



IAC-AH-KRL-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00859/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 March 2016**

**Decision & Reasons Promulgated
On 11 April 2016**

Before

UPPER TRIBUNAL JUDGE WARR

Between

**AHMED MOHAMMED HUSSEIN NADY AL-SAFFAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop of Counsel, instructed by A2 Solicitors
For the Respondent: Mr C Avery

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on 5 August 1990. He arrived in this country on 17 September 2014 and applied for asylum. The application was refused on

31 December 2014. The appellant appealed and his appeal came before First-tier Judge Butler on 8 April 2015.

2. Judge Butler helpfully summarises the appellant's case as follows:
 - "3. The appellant claimed that in 1991 his father was executed by the regime of Saddam Hussein for participating in the "intifada" uprising. This led to his family moving in with his grandfather. His grandfather owned a restaurant in Karbala which was opposite the government buildings taken over by American military personnel after the fall of the Saddam Hussein regime in 2003. US Army personnel frequented the restaurant and the appellant and his family became friendly with them.
 4. This led to problems for the family with other locals targeting the family. Rocks were thrown at the restaurant, the appellant's uncle was threatened and a grenade was thrown into the house, the restaurant being at the front of the house. One American soldier converted to Islam and married one of the appellant's aunts.
 5. Due to these continuing problems, the appellant's grandfather moved the family to another area called Al Mulhaq. In 2010, the appellant began working as a photographer for the Karbala Today newspaper. On a date in March 2014, he attended a meeting with other journalists who were interviewing some authors. The appellant became involved in a discussion with another journalist which became so heated they both had to be calmed down by others. The discussion was about the American involvement in Iraq and the other journalist insulted the appellant saying he was defending them because he had helped them in the past.
 6. On a date in June 2014, the appellant claimed that an envelope containing a photograph of members of his family with an American soldier, a threat to his family and a bullet [sic]. The appellant asked his uncle for advice and he told him to go to live with him at his grandmother's house in the centre of Karbala, which he did. The appellant then left Iraq because the situation became unsafe with the rise of ISIS and the Al-Mahdi Army."
3. The respondent expressly accepted that the appellant and his family had established friendships with some American troops but otherwise took issue with the appellant's claim as lacking credibility. It was rejected that the appellant worked as a photographer for Karbala Today Newspaper.
4. The documents produced by the parties before the First-tier Judge were listed in paragraph 15 of the determination as follows:
 - "15. The respondent produced an appeal bundle and the appellant produced a bundle of 62 documents which included a skeleton argument and statement dated 27 March 2015, several screen shots of the Karbala Council website featuring photographs by the appellant, letters dated 8 February 2014 and 13 October 2013 confirming the appellant was employed as a photographer by Karbala Today, confirmation of his membership of the Iraqi Journalists' Syndicate from 23

October 2012 until 14 January 2014, his written commitment for membership renewal, confirmation of the appellant's father's death and an extract from his death certificate, his age assessment, confirmation of change of name, confirmation of his inheritance from his father and a number of undated photographs with no commentary or description."

5. The judge heard oral evidence from the appellant and having summarised the submissions from the parties and having directed himself as to the appropriate standard of proof found that the appellant was not a credible witness and his evidence was inconsistent and implausible and he gives his reasons in the following extract from his determination:

- "36. In his screening interview, the appellant said he travelled from Greece to Italy by boat but in his statement dated 10 November 2014 he said he made that journey by lorry. Also in his screening interview he said he had an uncle in the UK but did not know where he was. In his asylum interview he said his uncle lived in London and he contacted him and was advised to come to the UK.
37. I did not find the appellant's evidence of his work as a photographer for Karbala Today to be credible. His evidence about his journalist's ID card was confused and inconsistent. I consider it highly unlikely that a card would record his date of birth inaccurately or that his original application in 2010 would be mislaid or destroyed resulting in his card being issued in 2012. Further, the accredited photographs produced by the appellant were taken from the Karbala Council website, not that of a newspaper. The letters from the editor and deputy editor of the newspaper were dated October 2013 and February 2014 and issued "upon his demand". Both dates are well before the appellant claimed to have received the threatening letter from the Mahdi Army and I find it highly unlikely the appellant would have had any reason to request such confirmation before his problems began. I further note the style of the dates on the letters, one being in the Arabic way and one in English, which further suggests they are not authentic. Following the guidance in *Tanveer Ahmed*, I do not find that the appellant has established the authenticity of any of the documents.
38. The appellant has produced Facebook conversations with several American troops. I do not accept Ms Christopher's submission that this corroborates his claim that he will be persecuted for supporting the American forces. The conversations show a friendship, nothing more. There is no evidence that the appellant falls within the category of risk of those who actively supported the American forces while they were in Iraq.
39. The appellant's account of moving from the restaurant premises to another part of the city is not credible. He said on the one hand that the family then lived in safety but on the other that his mother was harassed at a market and he was degraded by a teacher in school. The appellant cannot have it both ways. He either moved to another area and was safe or he was not. His evidence that one would always bump into someone one knew in Karbala is completely at odds with the notion that the family moved area for their safety.

40. I did not find the appellant's account of his argument with another journalist to be credible. He changed his evidence under cross-examination from having known the journalist in question for some time to never having met him before the argument. He could not name that journalist's employer. He said it was well known that he supported the Mahdi Army but produced no evidence to support this. In particular, I find it highly unlikely that the journalist in question would know of the appellant's relationship with the American forces if they had never met before. The appellant gave evidence that his photography work was more about cultural matters and he knew little about fundamentalist groups. I find there is no basis for suggesting his relationship with American troops would have been generally known.
 41. The refusal letter made the point that the appellant changed his story in relation to the letter he alleged was delivered to his home. Initially he said it contained more than one photograph and then produced the only photograph he said was in the envelope. He was also inconsistent in saying initially that it was left outside the house and then that it was put through or under the door. But the claim that the photograph was stolen some years previously and then fell into the hands of the journalist with whom he argued stretches the imagination too far, especially since he did not mention this in his asylum interview. He said he told his solicitor about it which I find highly unlikely since it was not mentioned in his statements. This account is not credible.
 42. The appellant said his whole family was threatened by the letter. No evidence of any further targeting of any members of his family was produced apart from a reference to his sister's house being burned down, an event I consider to have been highly unlikely. This further prejudices the appellant's credibility since if his family have experienced no problems since he left, there is no basis for him to fear persecution, either before he left or if he returns. He said his family were not living, only existing but none of them has provided any evidence that this is the case.
 43. I also find that the appellant has exaggerated the threat from the Mahdi Army. As the refusal letter noted, that organisation's threat has significantly reduced since the indefinite ceasefire announced in 2008 and its effectiveness has been greatly reduced following its fragmentation (COI Report 2011).
 44. Having considered all the circumstances in the round, I find it highly likely that the appellant has fabricated all of his evidence with the exception of his friendship with some American troops. It follows that I do not find he has a well-founded fear of persecution if he returns to Iraq and has not established that he satisfies the requirements of the Refugee Convention. His claims under Articles 2 and 3 fall to be dismissed in line with his asylum claim."
6. The judge then found the appellant would not be at risk as a returning failed asylum seeker and found there would be no very significant obstacles to his integration into Iraq and dismissed his appeal in relation to Article 8.
 7. There was an application for permission to appeal out of time. This was considered by First-tier Judge Levin on 16 June 2015. Judge Levin noted that the application was

some three weeks late. He nevertheless extended time but granted leave on one point only which was set out in paragraph 6 of the grounds of appeal. This ground reads as follows:

“The FTJ erred at paragraph 38 when he concluded that the Facebook conversation [sic] is merely friendship. The FTJ failed to take into account the various photographs that the applicant took with various American soldiers at his grandfather’s restaurant. These photographs were placed before the FTJ and had the FTJ considered these along with the Facebook conversation, he could have reached a different conclusion. The applicant states that his family had a good and close relationship with the American soldiers which the locals believe that the applicant’s family supported the Americans thereby putting them at risk [sic].”

8. It was contended in paragraph 7 that the judge’s assessment of the applicant’s family’s relationship with the American soldiers was inadequate and therefore flawed and erroneous.
9. On 31 July 2015 the respondent filed her Rule 24 response, issue was taken with the fact that Judge Levin had granted permission to appeal out of time. In relation to the point on which permission had been granted it was submitted that the judge had clearly recorded the documents before him in paragraph 15 of the determination (which I have set out above) and it was difficult to see how random “undated photographs with no commentary or description” could justify a grant of permission bearing in mind the limited evidential value of the photographs. The grounds were merely opportunistic in nature and no more than mere disagreement with the outcome of the appeal. The judge’s determination had been detailed and had taken all the evidence into account.
10. At the hearing it was confirmed that there had been no attempt to resurrect the rejected grounds and the appeal proceeded on the basis of the point identified by Judge Levin.
11. Mr Balroop submitted that the judge had failed to give the case the required anxious scrutiny. It was submitted that the photographs corroborated the appellant’s account. He submitted that photographs from Facebook were normally dated and timed. They were moreover in possession of the Secretary of State at the time of the decision and were exhibited at G1 in the respondent’s bundle. The reference in paragraph 15 of the determination to a number of undated photographs with no commentary or description was clearly an error. The photographs in the respondent’s bundle were dated. Counsel referred to **Tanveer Ahmed [2002] UKIAT 00439** and submitted that inquiries could have been made about the matter although he acknowledged the point had not been taken in the grounds it was an obvious point.
12. Mr Avery submitted that the grounds were confusing. If the photographs were from Facebook then the judge had clearly taken them into account. There was no need to make specific reference to the photographs in Facebook. There was no evidence he

had not taken the photographs into account. The fact that the appellant had a friendship with US troops had been accepted by the respondent. There was no error in paragraph 37 of the determination that showed the judge had erred in applying the case of Tanveer Ahmed. The judge had given proper consideration to the documentary and oral evidence and reached conclusions that were open to him.

13. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the decision if I find a material error of law. In this case the grounds were limited to paragraph 6 which I have set out above. It was acknowledged by Counsel that the point in relation to Tanveer Ahmed had not featured in the grounds and I see no merit in the argument in any event. The judge properly directed himself on the material before him and there was no misapplication of the guidance.
14. There was no dispute in this case that the appellant and his family had established friendships with some American troops. The judge refers to the bundles lodged at both sides and it is not arguable that he failed to have regard to the contents of the bundles. In paragraph 28 the judge summarises the submissions made by the advocate then representing the appellant which includes the following point:

“... his relationship with American troops was evidenced by his Facebook conversations with some of them. They related to issues which backed up his credibility as did his request to them not to post photographs of his family as he was concerned about their welfare. ...”.
15. It is plain that the judge was dealing with the submissions made by the appellant’s representative about the Facebook conversations and it is quite unarguable that he failed to have regard to the photographs included in the conversations or overlooked any other photographs in the respondent’s bundle or indeed in the appellant’s bundle. It was open to the judge to find that there was no evidence that the appellant fell within the category of risk of those who actively supported the American forces while they were in Iraq.
16. The judge properly considered all the evidence before him, applied the correct burden and standard of proof and it is not demonstrated when the determination is read as a whole that the judge neglected to consider any salient evidence upon which reliance was placed. For the sake of completeness I should mention that no attempt was made to resurrect the original grounds and rightly so. They go no further than expressing disagreement and the point on which permission was granted discloses no material error of law either.
17. For the reasons I have given, this appeal is dismissed.

Decision:

Appeal Dismissed

Anonymity Order

I was not invited to make an anonymity direction. The First-tier Judge made none. I make no anonymity direction in this case.

TO THE RESPONDENT
FEE AWARD

No fee award is payable.

Signed

Date 23 March 2016

G Warr
Judge of the Upper Tribunal