was considered in the round and the judge came to conclusions which were properly open to him.

32. As part of this evidence is the issue as to the contact with the family. The judge did not find the appellant's evidence credible in this regard. He had now said that he had asked the Red Cross for help but provided no evidence in support and, as the judge noted, contact with his family or community groups might have been able to establish contact with his family and get ID documents, which were of course central to his case. This was a matter of clear relevance and again the judge was entitled to have the doubts that he did.

33. In the circumstances therefore I consider that the judge came to sound findings on the issue of the appellant's nationality and he has not been shown arguably to have erred in law in that regard. I therefore need say no more about the challenge to the judge's findings in respect of risk on return, since those challenges were geared to risk on return to Iran whereas the judge in light of his findings as to the appellant's nationality considered risk on return to Iraq.

34. As a consequence, this appeal is dismissed.

Notice of Decision

The 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 24 February 2022

Upper Tribunal Judge Allen