IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: LP/00186/2021**
[PA/51446/2020]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 February 2022	**On the 30 March 2022**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR MASRWR ABDULRAHMAN MOHAMMED
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Hussein, Legal Representative, Fountain Solicitors
For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Kurdish citizen of Iraq born in March 1994 who has been in the UK since November 2017. He is appealing against a decision of Judge of the First-tier Tribunal Higgins ("the judge") promulgated on 20 May 2021 dismissing his protection and human rights claim.

2. This is the second protection claim by the appellant that has been heard in the First-tier Tribunal. The previous appeal was considered – and dismissed – by Judge of the First-tier Tribunal Bart-Stewart ("the previous

judge"), in a decision promulgated on 24 July 2018 ("the 2018 decision")
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The Appellant's Claim

3. The appellant claims to have been a Peshmerga fighter based in Kirkuk (which is where he was born and grew up). He claims that in 2015 he was shot (in the foot) and spent considerable time in hospital. He claims that, because following the injury he was no longer fit to be a fighter, he was deployed as a bodyguard for an influential brigadier general, Rizgar Amin. He claims that he was falsely accused of stealing weapons from Mr Amin's house and that Mr Amin threatened to kill him if he did not confess. He claims that he complained to superiors but his complaint was not acted on.

Decision of the Previous Judge in 2018

4. The previous judge found that the appellant's account contained numerous inconsistencies. These included:

5. In his screening interview, in response to being asked about his employment in Iraq, the appellant stated that he was unemployed, not that he was a bodyguard in the Peshmerga.

6. His CSID was blank in respect of his occupation.

7. No supporting evidence was submitted to corroborate that he had been a Peshmerga fighter or a bodyguard.

8. No supporting evidence was submitted to corroborate how he injured his foot.

9. The appellant was inconsistent about how long he was in hospital and recovered at home following the claimed injury to his foot.

10. No plausible explanation was given as to why Mr Amin would consider the appellant responsible for the theft of the weapons at his home.

11. His account of returning to work after the accusation against him, and his complaint to superiors, was implausible. At paragraph 52 of the 2018 decision, the previous judge concluded:

> "The appellant said that Rizgar Mohammed Amin had lots of visitors to his house. The appellant may well have been a visitor however I do not accept as credible his claim that even if he was a Peshmerga, he was a bodyguard for Rizgar Mohammed Amin. I do not accept as credible that he was accused of stealing weapons from him and I do not accept as credible the claim that he is of any adverse interest to Rizgar Mohammed Amin."

12. At the time of the 2018 decision it was common ground that the appellant had his CSID.

Decision of the Judge in 2021 (the Challenge Decision)

13. The judge stated, in accordance with *Devaseelan v SSHD* [2002] UKIAT 702, that the 2018 decision was his starting point.

14. Before the judge, the appellant gave an account which was consistent with that which he gave to the previous judge. However, he submitted five items of evidence (hereafter "the new documents") that were not before the previous judge. These were:

15. a medical report by the doctor who treated him in Iraq dated 21 October 2016 stating that he was shot in the left foot;

16. an arrest warrant dated 26 August 2017. The warrant does not set out what crime the appellant was accused of. Next to "type of crime and legal Article" is written "according to Article 156 of Military Justice Law Number 25"; and

17. a letter dated 2 September 2015 from Peshmerga 70th Command listing the appellant as a serviceman;

18. a service summary form dated 31 December 2017 from Peshmerga 70th Command stating that the appellant had served three consecutive years; and

19. two photographs: one purporting to show the appellant with Mr Amin and the other purporting to be a screenshot of Mr Amin's Facebook page.

20. The judge placed little weight on the new documents. He found that because they could have been but were not adduced before the previous judge – and a good reason had not been given to explain the failure to adduce them – he was required, in accordance with *Devaseelan*, to treat them with the "greatest circumspection". In addition, the judge found in paragraph 20:

> "The documents go nowhere near demonstrating that the Tribunal on the last occasion was wrong in the key findings on which it was determined that the appellant had not demonstrated a real risk on return to Iraq".

21. The reason the judge concluded that the medical report, letter dated 2 September 2015 and the service summary dated 31 December 2017 did not advance the appellant's case was that they did no more than confirm that the appellant was in the Peshmerga and that he was wounded. The judge stated that the previous judge's credibility findings did not turn on this.

22. The judge found he could not rely on the arrest warrant for several reasons. These were:

23. The appellant claimed that the reason he did not adduce the arrest warrant in the previous case (in 2018) was that he was unaware of it

because his brother did not inform him about it. The judge found this to not be credible.

24. The appellant's claim that arrest warrants are sent to the home of the person sought was inherently implausible.

25. The letter from the appellant's brother stating that the warrant was obtained from a vice sergeant in the Kirkuk police was inconsistent with the appellant saying in cross-examination that he presumed the arrest warrant was sent to his home as arrest warrants are sent to the home of the person who is sought.

26. The judge placed no weight on the photograph and Facebook screenshot on the basis that he could not say with any confidence that the person in the photograph said to be Mr Amin matched the picture in the Facebook page screenshot. The judge also found that the pictures did not corroborate several points rejected by the previous judge, in particular that the appellant was a bodyguard and was falsely accused of stealing weapons.

27. The appellant claimed, before the judge, that he had lost his CSID. The judge rejected this, stating in paragraph 21 that: "He produced no evidence of his having reported the loss of this, or any of his other belongings, to the police and I did not find it demonstrated to the required standard." The judge proceeded to find, in the alternative, that the appellant could, with assistance from family, obtain a replacement CSID.

Grounds of Appeal and Submissions

28. The appellant advances two grounds of appeal.

29. Ground 1 submits that the judge erred by failing to take into account objective evidence about the difficulties involved in obtaining a replacement CSID.

30. Ground 2 argues that the judge failed to adequately explain why he attached very little weight to the new documents.

31. The focus of Mr Hussein's submissions before me was on the second ground of appeal.

32. He argued that the medical report, in particular, was highly significant because it corroborated the appellant's claim to have been a Peshmerga who suffered an injury that prevented him continuing as a fighter.

33. Mr Hussein submitted that there was a good reason the appellant did not have this, or the other documents, prior to the 2018 hearing, which was that the appellant relied on a friend to collect them in person and therefore it was not possible to obtain them at an earlier stage.

34. He argued that the reasons given by the judge for rejecting the arrest warrant did not withstand scrutiny. He submitted that the appellant had adequately explained how this document had been obtained. He also argued that the judge fell into error by finding it inherently implausible that the arrest warrant would be sent to the appellant. He relied on *HK v SSHD* [2006] EWCA Civ 1037 where the danger of relying on "inherent probability" in protection cases concerning different societies was highlighted.

35. With respect to the first ground of appeal, Mr Hussein stated that the judge had speculated about the loss of the appellant's CSID; and, in any event, had failed to address the difficulties and issues that arise when a replacement is sought by proxy.

36. Ms Aboni's response was that, in respect of the second ground of appeal, the judge had properly applied the principles in *Devaseelan*. The new documents could have been, but were not, put before the judge in 2018; and a good explanation for the failure to do so had not been provided. She argued that the judge was correct to find that the documents (apart from the purported arrest warrant) did not address the key element of the appellant's case, which is his claim to have been a bodyguard who was falsely accused of stealing weapons. The previous judge had found the appellant incredible in this aspect of his claim, and the new documents did nothing to dispel this. She submitted that it was unfortunate that the judge stated in paragraph 20 that the new documents did not demonstrate that the previous judge was "wrong", as this was not the issue for the judge to decide, but this was immaterial because it is clear from the decision that the overall approach of the judge was consistent with *Devaseelan*.

37. With respect to the first ground of appeal, Ms Aboni submitted that the judge adequately explained why he rejected the appellant's claim to have lost his CSID.

Analysis

Ground 1: lack of CSID

38. The judge did not accept that the appellant had lost his CSID. This was the judge's primary finding.

39. The judge also made a finding, in the alternative, which was that if the appellant had lost his CSID he would be able to obtain a replacement.

40. The first ground of appeal challenges only the alternative finding about obtaining a replacement CSID. The appellant cannot succeed on this ground because even if he is correct that the judge erred on the issue of obtaining a replacement CSID, this is immaterial if the appellant has his CSID; and there is no challenge in the grounds to the judge's primary finding that the appellant does in fact have his CSID.

41. At the hearing, Mr Hussein submitted that the judge speculated about the loss of the appellant's CSID. This argument is not in the grounds of appeal and no application to amend the grounds has been made. I reject the argument for this reason alone. However, I would, in any event, not have accepted the argument. Having found the appellant to not be a credible witness – and in the absence of evidence to corroborate the loss of the CSID (such as a police report) – it was plainly open to the judge to not believe the appellant when he asserted that he had lost his CSID.

Ground 2**: **attaching little weight to the new documents

42. The judge found in paragraph 13 of the decision that, because the new evidence was available to the appellant at the time of the 2018 decision, it was appropriate to treat it with "the greatest circumspection" unless there was a "very good reason" why the failure to adduce it should not be held against him. This self-direction is entirely consistent with the binding authority of *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* * [2002] UKIAT 00702 (see, in particular, paragraphs 40 – 42 of *Devaseelan*).

43. The appellant's explanation for not producing the new evidence for the hearing in 2018 was that he did not obtain the documents until his friend visited Iraq in the summer of 2018 and brought them back for him. In his further submissions to the respondent enclosing the new documents, the appellant stated in response to the question "explain why you did not give us this evidence earlier" that he "was not able to obtain evidence as there was little contact with family and [I] was only able to receive it recently as [my friend] obtain it when he went to Iraq".

44. The judge did not accept that this was a good reason for not adducing the new documents in 2018 because the appellant's evidence was that prior to the 2018 hearing he had in fact been in contact with his brother. The judge found that the appellant's brother could have provided him with the new documents. This conclusion was, in my view, plainly open to the judge given that (a) the previous judge found that the appellant's brother had sent him his ID documents prior to the 2018 decision (paragraph 22 of the 2018 decision); the previous judge found that the appellant confirmed being in contact with family in Iraq after receiving the respondent's refusal letter (paragraph 35 of the 2018 decision); the judge found that the appellant had been in contact with his brother in the month before the 2018 hearing (paragraph 15 of the decision); and the appellant's evidence (corroborated by a letter from his brother) was that his brother obtained the new documents for him. In circumstances where the appellant had been in contact with his brother and his brother had sent him his ID prior to the 2018 decision it was plainly open to the judge to find that the appellant's explanation for not obtaining and adducing the new documents prior to the 2018 hearing fell significantly short of being a "very good reason".

45. The judge was also entitled to take into account, when considering the weight to attach to the new documents, that (apart from the arrest warrant) they did not corroborate the appellant's account of being deployed as a bodyguard and falsely accused of stealing weapons. In the context of the appellant not being believed by the previous judge in respect of this (or any) aspect of his claim, this was a relevant consideration when considering the weight to give to the new documents.

46. One of the reasons given by the judge for not attaching weight to the arrest warrant was that it was "inherently implausible" that such a document would be sent to the appellant's home address. There was no expert or objective evidence before the judge about who arrest warrants are normally sent to in Iraq and the judge has not explained why he found it to be inherently implausible that an arrest warrant would be sent to a person's house. Given the absence of any such explanation, I agree with Mr Hussein that the judge's "inherent implausibility" finding in respect of the arrest warrant is unsustainable. However, inherent implausibility was not the only reason given by the judge for not attaching weight to the arrest warrant; and the other reasons have not been challenged. In particular, I am satisfied that the judge was entitled to treat the arrest warrant with the greatest circumspection because the reason given by the appellant for not adducing it in the 2018 hearing was not a good (or even plausible) one. I have no hesitation, given this sustainable finding, that the "inherent implausibility" error was immaterial.

47. I note that in the grant of permission it was stated that the judge arguably erred by asking himself, in paragraph 20, whether the previous judge's findings were "wrong". This point, which is not in the grounds, was not pursued by Mr Hussein in his submissions at the hearing. However, for completeness I will address it. The task of the judge was not to determine whether the previous judge was wrong and it would have been erroneous for the judge to have approached the previous decision in this way. However, it is plain, from reading the decision as a whole, that the judge did not see his role as assessing whether or not the previous judge erred and that, consistently with *Devaseelan*, he accepted the 2018 decision without qualification and recognised that it was to be built upon, having regard to the new evidence. The point being made in paragraph 20 was simply that the new evidence did not undermine the key findings of the previous judge. This finding was plainly open to the judge and is entirely consistent with *Devaseelan*, where at paragraph 37 it is stated:

> The first Adjudicator's determination stands (unchallenged, or not successfully challenged) as an assessment of the claim the Appellant was then making, at the time of that determination. It is not binding on the second Adjudicator; but, on the other hand, the second Adjudicator is not hearing an appeal against it. As an assessment of the matters that were before the first Adjudicator it should simply be regarded as unquestioned. It may be built upon, and, as a result, the outcome of the hearing before the second Adjudicator may be quite different from what might have been expected from a reading of the first determination only. But it is not the

second Adjudicator's role to consider arguments intended to undermine the first Adjudicator's determination.

Notice of Decision

The appeal is dismissed. The decision of the First-tier Tribunal stands.

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

D. Sheridan
Upper Tribunal Judge Sheridan Dated: 14 March 2022