IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002531

First-tier Tribunal Nos: PA/50062/2023
LP/00299/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 22nd of October 2024

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

NS
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Williams, Legal Representative from Fountain Solicitors
For the Respondent: Ms S Nwachuku, Home Office Presenting Officer

Heard at Field House on 3 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a citizen of Iraq of Kurdish ethnicity. He is in Sinjar in the Governorate of Nineveh. His date of birth is 18 March 2001.

2. On 9 July 2024 the Upper Tribunal (Judge L Murray) granted the Appellant permission against the decision of the First-tier Tribunal (Judge Thorne) to dismiss his appeal against the decision of the Respondent on 20 December 2022 to refuse the Appellant's application for protection.

3. The Appellant's evidence is that he is at specific risk from the Kurdistan Workers' Party (PKK) and at general risk from ISIS. Members of the party visited his home and told the Appellant's paternal uncle that they wanted the Appellant to fight with them and if he refused he would be taken by force. Following this the Appellant's uncle facilitated his exit from Iraq. The Appellant relied on the background evidence relating to the general situation in Sinjar. The Appellant said that he would be returning to Iraq without documentation and that he would be unable to return to Kurdistan because he does not know anyone there.

4. The Appellant gave evidence at his hearing. He said his parents are deceased. His remining family consists of his uncle and sister with whom he last had contact when he was in Turkey on route to the UK. His uncle had contacted him on a mobile phone which was provided by the people smugglers. His evidence was that he had not subsequently made any effort to contact his family. He did not know how to find their contact numbers. The Appellant's evidence was that he had left his CSID card in the family home, however in 2014 the village where he lived with his family was attacked by ISIS and his house was destroyed. His documents were lost as a result. The Appellant said that he would not be able to obtain a new CSID because he is no longer in contact with his family.

The findings of the First-tier Tribunal

5. The judge made findings after stating that he had reviewed the evidence in the round. He found that the Appellant had not discharged the burden of proof. He did not accept that the PKK had tried to recruit him or that they have an adverse interest in him now for any other reason. The judge gave as his reason that the Appellant's own evidence is that he did not think that the PKK would know about him and target him because his own evidence was that he was not interacting or mixing with anyone. With reference to what the Appellant said in his asylum interview the judge said in those circumstances it was implausible that he would come to the attention of the PKK even if there were spies as the Appellant claimed. He said that the Appellant's claim that the PKK were seeking to recruit him was based solely on one interaction between the PKK and his uncle. The judge found that the Appellant's evidence that the PKK would kill people who refused their demands was not credible because he was unable to give specific details of anyone he knew who had been killed for this reason.

6. The judge said that the country background evidence indicated that people are recruited into the PKK from ages 15 to 21 and the Appellant was, on his evidence, aged 20 when he said he was approached by the PKK and that he had never had any previous dealings with members of the PKK. The judge found that it was not plausible that the Appellant had lost contact with his family, especially his uncle who supposedly helped him to leave Iraq. He did not find it credible that the Appellant had made so little effort to trace his family. The judge at paragraph 21 set out the Appellant's oral evidence about having left his CSID card in his home village and the judge said:

> "He can avail himself of the help of his family to obtain it. Alternatively if it has been lost, his records will be held in Sinjar and he will be able to obtain a replacement with the assistance of family members. Whether return is to Kurdistan or via Baghdad he will be able to obtain his original or replacement CSID".

Gound one

7. The judge gave inadequate reasons for finding that the Appellant's account of how the PKK targeted him and attempted to recruit him is not credible and implausible. The judge failed to consider the Appellant's account, supporting by the background evidence, that the PKK have power and a dominant presence in his area and that the Appellant may have been targeted solely for being a man of fighting age. The judge failed to consider the Appellant's evidence in the round.

Ground 2

8. The judge failed to apply the applicable country guidance of SMO and KSP *(*Civil status documentation; article 15*)* Iraq CG [2022] UKUT 00110 (IAC) when considering the Appellant's return, redocumentation and the possibility and reasonableness of relocation, the judge did not consider how the Appellant would be able to retrieve his CSID from his family.

Submissions

9. I heard submissions from the parties. Mr Williams relied on the grounds of appeal and drew my attention to the background evidence that was before the First-tier Tribunal, specifically at pages 74 and 78 of the electronic bundle. He also referred me to the ASA before the First-tier Tribunal specifically para 19 where reliance was placed on the background evidence. Mr Williams said that the judge did not take into account what the Appellant said in his witness statements, namely that he was working as a shepherd for his uncle, which necessitated him to leave the house and which explained how he could come to the interest of the PKK. Whilst the Appellant did not know anyone who had been killed by the PKK, the judge did not consider his evidence in the context of the background evidence relating to Sinjar.

10. The Respondent opposed the appeal. Ms Nwachuku relied on the response to the grounds of appeal under Rule 24 of the Tribunal (Upper Tribunal) Procedure Rules 2008 ("the Procedure Rules"). It is said the judge directed himself appropriately and reliance is placed on the Practice Direction from the Senior President of Tribunals: reasons for decision of 4 June 2024. It is accepted that the judge's reasons are brief but they are rational and there was an absence of evidence concerning the forcible recruitment by the PKK in the KRG. It is said that it does not appear that the judge was addressed on any background evidence that the PKK have any sort of authority and structure through which they can exercise in northern Iraq and in the absence of such evidence the decision was open to the judge.

11. In oral submissions Ms Nwachuku did not accept that the decision can be read as though the judge has not taken into consideration the background evidence and she made reference to paragraph 12 of the decision where the judge said that he had taken into account all the documents served on him. She said that the decision should be read on the basis that the judge had considered the background evidence and that even when the Appellant's evidence is considered

in the context of the background evidence it does not lead to a conclusion that he is telling the truth. The judge gave reasons why he did not accept the Appellant's account which was in based on the Appellant's own evidence about how he was not interacting with other people. There is nothing to suggest that the judge has gone behind the background evidence.

12. In respect of ground two Ms Nwachuku submitted that the judge did not find the Appellant credible and he did not find the Appellant's account in relation to his family and contact with them to be credible. The judge found that even if the Appellant's CSID card was lost, he would be able to obtain another. She accepted that the judge did not fully engage with how the Appellant could obtain a CSID but in light of the fact there was no up-to-date evidence about his family and the judge was entitled to find that he could obtain a replacement with the assistance of family members. At paragraph 10 the judge said that the Appellant's evidence was that he had no up-to-date information about whether the PKK still had an adverse interest in him.

Error of Law

13. Practice Direction of the Senior President of Tribunals: reasons for decision of 4 June 2024, at paragraph 5 reads as follows:

> "5. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principle controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable appellate bodies to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. Therse fundamental principles apply to the Tribunals as well as the courts.
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> 6. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resource of the Tribunal, but to the significance and complexity of issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those essential to the Tribunal's conclusion have been resolved.
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> 7. Stating reasons at any great length than is necessary in the particular case is not in the interests of justice. To do so is an efficient use of judicial time, does not assist either the parties or an appellate court or Tribunal, and is therefore inconsistent with the overriding objective providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In some cases, a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter."

14. The Practice Direction reflects case law. I have also taken into account what was said by Baroness Hale in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 at paragraph 30:

> "Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

15. This was reaffirmed by the Court of Appeal in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095. I have also taken into account the more recent case of Volpi v Volpi [2022] EWCA Civ 464. I am hesitant to interfere with the judge's findings on credibility and having considered the Practice Direction and the case law, however, in this case, I find that the judge materially erred.

16. The decision of the judge is succinct which is commendable and I make no criticism of that. However, in relation to ground one, I am concerned that risk on return has not been assessed on the basis of the background evidence that was brought to the attention of the judge. It was relied on in the ASA before the First-tier Tribunal. There were hyperlinks to the background evidence relied to the background evidence in the Appellant's bundle at pages 74 and 78. The background information is capable of supporting the Appellant's case insofar as it was capable of supporting the PKK's influence in Sinjar. It is capable of supporting the presence of ISIS in the area at the time the Appellant stated that his village was attacked. While the judge said that he considered the evidence in the round I am not satisfied that he did so. The presence of the PKK goes to a main issue of dispute and the judge needed to engage with this evidence for the parties to understand why the appeal was dismissed.

17. The judge did not need to set out the background evidence that was relied upon, and while I accept Ms Nwachuku's submission that the background evidence does not establish that the Appellant was telling the truth (that is not the test before me), there is nothing in the decision which would support that the judge considered the Appellant's account in the context of what was happening in Sinjar at the relevant times and which was capable of supporting the Appellant's account. I also accept that the judge's finding at para 19 is problematic because the fact that the Appellant was age 20 is a matter which is capable of supporting the Appellant's account rather than undermining it.

18. I therefore find that the judge materially erred and that ground one is made out. It is not necessary for me to consider ground two in any detail because the findings are infected by the error. However, suffice to say the findings made do not support the proper application of SMO and KSP *(*Civil status documentation; article 15*)* Iraq CG [2022] UKUT 00110 (IAC).

19. I set aside the decision to dismiss the Appellant's appeal. The parties agreed that as a result of the nature of the error, the matter should be remitted to the First-tier Tribunal (Manchester) be reheard de novo (not before Judge Thorne).

20. There will need to be a interpreter at the next hearing and the language is Kurdish Badini.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 October 2024