



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004729

First-tier Tribunal No: PA/00899/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14th March 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

OM
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Coyte, counsel instructed by

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 7 March 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

Introduction

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Suffield-Thompson promulgated on 27 July 2022.
2. However, for ease of reference hereafter the parties will be referred to as they were before the First-tier Tribunal.

3. Permission to appeal was granted by First-tier Tribunal Judge Karbani.

Anonymity

4. An anonymity direction was made by the First-tier Tribunal and is maintained because this is a protection appeal.

Factual Background

5. The appellant is a national of Iraq now aged twenty-two. He arrived in the United Kingdom during December 2019 and immediately applied for asylum. The appellant's protection claim was based on his Kurdish ethnicity, his father's high-ranking membership of the PUK and his fear of his father owing to the allegation made by the appellant to his maternal uncle that his father was having an affair and had killed his mother.
6. That claim was refused by way of a decision letter dated 13 April 2021. In brief, it was not accepted that the appellant's stated fear was for a reason covered by the Refugee Convention. Furthermore, it was not accepted that the appellant was in fear of his father owing to inconsistencies in his claim.

The decision of the First-tier Tribunal

7. The First-tier Tribunal accepted the credibility of the appellant's pre-flight claim, found that the Convention reason was imputed political opinion and that he would be at further risk in Iraq owing to his sur place political activities which include Facebook posts. The Tribunal also accepted that the appellant did not have the requisite documentation to be safely returned to Iraq.

The grounds of appeal

8. There are three grounds of appeal. Firstly, it is argued that the judge erred in relying on a Country Guidance case relating to Iran and the findings reached were therefore unsafe. Secondly, the judge erred in finding that a blood feud could involve the same family, inadequate reasons were given for accepting the appellant's evidence as to his father's role in the PUK and the background information showing that the PUK had no influence in Tuz Khurmatu had not been addressed. Lastly, the Tribunal was criticised for allowing the appeal owing to the appellant's lack of documents for travel within Iraq.
9. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

The grounds aver that the Judge materially erred on a number of grounds, including by reference to BA (demonstrators - risk on return) Iran CG [2011] UKUT 36 (IAC).

The grounds disclose a material arguable error of law on the basis that the Judge in determining the appellant's risk on return as a result of his sur place activities, has considered country guidance applicable to Iran, whilst the appellant is from Iraq.

10. A Rule 24 response was filed dated 27 October 2022. In it, the appeal was opposed, with the following comments being made. In relation to the first ground, it was argued that the judge had referred to BA in relation to the general guidance as to assessing sur place activities. As for ground two, it was accepted that the judge mis-typed the paragraph number of the relevant section of the

CPIN relating to blood feuds, it was submitted that the judge gave adequate reasons for accepting the appellant's evidence regarding his father's role in the PUK and that the judge had addressed the position of PUK in Tuz Khurmatu. There was said to be no material error in relation to the third ground as the judge had allowed the appellant's claim under the Refugee Convention rather than based on his inability to obtain documentation.

The error of law hearing

11. When this matter came before me, Mr Lawson stated that he had informed Mr Coyte that the Secretary of State was willing to grant the appellant a period of Discretionary Leave to Remain in the United Kingdom because it was accepted that he did not have access to his documentation. Mr Lawson contended that as the appellant had no family in Iraq it would not be disadvantageous if he received DLR rather than Refugee Status. Mr Coyte confirmed that he had discussed this matter with the appellant who still wished to pursue his appeal. Thereafter I heard minimal submissions from both representatives. At the end of the hearing, I informed the parties that the decision of the First-tier Tribunal contained no error of law and was upheld.

Decision on error of law

12. In the light of the guidance given by the Court of Appeal at paragraph [77] of *KM* [2021] EWCA Civ 693, I recognise that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal judge for arriving at their decision and that it should not be assumed too readily that the judge misdirected themselves.
13. The first ground is the high point of the Secretary of State's case in that [48] of the decision contains a reference to *BA*, in which the full citation is not given (there being no mention of Iran) and the paragraph could be read as indicating that the judge thought this case concerned Iraq rather than Iran. I accept that the judge did not say that *BA* concerned Iraq, what the judge said was that all the evidence and case law indicated that the appellant could be identified on return to Iraq. The guidance set out in headnote 4 of *BA* could apply to any case where an appellant is relying on sur place activities, not only involving nationals of Iran. Indeed, it was when the judge was considering sur place activities that the reference was made to *BA*. I am not satisfied that the judge made any error here or that if they did that it was material.
14. Mr Lawson had nothing to add to what was said in the grounds in relation to grounds two and three. Regarding the second ground, while the judge made a typographical error when referring to an extract from CPIN, this made no material difference to the outcome of the appeal given that the CPIN does show that a blood feud can arise out of intra-family disputes.
15. As for ground three, which relates to documentation, given Mr Lawson's statement at the start of the proceedings, it is hard to see how the judge could have erred in relation to this issue. What this ground overlooks is that, in any event, the judge allowed the appeal on a basis other than documentation.
16. The decision of the First-tier Tribunal contains no errors of law and is upheld.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal is upheld.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 March 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email