



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

Appeal Number: UI-2021-001032
(PA/50879/2020); IA/00620/2020

THE IMMIGRATION ACTS

**Heard at : Manchester Civil Justice
Centre
On : 13 September 2022**

**Decision & Reasons Promulgated
On : 16 September 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**KAH
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Dunne of Immigration Advice Service

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

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of Iraq of Kurdish ethnicity from Chwarqurna in Sulaymaniyah Governate, born on 26 December 1994. He arrived in the United Kingdom clandestinely on 27 February 2019 and claimed asylum the same day. His claim was refused on 16 July 2020.

3. The appellant's asylum claim was made on the basis of a fear of persecution from the KDP and the PUK as both parties had accused him of being an informant for the other. The appellant claimed that he became involved with the KDP Asayish as his brother-in-law was the head of the Asayish office in Erbil and he became a member in March 2014. He was initially a Private and later became a Sergeant Assistant and his role involved manning a checkpoint and checking vehicles for drugs and other illegal materials. On 15 October 2018 he was approached by the Chief of the Asayish, Dr Tariq, and was tasked with infiltrating the PUK. He was instructed to obtain information about Kosrat Rasul Ali, the General Secretary of the PUK. His cousin was a bodyguard of Kosrat Rasul Ali and the following day he informed his cousin that he wanted to swap allegiance and become involved with the PUK. On 28 October 2018 he began working as a guard at Kosrat Rasul Ali's house. About a month to a month and a half into his work members of the peshmerga staff became suspicious of him and began asking about his past employment with the KDP and he was ambushed on 23 January 2019 on his way home by unknown individuals whom he believed to be PUK members and who opened fire on him from a moving vehicle. He managed to escape. He received a telephone call from his brother-in-law stating that he (the appellant) had been accused of being an informant for the PUK and passing information about the KDP to them and his brother-in-law was being held and would not be released until he gave himself in. The appellant then fled the country and feared that he would be killed by the PUK and KDP if he returned.

4. The respondent, in her letter refusing the appellant's claim, accepted that he was a low-ranking member of Asayish since he was able to provide a consistent and plausible account of his rank, training and duties, but did not accept his account of being asked to infiltrate the PUK and did not accept his claim to be suspected of being an informant by the PUK and KDP. The respondent did not accept that the appellant was at any risk on return to Iraq and concluded that he had the appropriate documentation to enable him to return there.

5. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Hollings-Tennant on 25 May 2021. The appellant gave oral evidence before the judge, through a court interpreter. The judge set out the appellant's case as above but referred to his additional claim to be at risk of persecution on account of his *sur place* activities in the UK which included attending four demonstrations in London for which he had some photographs and his activities on Facebook which included postings against the Iraqi and Kurdish governments. The appellant had provided some evidence of Facebook posts and his evidence was that he had had an old Facebook account which he could no longer access on his new phone. It was confirmed on behalf of the appellant that he was not seeking to rely on any risk arising through a lack of identity documents nor was he raising family or private life grounds under Article 8.

6. The judge did not find the appellant to be a credible witness and did not accept that he had told the truth about his reasons for leaving Iraq. He did not accept that the appellant had been asked to infiltrate the PUK, that he was

recruited as a bodyguard for Kosrat Ali, that the shooting incident had taken place as claimed or that the PUK had any adverse interest in him. The judge did not find that the appellant was at risk of persecution at the hands of the Kurdish parties for spying on behalf of the KDP. As for the appellant's *sur place* activities, the judge accepted from the photographic evidence that he had attended a demonstration in the UK on 23 October 2020 and also accepted that there were a handful of posts on Facebook, but he did not accept that his attendance, or his Facebook activity, had been motivated by any genuinely held political views and concluded that the evidence had been contrived to support his asylum claim. The judge considered that the appellant could be expected to delete the Facebook posts and considered that there was no reason to conclude that his activities had come to the attention of the Kurdish authorities or would come to their attention or that they would give rise to any risk of him being targeted. He concluded that the appellant could return to his home area and that he was not entitled to asylum, humanitarian protection or to protection under Articles 2 or 3 of the ECHR. He accordingly dismissed the appeal.

7. Permission to appeal the decision to the Upper Tribunal was sought on three grounds. Firstly, that there had been procedural unfairness in the judge impugning the appellant's credibility from a discrepancy arising from the screening interview when the appellant had never been provided with a copy of the interview and had claimed that there had been error made by the interpreter. Secondly, that the judge had made a material misdirection law by assessing the appellant's account on the grounds of plausibility contrary to the principles in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037. Thirdly, that the judge had made a material misdirection law in regard to the appellant's political activity by failing to view the totality of his account in the round instead of compartmentalising it as per Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367 in particular by failing to consider, in the round, the appellant's claim to have been targeted by the KDP and the PUK.

8. Permission to appeal was initially refused in the First-tier Tribunal, but was granted upon a renewed application to the Upper Tribunal, with particular regard to the first ground. The respondent served a rule 24 response opposing the appeal.

Hearing and Submissions

9. The matter then came before me for a hearing. Both parties made submissions.

10. Ms Dunne relied and expanded upon the grounds. With regard to the first ground, she submitted that there had been procedural unfairness in the way that the proceedings operated, to the detriment of the appellant, in regard to supposed inconsistencies between the screening interview and the asylum interview. Two requests had been made to the Home Office for the record of the screening interview but it was not provided. The judge agreed that a copy should have been provided, but was satisfied that there was no issue arising

because the appellant had the benefit of an interpreter, but that did not mean that the interpreter had understood the appellant correctly. Ms Dunne relied upon the case of JA (Afghanistan) v Secretary of State for the Home Department [2014] EWCA Civ 450 in regard to the weight to be given to the appellant's answers at the screening interview and the possibility of errors arising from the interview, particularly when an interpreter was being used. As for the second ground, Ms Dunne submitted that the judge misdirected himself in law when considering at [25] the plausibility of the appellant's lack of training by the KDP before being sent to inform on the PUK, which was contrary to the principles in HK and failed to take account of the findings in AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 as to the importance in Iraq of nepotism and patronage in securing employment. For the third ground, in relation to the judge findings on the appellant's *sur place* activities and his lack of previous interest in political corruption and human rights abuses at [35], Ms Dunne submitted that the judge had compartmentalised parts of the appellant's account instead of looking at the evidence as a whole and considering that his interests may have changed over time. The judge had failed to consider, following the guidance in HJ (Iran) & Anor v Secretary of State for the Home Department [2009] EWCA Civ 172, how the appellant would conduct himself on return to Iraq, in the event that his *sur place* activities were accepted as genuine.

11. Mr Tan submitted that the judge's decision involved a detailed and evenly balanced consideration of the appellant's case, with findings both in favour of and against the Secretary of State. The judge had had regard to the guidance in YL (Rely on SEF) China [2004] UKIAT 00145 in relation to the screening interview and had taken account of the discrepancies in the appellant's evidence in that context. He was entitled to accord the weight that he did to the discrepancy, but in any event there were numerous other reasons given for finding the appellant's claim not credible. As for the second ground, the judge had correctly self-directed himself in relation to the issue of plausibility and credibility, by reference at [20] to KB & AH (credibility-structured approach) Pakistan [2017] UKUT 491. The judge had not rejected the appellant's case on plausibility grounds alone and there was a cumulative set of circumstances which led the judge to conclude that his claim to have been recruited as an informant was all the more unlikely. The judge gave various reasons for concluding that the appellant's account was not credible and no issue was taken in the grounds with his findings at [28] -[32]. As for ground three, the challenge to the judge's findings on the appellant's *sur place* activities was misconceived as they were not founded upon a rejection of the appellant's historical claim but upon various matters assessed holistically and in accordance with the principles subsequently set out XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23.

12. Ms Dunne did not make submissions in response.

Discussion

13. The assertion that there was procedural unfairness arising out of the judge's reliance upon evidence at the screening interview is, in my view,

without any merit. The judge was fully aware of the limitations of the evidence given at a screening interview, having regard to the principles expressed in YL. As Mr Tan properly submitted, the judge adopted a fair and balanced approach and, at [21] and [22], declined to give weight to some inconsistencies which had been relied upon by the Secretary of State in the refusal decision. The grounds take issue with only one particular finding by the judge relating to a discrepancy arising from the screening interview, namely that arising from the appellant's account of whether or not he had disclosed information about the PUK to the KDP, but it is clear that the judge carefully assessed the weight to be given to that issue and had regard to all matters of relevance in deciding to accord the weight that he did to the discrepancy. Ms Dunne's point was that the judge's reliance upon the presence of an interpreter, in giving weight to the discrepancy, was irrelevant if the interpreter had not translated the appellant's evidence properly, but given that there had been no other issues with the interpreter it seems to me that the judge was fully entitled to conclude as he did. As Mr Tan submitted, the judge's limited reliance upon that discrepancy had, in any event, to be considered in the context of the various other adverse findings that had been properly made against the appellant. Accordingly I reject the assertion that there was any procedural unfairness arising from the judge's approach to the evidence in that regard.

14. Likewise I find no merit in the second ground which asserts that the judge, at [25], imposed his own views of what would be required of a person recruited as an informant, contrary to the principles in HK. The judge self-directed himself at [20] on the correct approach to assessing credibility and plainly did not reject the appellant's claim solely on grounds of plausibility. As Mr Tan properly submitted, there was an accumulation of circumstances which made the appellant's account of being recruited as an informant inherently unlikely, as the judge set out at [25] to [27]. In accordance with the principles in HK, the judge considered those aspects of the claim in the round together with various other matters which undermined its overall credibility, which he then set out in the subsequent paragraphs. Those included, at [28] the speculative nature of his claim that the PUK had attempted to shoot him, at [29] and [30] his failure to report to and contact the KDP, at [30] the lack of credibility of his account of the reaction of the KDP to his actions, at [31] the inconsistency in his evidence and lack of credibility of his account of family contact and at [32] the inconsistency between his public social media profile and his fear of reprisals from the KDP and PUK. None of these findings by the judge were challenged by the appellant and the grounds merely pick out an isolated part of his findings without considering it in the context of his overall assessment. I agree with Mr Tan that, when taken as a whole, the judge's rejection of the appellant's account of his recruitment as an informant was one which was fully and cogently reasoned and entirely open to him on the evidence.

15. The final ground challenges the judge's conclusion that the appellant's *sur place* activities were contrived and were not founded upon any genuine belief, asserting that that conclusion was simply predicated upon the rejection of his historical claim rather than a full and proper holistic assessment of his account. However I do not agree. The judge gave various cogent reasons for

making the adverse findings that he did on the appellant's *sur place* activities which were unrelated to his findings on his account of recruitment as an informant. The judge noted, at [35], that such activities only commenced after the appellant's asylum was refused and he made relevant observations about the photographs taken at demonstrations. At [36] to [38] he went on to give further reasons for concluding that the appellant's *sur place* activities were not genuinely motivated, noting the limited number of social media posts and the timeframe of the posts, the lack of evidence and the contradictory account of having posted on an old Facebook account. All of these were perfectly cogent reasons for rejecting the credibility of the appellant's *sur place* activities. Taking all of these matters into account, the judge was perfectly entitled to conclude as he did and there was no error in his approach.

16. In any event, and contrary to the assertion at [14] of the grounds, the judge went on to consider the risks to the appellant on return to Iraq as a result of his *sur place* activities irrespective of his motivation in undertaking those activities, in accordance with the principles in HJ (Iran), and having regard to relevant background country information. He provided detailed reasons, at [40] to [43], for concluding that those activities were not such as to bring the appellant to the adverse attention of the authorities in the IKR and would not put him at any risk on return. The conclusion that he reached was, it seems to me, fully and properly open to him on the evidence before him.

17. Accordingly, none of the grounds of challenge is made out. The appellant had a full and fair hearing before Judge Hollings-Tennant. There was no procedural unfairness in the judge's approach and, on the contrary, the judge's assessment of the evidence was a fair and balanced one, taking account of all relevant matters. Clear and cogent reasons were given by the judge for making the findings that he did and he was perfectly entitled to dismiss the appeal on the basis that he did. His decision contains no errors of law and is accordingly upheld.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 15 September 2022