



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02662/2019 (V)

THE IMMIGRATION ACTS

Heard at: Field House

Decision & Reasons Promulgated

On : 26 February 2021

On : 11 March 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

RF
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Singh of Hasan Solicitors

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

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.
2. The appellant is a citizen of Iraq, born on 1 January 1988, of Kurdish ethnicity. He has been given permission to appeal against the decision of First-tier Tribunal Judge Parkes

dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

3. The appellant claims to have entered the United Kingdom clandestinely on 12 January 2016. He was encountered by the UK authorities and was served with illegal entry papers. He claimed asylum the following day. His claim was refused on 7 March 2019. His appeal against that decision was dismissed in the First-tier Tribunal on 20 September 2019, but that decision was set aside and the case remitted to the First-tier Tribunal, where the appeal was dismissed once again, on 20 July 2020.

4. The basis of the appellant's claim was that he was at risk on return to Iraq as a result of his relationship with C, whom he had met in late 2005 at a market where she was with her mother and cousin. He had signalled to her and managed to give her his telephone number and, whilst her family was very strict and escorted her everywhere, they managed to meet secretly about 15 to 20 times from December 2005. He made several marriage proposals to her family which were all refused because he was Sunni Muslim and she was Shia. Their relationship was discovered in 2006 when she became pregnant and C's brothers ambushed and kidnapped him, took him to an unknown location and held him captive and tortured him. They then dumped him and left him for dead. He received emergency medical treatment and remained in hospital for a number of months. He was informed by his mother that C had been murdered by her brothers. His father reported the torture to Asayish, the Kurdish security forces, and C's brothers were arrested and charged with torturing him. One of the brothers, A, was sentenced to 12 years in prison, but was released after 9 years. The appellant claimed that in 2015 A attacked him in Kirkuk and shot him in the leg and he saw him again in Sulaymaniyah although A did not see him. He fled Iraq as he was in fear of C's brothers and he believed that they would kill him if he returned. He feared the Kurdish Democratic Party as C's father was a KDP members.

5. The respondent, in refusing the appellant's claim, noted discrepancies in his evidence and did not accept any of his account, including his claimed relationship with C. The respondent considered that there was a sufficiency of protection available to the appellant in any event and that he could also relocate to another part of the KRI. It was considered that he would be able to obtain a CSID. As for Article 8, the respondent considered that there were no very significant obstacles to integration for the appellant in Iraq and that his removal from the UK would not breach his human rights. It was considered that his claimed medical and mental health problems were not such as to meet the threshold for an Article 3 or 8 claim.

6. The appellant's appeal was initially heard by First-tier Tribunal Judge Thomas who accepted the appellant's account of his relationship with C and accepted that he was assaulted by her brothers in 2006 resulting in the injuries identified in the medical evidence. She also accepted that the appellant was shot in 2015 but she did not accept that that incident was anything to do with C and her brothers and did not accept that they retained any interest in him or that he was at any risk on return to Iraq. She found that the

appellant had the necessary documentation to return to Iraq and she dismissed the appeal on all grounds.

7. Judge Thomas's decision was, however, set aside by the Upper Tribunal by consent and the case was remitted to the First-tier Tribunal for the decision in the appeal to be re-made from afresh, with no findings preserved.

8. The appeal then came before First-tier Tribunal Judge Parkes on 20 July 2020. The appellant gave oral evidence before the judge, as did his partner. The judge had before him two appeal bundles which included a medico-legal report from Dr Ritesh Sinha and photographs of the appellant's injuries. The judge accepted that there was an event in 2006 in which the appellant sustained injuries and received treatment, and that the attacker was sent to prison, but he did not accept the appellant's account of the problems arising from his relationship with his girlfriend and did not accept that the attack was honour-related or that there was any political element. Likewise, whilst it was accepted that the appellant was shot in 2015, the judge did not accept that it was in the circumstances claimed. It was not accepted that there was any adverse interest in the appellant and it was considered by the judge that he could access his CSID and return to Iraq. He could relocate to another part of the IKR if he considered himself to be at risk in his home area. As for his claim to be in a relationship with a British national who was a Sikh, the judge accepted that the relationship was genuine but considered that the relationship did not fall within the immigration rules. The judge considered that the appellant could access medical treatment in Iraq and there were no very significant obstacles to his integration in that country, nor compelling circumstances outside the rules. The judge accordingly dismissed the appeal on all grounds.

9. Permission was sought by the appellant to appeal to the Upper Tribunal on the grounds that the judge had failed properly to identify and address the material issues, that he had failed to consider material evidence and had failed to make adequately reasoned findings of fact, that it was not possible to understand why he had dismissed the appeal, that he had made findings on immaterial matters and that he had misdirected himself on the evidence. It was asserted that the judge had failed to intervene when the Presenting Officer was carrying out an extensive and aggressive cross-examination and failed to treat the appellant as a vulnerable witness in accordance with the relevant guidance.

10. Permission was granted on 3 September 2020. On 12 October 2020 the respondent produced a rule 24 response defending the judge's decision and opposing the grounds of appeal. The matter then came before me for a hearing, by way of skype for business.

Hearing and submissions

11. Mr Singh relied on the grounds which he submitted were in two parts: the first relating to the appellant's vulnerability and the second based upon the judge's failure to understand the appellant's case and to take account of all the evidence. With regard to the first part, Mr Singh submitted that whilst at [6] the judge referred to AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17, there was nothing in his

findings to show that he considered the appellant as a vulnerable witness, yet Judge Thomas had specifically referred in her decision to him being vulnerable and to considering his evidence in that context. As for the second, Judge Parkes made errors on the facts of the appellant's case, at [13] to [17] and misdirected himself on the evidence at [18] to [25], leading to errors of law in his decision on those facts and on the evidence.

12. Mr Melvin relied on the respondent's rule 24 response and submitted that the judge's decision was sustainable in law. With regard to Judge Thomas's treatment of the appellant as a vulnerable witness, her decision had been set aside in its entirety. It was unclear as to what submissions, if any, were made before Judge Parkes in regard to the appellant being a vulnerable witness. There was nothing in the Home Office Presenting Officer's minutes of the hearing to that effect and nothing that reflected an aggressive cross-examination. There was no witness statement from the appellant's Counsel representing at the First-tier Tribunal hearing to support the allegation of aggressive cross-examination and no indication that the judge did anything other than treat the appellant as someone who had been diagnosed as having PTSD to the extent stated at [10] of his decision. It was not incumbent upon the judge to include a paragraph specifically relating to the appellant being a vulnerable witness. As for the second part of the appellant's grounds, the judge accepted some of the appellant's evidence and gave proper reasons for rejecting his evidence of events in 2015 and 2016 and for finding that he could safely return to the IKR. It was clear that there was a major discrepancy in the appellant's evidence as to what happened to him in 2015/16 and whether he was shot in Kirkuk or Suleymaniyah and the judge was entitled to reject the appellant's claim on that basis and for all the reasons given.

13. In response, Mr Singh reiterated the points previously made and requested that the case be remitted to the First-tier Tribunal to be heard again.

Discussion and conclusions

14. The first ground of challenge was the judge's failure to treat the appellant as a vulnerable witness and failure to intervene with aggressive cross-examination. It is relevant to note that, in her rule 24 response at [8] and [9], the respondent, in response to [4] of the appellant's grounds, stated that no details had been provided of submissions made at the hearing addressing the appellant's vulnerability or seeking any adjustments for the appellant on such a basis and that there was no indication of any objection being made at the hearing on the basis of aggressive cross-examination. It was therefore made clear to the appellant that the allegations made in this ground were challenged owing to a lack of any supporting evidence. Yet, despite the fact that the appellant had been put on notice, nothing further was produced in the four months following the rule 24 response. Mr Melvin accordingly properly relied, in his submissions before me, upon the lack of information and evidence supporting the allegations made in the grounds. It is therefore unclear on what basis it is claimed that there was unduly aggressive cross-examination and to what extent the cross-examination impacted upon the appellant's evidence and I note that there is nothing in the judge's decision, the very detailed record of the hearing or any statement from or on behalf of the appellant to confirm or support the allegation.

15. With regard to the treatment of the appellant as a vulnerable witness, it is indeed the case that there is no specific paragraph in the judge's decision explicitly confirming that the appellant was being treated as a vulnerable witness. However, I do not accept that anything material arises from this, given that it is abundantly clear that the judge had full and careful regard to the contents of the medico-legal report of Dr Ritesh Sinha and the other medical evidence in the appellant's appeal bundle, took full account of the medical opinions and, at [24], considered the impact of any psychological problems on the appellant's ability to give evidence and to recall events and details.

16. Further, and although not a point made by the judge, I note that, whilst a letter of 17 January 2019 from Dr Saini of Soho Road Health Centre refers to the appellant being under the care of Psychiatry and having counselling, and whilst the letter dated 8 January 2019 from Freedom from Torture refers to the appellant having attended therapy sessions, there was no report from a psychiatrist, psychologist or therapist before the judge. Dr Sinha gave a medical opinion on the appellant's mental health but his report did not indicate that he was a psychiatrist or a mental health specialist. In addition, the report gave conflicting opinions at [104] and [108] on whether there was a diagnosis of PTSD, or just symptoms of PTSD. Accordingly, there were clearly limitations to the evidence before the judge and it seems to me that there is nothing in that evidence to suggest that the judge did not treat the appellant or his evidence with the appropriate care and consideration. I therefore find nothing of merit in the first ground.

17. Likewise, I find no merit in the second ground which is essentially a disagreement with the judge's adverse findings. The grounds assert that the judge's decision was unclear and failed properly to explain the discrepancies identified in the evidence, but I agree with the submission made at [11] of the respondent's rule 24 response that the grounds themselves are unclear and fail to identify the judge's asserted errors of fact. Grounds [10] and [11], typed in bold, make assertions that the judge misdirected himself on the evidence and failed to consider the circumstances of the appellant's ability to access protection during the earlier incident but not the latter one. However, it seems to me that rather than identifying the evidence which was before the judge and not considered, the grounds in fact seek to expand upon the evidence and re-argue the appellant's case. In any event, the judge plainly did have regard to the appellant's evidence in that regard, at [18], and made relevant findings. Furthermore, such matters were in any event immaterial given the judge's rejection, for reasons properly given, of the appellant's account of the continuing adverse interest in the appellant and the attack on him in 2015.

18. As Mr Melvin submitted, there was a major discrepancy in the appellant's evidence in relation to the events which he claimed led to him leaving Iraq and the judge was perfectly entitled to conclude from that discrepancy that the events claimed did not in fact occur and that there had been no further adverse interest in the appellant since the earlier incident in 2006. That was the point properly made by the judge at [21] and [22] when considering the inconsistencies in the appellant's evidence at his interview and in his statements about being pursued by A and shot in Kirkuk/ Suleymania. As Mr Mevin submitted, the evidence at questions 167 to 178 of the interview could not be reconciled with the evidence in the appellant's statements (at [9] of the statement of 8 April 2016 and

[59] to [62] of the statement of 24 April 2019). There was no lack of clarity in the judge's findings. It is plain that he considered whether the appellant's mental health could have impacted upon his recollection of the events and he gave proper reasons for concluding that it did not. The judge's rejection of the appellant's account in that regard, when taken together with the other inconsistencies and discrepancies he properly identified from [14] to [17] in particular at [15], was fully and properly open to him and he was fully entitled to conclude that the appellant had failed to give a credible account of being at risk on return to Iraq.

19. Mr Singh did not make submissions on the grounds relating to the judge's decision on Article 8 and that did not form part of the grant of permission. In any event the appellant's relationship was a matter properly considered by the judge at [36] to [40] of his decision and he was fully entitled to reach the conclusions that he did in that regard for the reasons cogently given.

20. For all of these reasons I find that the grounds disclose no errors of law in the judge's decision.

DECISION

21. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 1 March 2021