



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04785/2017

THE IMMIGRATION ACTS

Heard at Field House
On 14 May 2018

Decision & Reasons Promulgated
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

KHALID MOHAMMED HASSAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Fisher, Counsel instructed by Barnes Harrild & Dyer
Solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

ANONYMITY DIRECTION DISCHARGED

The First-tier Tribunal made an anonymity direction pursuant to Rule 45(4)(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. Counsel was unable to give me any proper reason for my continuing the anonymity direction and I therefore discharge it.

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on 1st November 1976. He made an application to the respondent for recognition as a refugee, but in a decision dated 11th May 2017, the respondent concluded that he was not entitled to international protection to the grant of other protection and/or the grant of leave to protect his human rights. The

appellant appealed and his appeal was heard by a First-tier Tribunal Judge (Judge A Khawar) at Taylor House on 19th June, 2017. The judge's determination was prepared, according to a note on the first page, on 17th July 2017 and, according to a note on the last page, was signed on 9th November 2017. It was promulgated by the First-tier Tribunal on 14th November 2017.

2. The basis for the appellant's claim to international protection was that when he was 10 years of age both his parents were killed and he was injured by his maternal uncles because they objected to the appellant's mother's marriage to the appellant's father. Subsequently, his two maternal uncles had, claimed the appellant, attempted to kill him on two occasions, first in 2004 when he was in hospital, and later in September 2015, whilst he was cycling on his way to work.
3. The judge did not believe the appellant's claim and made several adverse credibility findings. The judge found that the appellant would not be at risk on his return. The judge applied *AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)* and concluded that the appellant could acquire such identity documents as he needed with the assistance of his three adoptive sisters in order to effect his travel to the Kurdish autonomous region without the need to transit Baghdad. He dismissed the appellant's asylum claim, he dismissed the appellant's humanitarian protection claim and he dismissed the appellant's human rights claim.
4. Dissatisfied with the judge's determination the appellant sought and was granted permission to appeal. At paragraphs 5 and 6 of the grant of permission, Upper Tribunal Judge Macleman said this:-
 - “5. The hearing was on 19 June 2017. The decision says on page 1 that it was prepared on 17 July 2017, but on page 11 had the date of signature as 9 November 2017. It was promulgated on 14 November 2017. There may be an explanation which does not cast any doubt on the safety of the credibility findings, but those were in part based on the oral evidence, and the explanation should at least arguably have been contained within the decision.
 6. While this grant of permission is not restricted, it is made principally on the basis that ground 1 merits consideration in the light of an explanation from Judge Khawar.”
5. Judge Macleman pointed out that the second challenge relied on generalities about screening interviews, Section 8 of the 2004 Act and credibility and that the ground does not acknowledge the strength of the judge's points and may turn out to be no more than a form of insistence and disagreement, that ground 3 was a vague assertion of lack of reasoning, and that ground 4 offered little, when the appellant said in oral evidence that he is in regular touch with relatives in Sulemniya.
6. At the hearing before me, Counsel adopted her grounds and suggested that since the appeal was dismissed primarily on credibility grounds the delay in hearing this appeal and in promulgating the determination must be a cause for concern. Amongst other cases she referred me to *Sambasioam v Secretary of State for the Home Department [1999] All ER (D) 1168* and to paragraphs 16 and 17 of the judgment of

Potter LJ. I pointed out to Counsel that the determination was **prepared** some four weeks after the hearing although it was not actually **signed** until November. In the case in question the delay exceeding three months was between the date of the hearing and the date of the **preparation** of the determination. Here the determination was prepared some four weeks after the hearing and I did not see any merit in her challenge.

7. Counsel then took me through her second ground. She referred me to paragraph 36 of the determination where the judge refers to paragraph 19 of the Secretary of State's Reasons for Refusal Letter, wherein the respondent refers to the appellant's answer to question 13 of the Asylum Interview Record where (in describing his adoptive family) the appellant said ... *"He is a friend of my father, when the incident happened to me, my father took me to this family because my mother died"*. In paragraph 36 the judge noted that the appellant had sought to correct this as being an error in his solicitors' letter but that it did not explain why the appellant had added, *"because my mother died"*. Counsel suggested that the appellant's solicitors had written giving an explanation of the replies to questions in interview and had sent their letter to the Home Office three days after the interview was conducted on 2nd March 2017. In that letter they point out that their client answered *"My father died in the incident, my father's friend took me to his house"*. However, it appears at paragraph 38 that the judge has taken account of this explanation but says that this simply does not explain why in answer to question 13 the appellant had said *"because my mother died"*. His claim is that both his parents were killed, and yet at this point during his asylum interview he did not and had not suggested that both his parents were killed, rather that his mother was killed. Counsel suggested that what the appellant had said during his interview should not be analysed in this way, but I pointed out to her that what the judge said did appear to be correct. It was a finding open to the judge on the evidence before him.

8. Counsel then took me to paragraph 37 of the determination where there was, what the judge believed to be, a further difficulty with the appellant's account, because at the appellant's screening interview in answer to question 4.1, when asked briefly to explain all of the reasons why he cannot return to his home country the appellant said:-

"My mum and dad were shot and killed when I was 10. I was not sure if it was Iraqi or Iranian authorities who were responsible. My life is not safe there and I could not leave until I reached the age I am now".

Counsel told me that the explanation offered at paragraph 4.1 was not meant to be a definitive response giving all the details of his asylum claim and it was not open, therefore, to the judge to criticise it in the way the judge has. The judge believed that at some point the appellant had changed his account, but that was unfair, suggested Counsel, because the asylum screening interview was not meant to be a definitive statement of all the reasons he could not return to his native country. *YL (Rely on SEF) China* [2004] UKIAT 00145 reminds one that the screening interview is not done to establish in detail the reasons a person gives to support their claim to asylum. The judge relied on the discrepancy and elevated it to a discrepancy beyond critical by referring to it in three paragraphs.

9. He then went on, she submitted, to rely on Section 8 of the 2004 Act, because on his journey from Iraq the appellant travelled through France and Germany. She submitted that the First-tier Tribunal Judge erred in elevating what were effectively brief answers at the screening interview and opining how the appellant's assailants would have attacked him at point blank range in paragraph 42 of the determination. There the appellant is criticised for offering no sensible explanation as to how two assailants attempted to kill him whilst he was in hospital. The appellant claimed that his two uncles found him and tried to kill him in hospital, they took the medication out of his hands and the appellant had to shout for security to intervene and get him out. The judge said that there was simply nothing to prevent the uncles from shooting the appellant dead rather than attempting to take his medication from him. The judge went on to make further criticisms in relation to what the appellant claimed was an attempt by his uncles to kill him in 2015. He was riding his bike to work on a route that he had used frequently and the judge pointed out that he could easily have been brought down by two armed men and shot at point blank range if that was the case. According to the appellant he carried on living at the same family farm after 2007 and was involved in farming along with his adoptive father. In oral evidence he claimed that he had been helping his adopted father in looking after animals and when questioned during oral evidence he asserted that for a while his uncles did not know that he was alive. However, he failed to offer any explanation as to how he was aware of that fact.
10. The third challenge suggests that the findings lack proper reasoning and are flawed and the fourth ground suggested that the judge had dealt with the question of documentation by sweeping it away largely on the basis that the appellant's adopted sisters would be able to help obtain documents for him, and as the grounds put it, "thus paid lip service to case law in AA Iraq [2016] EWCA Civ 779". The judge further failed to acknowledge that the Secretary of State had accepted that the appellant would not be able to go back to his own home area as it was bombed by Turkish troops, merely stating that he could relocate, but there was no attempt to explain why it would not be unduly harsh to expect him to relocate. The judge has failed to deal with the question of internal flight.
11. Responding briefly on behalf of the Secretary of State, Mr Wilding suggested that as to the promulgation of the judge's determination the fact that promulgation took place in November following a hearing in June did not make the determination in any way unsatisfactory. The appeal was heard on 19th June and some four weeks later the judge dictated his determination. It was not typed and signed by him until November, but it clearly was prepared by him some four weeks after the hearing. There is, therefore, no merit in the first challenge.
12. As to the findings of fact, the challenges to the judge's findings amount to nothing more than a series of disagreements with those findings and an attempt to reargue the issues. Each of the findings made by the judge between paragraphs 35 and 47 are findings which the judge was entitled to make on the evidence which the appellant

had placed before him. Counsel had suggested that the judge had erred in paragraph 46 where the appellant said:-

“Furthermore while I accept that the Appellant has undergone medical treatment in the United Kingdom in relation to his genital/kidney problems, as noted at paragraph 24 of the RFRL there is no evidence to substantiate his claim that his injuries were caused as a result of being shot when he was 10 years of age. Consequently it would appear that there is a clear error at paragraph 27 of the RFRL (Summary of Findings of Fact) in which it is intimated that it is accepted the Appellant was the victim of a shooting at 10 years of age.”

Mr Wilding pointed out that what the judge said at paragraph 46 was neither here nor there, but he was actually making it clear that the evidence did not substantiate the appellant’s claim that he was injured when he was 10. It is not a point which goes against the appellant because the judge accepts that the appellant has had medical treatment, in any event.

13. At paragraph 23 of the Reasons for Refusal Letter the Secretary of State accepted that the appellant’s home was bombed by the Turkish forces, but the question of internal relocation does not arise, because the appellant has not been found to be in fear as he claimed. He may not be able to go back and live in the farm house that he was living in previously, but there is no reason why he should not go back to the area and continue farming as he had done before he left the country. He is from the Iraqi Kurdish region and he is able to return there. He was in possession of identification documents and, as the judge found, he would be able to return with identity documents which he could obtain with the assistance of his adopted three sisters. Mr Wilding invited me to dismiss the appeal.

Determination

14. I have carefully read the determination in the light of the grounds of appeal and in the light of Counsel’s submissions to me.
15. I do not accept that the determination is unsafe because it was not promulgated until November, despite the fact that the hearing took place in June, some five months earlier. The judge makes it clear that the determination was prepared by him four weeks after the hearing, so that there was not a terribly long gap between the date of the hearing and the date of preparation of the determination. I do not believe that the delay of four weeks renders the appellant’s assessment of credibility issues unsafe.
16. So far as challenges to credibility are concerned, they are in fact nothing more than disagreements as to the judge’s conclusions.
17. I believe that the judge was perfectly well-entitled to reach the conclusions he did based on the evidence before him. He demonstrates that he considered what solicitors had said on behalf of the appellant following his asylum interview and although the initial interview was not meant to be a definitive statement of his claim to asylum, one would ordinarily expect it to be similar to the claim that would be developed before a Tribunal at an asylum hearing. In the case of this appeal,

however, what the appellant said were his reasons for not being able to return to his home country were different to what he had said when it came to the appeal. Initially he had not mentioned his uncles at all as being responsible for the death of his mother and father. I note from paragraph 36 that the judge did consider the solicitors' letter, but quite rightly pointed out that this did not explain why the appellant had added the words "because my mother died". The judge was entitled to find as he did in relation to the claims made by the appellant that two men tried to kill him when he was in hospital undergoing surgery. The judge was similarly entitled to point out that in relation to the 2015 claimed assassination attempt there would have been no reason at all why two armed men could not have shot the appellant at point blank range. The appellant had apparently carried on living at the same family home after the attempt to kill him in 2004. I do not believe that the judge erred in making credibility findings under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

18. There is simply no merit in the suggestion that the findings are inadequate or inadequately reasoned.
19. I do not believe therefore that there is any merit in the third challenge either, and as to the last challenge there was no question of sufficiency of protection or internal relocation for the judge to deal with. He was not satisfied that the claim made by the appellant was credible. He gives sound, logical and clear reasons for his findings. The appellant cannot go and live in his house, because that was bombed, but that does not mean that he needs to internally relocate. There is no reason why he should not go back to his farm and rebuild his house or build another one. In any event, he is from the Iranian Kurdish region and given that he has relatives who would be able to assist him in obtaining documentation, there is no reason why he could not return there without transiting Baghdad.

Notice of Decision

16. In making his determination Judge A Khawar did not materially err in law. I uphold his determination. The appellant's appeal is dismissed on asylum grounds, humanitarian protection grounds and human rights grounds.
17. No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and since the appeal is dismissed there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley

Dated 17 May 2018