IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002751

First-tier Tribunal No:
PA/51452/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of December 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

AMN
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Jebb instructed by JMS Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer (04/09/24)
Ms S Arif, Senior Home Office Presenting Officer (20/11/24)

Heard at Royal Courts of Justice (Belfast)
on 4 September 2024 and on 20 November 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 Secretary of State appealed with permission against the decision of First-tier Tribunal Judge Rea, promulgated on 7 May 2023, allowing AMN's appeal against a decision of the Secretary of State made on 4 April 2022 to refuse his asylum claim. I refer to AMN as the appellant as he was before the First-tier Tribunal for convenience. His wife and child were included in that claim.

2. The basis of the appellant's claim is that if returned to Iraq he will be killed by terrorist groups because of his work as an Asayish for the Patriotic Union of Kurdistan and the US Army. He also fears that he is at risk of arrest from the Iraqi government.

3. The Secretary of State did not accept the appellant's account and in particular did not accept that he had worked as a Asayish prior to leaving Iraq, did not accept that he was threatened prior to leaving Iraq, did not accept that he had attracted the adverse attention from the Iraqi government prior to leaving Iraq. The reasons for this are set out in the refusal letter at paragraphs 37 to 57 of the refusal letter.

4. The judge heard evidence from AMN. He also had before him an extensive bundle of material provided by both parties. The judge concluded:-

   (i) AMN had provided a plausible explanation consistent with the background information of how he would have been involved with intelligence gathering despite lack of educational achievement;

   (ii) AMN had provided a plausible explanation as to why he could not give the location of the training academy;

   (iii) AMN had given a plausible explanation about the aims of the Ba'ath Party;

   (iv) there was a discrepancy in the dates given by AMN for the chronology of the car bomb and when he was approached by three men seeking the location of their leader; that the explanation was not entirely satisfactory for the different dates given in the interview process;

   (v) the photographs of AMN provided some support of his claim to have worked undercover and with the US Forces;

   (vi) AMN's account is generally credible and that he has given a truthful account;

(vii) There was no longer an active threat against the appellant and thus his appeal fell to be dismissed on Refugee Convention and asylum grounds;

(viii) in light of SMO and KSP (civil status documentation, Article 15(c)) (CG) Iraq ("SMO (2)") [2022] UKUT 110 that AMN was in the category of those who would face a heightened risk of indiscriminate violence on account of their past association with Western security forces;

(ix) although AMN has the necessary documentation to permit him to return, relocation would not be a safe option for him and his family, nor would adequate state protection be available, AMN facing a heightened risk of serious harm in the event if he returns to Iraq; and, thus AMN is entitled to humanitarian protection.

5. The Secretary of State sought permission to appeal on the grounds that the judge had erred in

(i) misapplying SMO (2) and that internal relocation was an option for him;

(ii) in failing to resolve a conflict of interest in the evidence, that is different dates for major incidents in the core of his claim.

6. On 19 July 2023 First-tier Tribunal Judge Barker granted permission observing that the judge had arguably failed to provide any or adequate reasons for his finding that the account was credible and had failed to provide adequate reasons for the finding that the appellant was at risk of indiscriminate violence and that he had failed to carry out the careful assessment required of the situation, nor had he dealt with the issue of internal relocation.

The Hearing on 4 September 2024

7. Ms Rushforth relied on the grounds of appeal submitting that the reasons were so short that, despite even given the decision in Azizi (succinct credibility findings, lies) [2024] UKUT 65, the reasoning was inadequate. She submitted further that the judge had failed to carry out a proper sliding scale analysis as required by SMO(2) in respect of those who had an association with Western security forces; and, had failed to provide any reasons for concluding that there was no sufficiency of protection for AMN or that he could relocate.

8. Mr Jebb submitted in respect of sufficiency of protection and relocation that this had not been raised in the refusal letter and indeed the issue had in effect been conceded subsequent to exchange of the appellant's skeleton argument and the counter schedule provided by the Secretary of State. He submitted that the reasoning was adequate and there had been a proper assessment in accordance with the sliding scale.

The Law

9. In assessing the grounds of appeal, I bear in mind that Ullah v SSHD [2024] EWCA Civ 201 at [26]:

> 26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:
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> (i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];
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> (ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 at paragraph [45];
>
> (iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19 at paragraph [25];
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> (iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095 at paragraph [27];
>
> (v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at paragraph [34];
>
> (vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 at paragraph [107].

10. I also bear in mind what was said in Volpi v Volpi [2022] EWCA Civ 464 at [2]. I bear in mind also what was held in HA (Iraq) [2022] UKSC 22 at [72], and that the decision must be read sensibly and holistically. Justice requires that the reasons enable it to be apparent to the parties why one has won and the other has lost: English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409 at [16]. When reading the decision, I am entitled to assume that the reader is familiar with the issues involved and arguments advanced. Reasons for judgment will always be

capable of having been better expressed and an appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.

11. The issue of sufficiency of protection and internal relocation had in effect not been raised in the refusal letter nor in response to the Appellant's Skeleton Argument. As Mr Jebb submitted, it was pointed out that these issues were not raised and these were not raised in any counter schedule. Further, there is no indication that this issue was put to the judge or that he was requested to make any findings on the issues. Accordingly, in that context it cannot be argued that the judge failed in these circumstances to provide adequate reasoning on this issue.

12. This was undoubtedly a short decision. But the core of the Secretary of State's case is with respect to inconsistencies of the date of a core issue. That said, the judge clearly heard evidence from AMN, had all the material before him and reached a conclusion that the account was generally credible. That is not a perverse decision and importantly in the context of the finding that there was no longer an extant threat to AMN, it is difficult to see how it is material given that the judge had explained adequately why he accepted AMN's account of what he had done, that is that he was a member of the Asayish and had conducted undercover activities. There is no direct challenge in the grounds to those findings.

13. Turning next to the application of SMO (2), it is sensible to set out here paragraphs 1 to 2 of the headnote:

> 1. *There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*
> 2. *The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*

14. I accept that this is a case where AMN was from a formerly contested area, Kirkuk, and that at paragraph 3 of SMO (2), the guidance given is whether the return of an individual to such an area would be contrary to Article 15(c) required a fact-sensitive sliding scale assessment. The headnote then goes on at [5] to set out relevant personal characteristics. That includes those associated with Western organisations or security forces.

15. In reality, there is no assessment of that in this case. There is no mention of Kirkuk and nothing specific to AMN's situation is set out or is there any

proper reasoning why he in particular would be at risk. I consider that the judge's decision on this issue is flawed as it is insufficiently reasoned. Accordingly, for these reasons I have set aside the decision, it involved the making of an error of law and it is set aside.

16. Having reached these conclusions, I considered that there is was no merit in remitting the appeal to the First-tier Tribunal as all that is required in remaking the decision is an assessment of the risks to AMN on return to his particular area in light of the findings which are set out above and which are preserved. I therefore gave directions to that effect, and the appeal was listed for remaking on 20 November 2024.

Re-making the Appeal

17. I heard submissions from both representatives. The appellant was not called to give further evidence. In addition to the material which had been before the First-tier Tribunal, the respondent served a copy of the Country Policy and Information Note Iraq: Security situation, version 1.0 of November 2022.

18. Mr Jebb submitted that the issue was a narrow one: whether, in the light of SMO (2), the appellant was at risk of indiscriminate violence. He submitted, relying on paragraphs 3 to 5 of the headnote, that on conducting a fact-sensitive assessment of that issue, that there was a potential risk where ISIL/Daesh has a presence which made an increased risk for those in the appellant's position who had previously worked for the security forces. He submitted that as the appellant had worked for the US, national and local governments and on the basis of the material set out in the CPIN that ISIL has an active presence in Kirkuk and thus the appellant would be at enhanced risk thus is entitled to a grant of humanitarian protection.

19. Ms Arif accepted that additional evidence had been provided and although not conceding the case had little to say given that the reference to the difficulties that might be faced in paragraph 80 of the refusal letter relied on the previous version of **SMO**, that being from 2019.

20. I reserved my decision.

21. In an asylum or a humanitarian protection case it is for an appellant to demonstrate albeit to the lower standard, that he is at risk of serious harm on return to his country of origin. In this case, as is accepted by both parties, the issue was a narrow one: whether, applying SMO (2) at headnote at paragraphs 3 to 5 the appellant is at risk in his home area, that is Kirkuk, because of his previous activities on behalf of the government and US Forces and in an area where ISIL is still active. In assessing the position I note that the most recent information before me indicates [2.4.5] that there continue to be regular security incidents across Iraq carried out by a wide range of actors including Daesh.

22. Paragraphs 5.1.1 and 5.1.2 of the CPIN Report provide detail of Daesh's activities and the extent to which it is still active. That is the most up to date information before me. I take it fully into account in reaching my decision, but there is no need to set it out in full here.

23. In addition, as can be seen from the table at 7.2.5 that there is a relatively high number of security events in Kirkuk and 338 fatalities. It appears also from section 7 that Daesh continued to carry out attacks in Kirkuk amongst other areas and that the Iraqi security forces continue counterterrorism operations in response. At paragraph 7.1.4 the report provides further details as to the incidents. Again, there is no need to set it out in full.

24. Ms Arif made in her submissions that I should not attach weight to this material and I am satisfied in all the circumstances that it is right to do so. I am satisfied from this material and the other material before me that Daesh continues to be active in Kirkuk.

25. I then consider the application of paragraphs 3 to 5 of the headnote in SMO (2):

> *3. The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*
>
> *4. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.*
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> *5. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:*
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> > *(i) Opposition to or criticism of the GOI, the KRG or local security actors;*
> >
> > *(ii) Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;*
> >
> > *(iii) LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;*

(iv) Humanitarian or medical staff and those associated with Western organisations or security forces;

(v) Women and children without genuine family support; and

(vi) Individuals with disabilities.

26. There does not appear to be a perceived association with ISIL in this case but I find that the appellant does fall within 5(iv) of the headnote and thus a proper detailed analysis of the risk to him must be carried out.

27. having done so, and bearing in mind the preserved findings, I am satisfied, on the basis of the findings of fact made and preserved that the appellant has worked with US Forces, national and local government and was also opposed to Daesh. In light of the material provided in the CPIN and the other material I am satisfied that this puts him at greater risk given his previous association and I apply the sliding scale analysis required by Article 15(c).

28. Given the particular factual situation of the appellant, and his multiple associations with different security forces, I am satisfied that he is at sufficiently greater risk such that Article 15(c) given the number of factors including he has worked for several different organisations plus the connections such as to put him in a category different from the generality of others.

29. On the particular facts of this case, I consider that returning him to Kirkuk would be contrary to Article 15(c) and accordingly, in the light of the parameters of the remaking, the appeal falls to be allowed on humanitarian protection grounds. It also follows that his appeal falls to be allowed on human rights grounds as returning him to Iraq would be a breach of his rights pursuant to article 3 of the Human Rights Convention.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I remake the decision by allowing the appeal on Humanitarian Protection Grounds and on Human Rights Grounds

Signed Date: 6 December 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal