



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

Appeal Number: LP/00031/2021 (V)
[PA/50208/2020]

THE IMMIGRATION ACTS

**Heard at Field House, London via
Microsoft Teams
On Tuesday 16 November 2021**

**Decision & Reasons
Promulgated
On Thursday 02 December
2021**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

S A M

[Anonymity direction made]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs L Brakaj, solicitor, Iris Law Firm (Gateshead)

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim, I consider it is appropriate to continue that order. 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, amongst others, to

both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND DIRECTIONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge O'Hanlon dated 10 February 2021 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 20 March 2020 refusing his protection claim.
2. The Appellant is a national of Iraq. The core of his protection claim is that he is at risk from Hasht Al Shabi (PMF) due to difficulties he encountered with them in his home area because of a business arrangement which he and his brother had with them. He also claimed to be at risk from a high-ranking member of the PUK. The Judge accepted at [39] of the Decision that the Appellant's account of his and his brother's dealings with the PMF was credible. He did not accept the Appellant's claim to be at risk from the PUK individual. The Judge also did not accept the Appellant's account regarding events said to have befallen his parents and other family in Iraq in consequence of the dealings with the PMF. Notwithstanding the finding of risk from the PMF in the Appellant's home area within the Government controlled area of Iraq ("GCI"), the Judge concluded that the Appellant could relocate to the Kurdish region (the KRI). He therefore dismissed the appeal.
3. The Appellant's grounds can be summarised as follows. Based on the finding that the Appellant would be at risk in his home area from PMF, the Judge should have accepted that the Appellant would be at risk throughout Iraq. PMF is said to be an organisation of State agents. Reference is made in that regard to the Home Office's Country Information and Policy Note dated 6 January 2021 ("the CPIN"). The relevant CPIN as published (entitled "Iraq: Actors of Protection") is in fact dated December 2020 but nothing turns on that. The Appellant submits, based on what he claims is said in the CPIN, that the PMF would have "the means and influence to locate the Appellant throughout Iraq" and internal relocation would not therefore be a possibility. It is asserted that the Judge failed to consider this and that is an error of law.
4. Permission to appeal was granted by First-tier Tribunal Judge Adio on 26 February 2021 in the following terms so far as relevant:

"... 4 Having accepted the account that the Applicant was at risk of persecution from the PMF in his home area, and it being well known that the PMF are state agents it is arguable that protection is unlikely to be available to the Applicant in view of the Respondent's own background evidence. It is arguable that the judge failed to consider material background evidence in making the findings of fact in respect of internal relocation. All other grounds are arguable."

5. The appeal comes before me to decide whether there is an error of law in the Decision and if I so conclude to either re-make the decision or remit the appeal to the First-tier Tribunal for it to do so. The hearing before me was conducted via Microsoft Teams. There were no technical issues affecting the hearing.
6. I had before me a core bundle of documents including the Respondent's bundle. I also had the Appellant's skeleton argument before the First-tier Tribunal and the Appellant's bundle before the First-tier Tribunal running to 333 pages. Although the CPIN is not in the bundles and, I add, is not referred to in the Appellant's skeleton argument nor recorded in the Decision as referred to by the Appellant, I permitted Ms Brakaj to develop her arguments in that regard without objection from Mr Tan.

DISCUSSION AND CONCLUSIONS

7. In order to understand the Appellant's challenge to the Decision, it is necessary to say a little bit more about the nature of the protection claim and to set out the detail of the Judge's findings and what is or is not challenged.
8. The Appellant said that he was at risk from two sources. The first was the PMF (which is also known as Hashd al-Sha'bi). The PMF is perhaps more accurately referred to as "a PMF" as it stands for "Popular Mobilisation Forces" which are, as I understand it, disparate militia forces (see 4.2 of the CPIN). I refer to them hereafter however as the PMF. The Appellant says that he was in business with his brother in his home area within Saladin province (which I understand to be within the GCI). They operated an oil and gas business. It is said that they paid what was in effect protection money to the PMF. The Appellant claimed that he suffered detention and torture by the PMF, and his brother was killed by them because they refused to pay an increased amount.
9. The Judge accepted that claim for the reasons given at [39] of the Decision. He accepted that the operation by the PMF of what was "effectively a protection racket" was plausible and that it was also plausible that that the PMF "may have dealt with the Appellant's brother and the Appellant in the manner claimed by the Appellant to ensure compliance with their demands from other parties" (in other words to deter others from refusing to pay money demanded). The Judge therefore accepted to the lower standard "that the Appellant's account of the dealings of his brother and himself with the PMF is credible".
10. The second part of the Appellant's claim is that he is also at risk from a high-ranking individual in the PUK ([M]). It is said that [M] was obtaining oil and gas supplies from the Appellant's and his brother's business. The Appellant says that he gave [M]'s name to the PMF when tortured by them and that he was forced by the PMF to disclose that fact to [M] in a telephone call to him. The Appellant says that [M] would be concerned by this disclosure due to reputational damage. He further claims that his

father went to see [M] because of the Appellant's and his brother's disappearance. It is said that his father was thereafter killed.

11. The Judge did not accept any of this account for reasons given at [40] to [46] of the Decision. He found the Appellant's account to be "both vague and speculative and lacking credibility". There is no challenge to this part of the Decision.
12. The Judge also did not accept that the Appellant's parents were dead (his father being said to have been killed and his mother having died) or that the Appellant had lost contact with his sister and brother-in-law. He gave reasons for that finding at [45] and [47] of the Decision. Again, there is no challenge to that finding. Based on that finding, the Judge found that the Appellant could obtain a CSID via his family contacts ([51] of the Decision). There is no challenge to this finding.
13. As to the core claim, the Judge summarised his findings at [49] of the Decision as follows:

"Having considered the Appellant's account overall, whilst I am satisfied to the requisite standard of proof that the Appellant did have problems with the PMF in Iraq, I am not satisfied to the requisite standard of proof that the Appellant's claimed problems with [M], including the death of both of his parents, is reasonably likely to be true."

14. The Respondent's position was that, if the risk from the PMF were established, the Appellant would not be given sufficient protection in his home area. That is as recorded at [50] of the Decision. However, the Respondent had suggested that the Appellant could go to the KRI. It would be reasonable for him to relocate there as he is an Iraqi national of Kurdish origin. Based on his finding that the Appellant is of Kurdish ethnicity and would be able to obtain a CSID in order to travel to KRI, the Judge found at [52] of the Decision that the Appellant "would be able to make the journey from Baghdad to the KRI without suffering persecution, serious harm or breach of his Article 3 rights". As I will come to, that finding is not challenged.
15. The Judge then went on to consider whether the Appellant would be admitted to KRI. Since this is the crucial foundation for most of Ms Brakaj's submissions, I set out this passage in full:

"53. Paragraph 24 of the headnote of **SMO** suggests that once at the KRI border the Appellant would normally be granted access to the KRI. Subject to security screening and registering his presence with the local mukhtar the Appellant would be permitted to enter and reside in the KRI without further legal impediment. According to Paragraph 25 of the headnote of **SMO**, any risks of ill-treatment of the Appellant during the security screening process are to be assessed on a case-by-case basis. The Appellant does not come from a family with known associations to ISIS and although he is a single male of fighting age, the evidence of his recent arrival from the UK would dispel any suggestion of having arrived directly from ISIS territory."

16. As the Judge then pointed out, there could be no challenge to the Appellant's ability to stay in KRI since his claim to be at risk from the PUK in the form of [M] was disbelieved. Given the findings about his family members, the Appellant could also rely upon support from those family members in the short-term and would be able to find employment given the finding that he would have a CSID and was well-educated with work experience. Again, there is no challenge to those findings.
17. The Judge therefore summarised the basis for dismissing the appeal as follows:

“57. Although I have therefore found that the Appellant would be at risk from the PMF in the event of his return to his home area, I further find for the reasons given that internal relocation for the Appellant to the KRI would be reasonable and that the Appellant would not be at risk of persecution in the KRI as I do not find his claimed problems with [M] to be credible.”
18. I now consider the Appellant's grounds and Ms Brakaj's submissions in the context of those findings.
19. Ms Brakaj began her submissions by suggesting that the first “pinch point” for risk to arise would be in Baghdad on the way to KRI. She suggested at one point that the Appellant would be screened there and that the interest the PMF would have in him would emerge. However, as Mr Tan pointed out, the only finding made by the Judge at [57] is that there would be a risk in the Appellant's home area and not throughout Iraq. Moreover, it was not suggested in the grounds or before the First-tier Tribunal that the risk of interest from the PMF would emerge at this point. As Mr Tan pointed out, the Appellant would, on the Judge's findings, return in possession of a CSID. The security screening would arise only when the KRI authorities were considering whether to admit him.
20. Turning then to that point in time, Ms Brakaj suggested that there would be a risk because the KRI authorities would be interested in someone wanted by the GCI authorities. She said that the Appellant would have to tell the truth if asked why he had left Iraq. I accept that submission. However, the question which then arises is what is the truth? Ms Brakaj suggested that this would involve mentioning the name of [M] and the Appellant's disclosure of his name to the PMF but I (and Judge O'Hanlon) could only proceed based on the truth as found. The truth of the Appellant's claim as determined does not involve any risk from [M] as his account of what happened between them was not believed. The Appellant would be obliged to say only that he had fled from the PMF who had targeted him and his brother for failing to pay protection money.
21. Ms Brakaj went on to suggest that whether that disclosure would give rise to a risk to the Appellant or, perhaps more accurately, a refusal by the KRI authorities to admit him depended on what would be recorded and accepted by the PMF. I had some difficulty following this submission as the Judge found that the PMF had no reach in KRI. It was therefore difficult

to understand, first, what information the authorities in KRI would have and, second, why they would have any concern about the PMF's interest once that was explained by the Appellant.

22. That brings me on to the relevance of the CPIN. Ms Brakaj relied on [2.3.15] of the CPIN which reads as follows:

“While there is a functioning criminal justice system in both Iraq and in the KRI, they are highly politicised and corruption is common. Within Iraq the ability of authorities to provide state protection varies greatly, with several parts of the country not under the effective control of the state. The police are prone to corruption, poorly trained and severely under-resourced and although willing, are generally unable to provide effective protection. The willingness of the authorities to protect may also depend on the profile of the person. Within Iraq, protection for those with a perceived affiliation with Daesh, in particular Sunni Arabs, is unlikely to be available. Where the actor of persecution is a PMF, protection is also unlikely to be available. While there is a functioning tribal justice system in Iraq, it is unclear how much protection it affords to individuals.”

23. Ms Brakaj submitted that this shows that the lack of protection against persecution by the PMF extends across Iraq and includes KRI.

24. Mr Tan pointed out the starting point for that section refers to the lack of protection “within Iraq” as distinct from KRI. To make good that submission, he took me to [2.3.1] of the CPIN which introduced that section as follows:

The Iraqi state security apparatus consists of the Iraqi Security Forces, the National Security Service, the Federal and Local Police, and the Popular Mobilisation Forces (PMFs) (or Popular Mobilisation Units). The Kurdistan Region of Iraq's (KRI) security apparatus consists of the Asayish intelligence agency, the Peshmerga and the municipal police”

[my emphasis]

That section also cross-refers to two separate sections of the CPIN, section 4 dealing with “Iraqi State security apparatus” and section 5 setting out the “Kurdistan Region of Iraq security apparatus”.

25. I have read carefully in particular section 4 dealing with the PMF. I can find no reference to the PMF having any presence or control within KRI (see in particular [4.2.1] to [4.2.4]). There is nothing in section 5 of the CPIN suggesting that the PMF forms any part of the security apparatus of the KRI. As I have already noted, I am also far from clear that the First-tier Tribunal Judge was referred to this CPIN.
26. Mr Tan also referred in his submissions to SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (“SMO”). Although the Tribunal's reconsideration of SMO following remittal from the Court of Appeal remains pending that is only on a narrow issue regarding identity documents not relevant to the challenge to the Decision in this case. There is nothing to suggest that the PMF has influence in KRI. For that

reason, he submitted that the Appellant's only ground of challenge was "without evidential basis".

27. Ms Brakaj's submission founded on [2.3.15] of the CPIN (even if that was before Judge O'Hanlon) does not support the proposition for which it is advanced. The reference is taken out of context. Neither the background evidence nor SMO support a suggestion that the PMF has a presence or control in KRI. Even if the Appellant were to disclose his reasons for leaving Iraq as being to escape the PMF, once he had provided reasons why that was so, the suggestion that the KRI authorities would refuse him admission is speculative.
28. That being the only ground advanced and the only basis of the grant of permission being that the Judge arguably overlooked background evidence (which may not have been before him anyway), I am satisfied that the Appellant has failed to make out his challenge to the Decision.

CONCLUSION

29. For those reasons, I am satisfied that the Decision does not contain any error of law. The Judge was entitled to reach the conclusions he did based on all the evidence including the background evidence. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

DECISION

The Decision of First-tier Tribunal Judge O'Hanlon dated 10 February 2021 does not involve the making of an error on a point of law. I therefore uphold the Decision.

Signed: L K Smith
Upper Tribunal Judge Smith

Dated: 25 November 2021