



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001980

First-tier Tribunal Nos:
PA/51756/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of December 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

AR
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Forrest, instructed by Rea Law

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

Heard at Edinburgh on 8 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Komorowski promulgated on 10 August 2021 dismissing his appeal against a decision of the Secretary of State made on 29 September 2020 to refuse to revoke a deportation order against him and to refuse his asylum and human rights claims.
2. The appellant is a Kurdish Iraqi. Prior to the decision made on 29 September 2020, the appellant had made two prior claims for asylum, both of which had been rejected and both of which had been rejected on appeals dismissed by the Tribunal on 31 August 2010 and 7 June 2017.
3. The appellant's case is that he is at risk on return to Iraq on two grounds:-
 - (i) a tattoo on his left arm which, it is said, states in Kurdish "Saddam Hussein was much better than the current militia"; and
 - (ii) on account of his conversion to Christianity.
4. The Secretary of State did not accept that his conversion was genuine, nor did she accept that he would be at risk from what was written in the tattoo. The judge concluded [15] that the appellant has been dishonest in the course of his previous asylum appeals in respect of his age or date of birth, whether he was in a relationship, the circumstances in which he was not represented at his earlier appeal, and whether he has worked whilst in the United Kingdom. He concluded that the appellant had lied during the course of his original asylum claim and in his second appeal hearing on a varied range of matters.
5. With regard to the appellant's conversion to Christianity, the judge accepted that the appellant had attended church before his imprisonment and had participated in acts of Christian worship both before, during and after his imprisonment. Having heard evidence from Mr Ritchie, a senior pastor at the Assemblies of God Church Central in Fraserburgh and having directed himself in line with TF v SSHD [2018] CSIH 58 and MH (review; slip rule; church witnesses) Iran [2020] UKUT 125 found that Mr Ritchie's evidence lacked foundation [50] given his lack of sufficient knowledge of the appellant and of his British main church activities.
6. With respect to the tattoo, the judge concluded [58] that it was very likely that the appellant had had the tattoo as an insincere device engaged for the sole or main purpose of obtaining asylum. He assessed his overall credibility to be very poor [59], he observed that there was no evidence particular to Iraq as to how tattoos are viewed there [64] but was not satisfied that the appellant would be at real risk of serious harm on account of his tattoo given the lack of evidence as to the extent to which militias would be conversant with Kurdish or would otherwise be able to understand the tattoo, nor as to whether his forearm would be expected to be exposed or the extent to which he could keep his arms covered without enticing curiosity or suspicion, nor would it engage HJ (Iran) on the basis

that going about with bare arms was not some fundamental aspect of one's identity or personality [65(iii)].

7. The appellant sought permission to appeal on the grounds that the judge had erred:-
 - (i) in compartmentalising the claim and in particular failing to assess the Article 15(c) risk as possibly being enhanced owing to the tattoo;
 - (ii) in concluding that there was no risk of the militias being able to read the tattoo even though it was in Sorani;
 - (iii) in concluding that there was no evidence as to typical garb for men in Iraq, background reports showing a mixture of long and short sleeve shirts being worn and the judge had erred in expecting the appellant not to conceal a political tattoo as he was being denied freedom of expression;
 - (iv) in failing to apply the proper standard of proof in assessing the evidence of Pastor Ritchie.
8. On 21 October 2021 First-tier Tribunal Judge D Brannan granted permission on all grounds stating:-
 - “3. Ground c is an arguable error of law. The appellant is Kurdish and so his return to Iraq would be expected to be his home region. The grounds of appeal mention Kirkuk. It is not clear why the Judge rejected the ability of militias in that area being able to read Kurdish. It is not clear whether the appellant would be at risk from Kurdish militias/authorities due to his tattoo. Furthermore, the question, which is arguably not addressed, is whether the appellant could relocate to an area where his tattoo would not be understood. This is clearly a factor that the Judge sees as going to the level of risk and is therefore an arguable error of law”.
9. For reasons which are unclear, this matter was not listed for hearing until 2024.

The Hearing

10. I heard submissions from both representatives. In addition, I had before me a skeleton argument produced by Mr Forrest and a paginated bundle of 668 pages and in addition, copies of the decisions in TF and MA.
11. Mr Forrest submitted that it was not open to the judge to conclude that the tattoo would not place the appellant at risk on return and that the judge had misapplied the burden of proof. He submitted it could not be safely said that it would not be read or understood simply because it is expressed in Kurdish. He further submitted that there was no proper consideration of the practicalities of covering up one's arm in Iraq, nor was there a proper consideration of Article 15(c) although Mr Forrest accepted

that it was difficult to see how this risk could arise separately if it flowed from the tattoo.

12. He submitted that the judge had erred in the rejection of Pastor Ritchie's evidence and in doing so had not properly applied TF and MA. He submitted that in the circumstances where it had been accepted that Mr Ritchie was the senior pastor and leader at a large church that had in place a system for mentoring new converts, it was irrational to insist that he had a degree of intimate knowledge of each convert or person interested in conversion. It was submitted further that the judge erred in not according sufficient weight to Pastor Ritchie as an experienced Christian leader.
13. Mr Mullen submitted that the findings with respect to the tattoo were open to the judge and no error of law was disclosed. It was for the appellant to prove his case and in light of the previous dishonesty the judge was entitled to include that his evidence needed to be treated with a significant degree of circumspection. Evidence had been required as to what the consequences were of this tattoo being seen and whether it would be discovered or whether it was understood.
14. Mr Mullen submitted that the challenge to the assessment of the pastor's evidence was simply an attack on the weight attached. The judge had given proper deference in respect to the evidence of the pastor and it was open to him to note that the pastor's acquaintance with the appellant himself was limited. This was not a failure to give value but simply an assessment that the weight to be attached was less.
15. I reserved my decision.
16. It is relevant to bear in mind that the appellant had been found to be lacking in credibility by two previous judges and he was also found to be significantly lacking in credibility by Judge Komorowski, findings which are not challenged in the grounds of appeal. It is also to be noted that the judge had the benefit of hearing and seeing the appellant give evidence and also heard the evidence of Pastor Ritchie.
17. I turn first to the issue of the tattoo. There does not appear to be any dispute that the appellant has a tattoo or that it says what is set out above. There is no effective challenge in the grounds to the judge's assessment that the appellant had got the tattoo as a device to obtain asylum, a finding manifestly open to him on the other findings of fact, his assessment of credibility and the appellant's overall behaviour as noted by previous judges. It was open to the judge to note that there was no evidence in the account as to the extent to which a militia would be conversant with written Kurdish or the extent to which they would be able to understand the tattoo using their knowledge of Arabic. As Mr Mullen submitted, it was for the appellant to prove his case. The only evidence as to how it would be comprehensible was from the appellant himself, the judge having properly found him not to be credible. Even assuming that an Iraqi based militia would be able to speak Sorani it does not mean that

they would be able to read it even were it written in an alphabet similar to that used in Arabic. Again, it was open to the judge to note that there was simply insufficient evidence on that point and his finding on this issue is thus sustainable.

18. It is not for the judge to speculate as to whether men would wear short sleeves or not in Iraq or as to whether wearing a long sleeve would be likely to attract adverse attention, curiosity. As the judge himself noted going about with bare arms is not a fundamental aspect of one's identity, nor could it be said this was an infringement on freedom of expression of a freely held belief. That is in the context of the judge having disbelieved the appellant's account and finding that getting a tattoo was, in effect, a cynical act.
19. Whilst the judge accepts [66] that an assessment of Article 15(c) requires a sliding assessment which is a matter of law, the grounds do not provide any basis for departing from the judge's observation that it had not been argued that his ethnicity or any other features would place him differentially at risk which was the judge's conclusion. As Mr Forrest accepted during submissions, it would be difficult to conceive of the risk to the appellant from his tattoo attracting adverse attention that would not also result in persecution for a Convention reason, that is perceived political opinion.
20. Accordingly, it is not arguable that the judge's approach to the tattoo involved the making of an error of law.

Christian Conversion

21. This is a case in which there were already significant doubts as to the appellant's credibility. The judge had the benefit of hearing Mr Ritchie give evidence on which he was cross-examined. In addressing this issue, I note what was said by the Court of Session in TF at paragraphs 59ff.
22. In reality what is submitted here is not an incorrect application of the standard of proof but rather an assessment of the weight to be attached to evidence which is primarily a matter for the judge. Contrary to what is submitted the judge directed himself properly as to the law and followed it. But the reason that the judge attached less weight to Pastor Ritchie's evidence was, having set out the factors which are relevant at [44] he set out the basis on which he had reached his analysis which mirrors the approach taken in TF v SSHD. This assessment of the evidence needs to be seen as a whole and it is sufficiently clear that the issue was not whether the pastor was entitled to give opinion in evidence or whether it was to be respected but it was the lack of familiarity and lack of direct interaction and indeed lack of knowledge as to whether the appellant had been baptised or not which was the basis on which the judge attached less weight to his evidence. In doing so he gave adequate and sustainable reasons for not attaching weight to that evidence.
23. Accordingly, I am not satisfied that the judge's assessment of Pastor Ritchie's evidence was flawed nor, for the reasons set out otherwise, do I

conclude that the decision of the First-tier Tribunal involved the making of an error of law and I uphold it.

Notice of Decision

- (1) The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 6 December 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal