



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001935
First-tier Tribunal No:
PA/51585/2020
IA/01405/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 July 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KAF

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer
For the Respondent: Not represented and not present

Heard at Field House on 12 April 2023

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 appeals with permission against the decision of First-tier Tribunal Judge Lodato sitting in Bradford on 25 March 2021. The decision is dated 7 April 2021. Permission to appeal to the Upper Tribunal was granted as long ago as 13 October 2021. For reasons which are not

clear to me this matter has only come in front of the Upper Tribunal today, 22 May 2023.

2. I refer to KAF as the appellant as he was before the First-tier Tribunal. That is simply out of convenience, as he is without doubt the respondent to the Secretary of State's appeal.
3. At the outset of the appeal, I noted that the appellant was not represented nor was he present. I had enquiries made of the appellant's last-named representatives, Parker Rhodes Hickmotts, who explained that they are no longer acting for the appellant and that they had informed the Upper Tribunal of this by email on 25 April 2023. For reasons which are unclear to me there was no record of that on the CE file nor was Ms Ahmed for the Secretary of State aware of that. I am however satisfied that the appellant was given due notice of the time, date and venue of the appeal sent to his last known address and to his solicitors before they indicated that they no longer acted for the appellant; and that accordingly due notice of the appeal has been given. The appellant has not provided any proper explanation for his failure to attend and in the circumstances of the case I was satisfied that it was fair and just to proceed to determine the appeal in his absence.
4. The appellant is a citizen of Iraq. He is a member of the Kurdish ethnic group and, it is said, is at risk in his home area, Halabja, as a result of his relationship with a young woman whom he wished to marry but whose family refused to permit that. The details of what happened as a result are set out in Judge Lodato's decision. It is sufficient to note at this stage that the Secretary of State did not accept the appellant's account as credible, nor did she accept, even if it were true, that there would not be a sufficiency of protection for the appellant in his home area or elsewhere in Iraq, nor that he could not relocate to any area where he would be safe. In particular, the Secretary of State took the view that the appellant would have no difficulty in getting the required documentation.
5. The judge heard evidence from the appellant as well as submissions from Mr Holmes on his behalf and submissions from the Home Office Presenting Officer Ms Walters. The judge noted that there were two central issues to be determined in the appeal, the first being whether his account of the events which preceded his departure from Iraq could be regarded as credible, and second, whether the risk could be mitigated by internal relocation which could be achieved only if he had access to the necessary documentation. The judge addressed the Secretary of State's challenges to credibility at paragraphs 45 to 49 finding that the appellant's evidence was consistent with the background evidence and did not undermine his credibility as a witness. He further found that other aspects of the account were not implausible and addressed the failure to provide supporting evidence at paragraph 49. The judge said at paragraph 50:

"I have considered the overall evidential picture and I find the appellant to be a credible witness. I found it to be of significance that he gave a detailed

account of events stretching over several years in Iraq before he fled. The respondent did not rely on any inconsistencies of substance or a meaningful lack of detail that undermined the core of his factual case. I find it to be reasonably likely that he is at risk of honour-based violence from his wife's father following the rejection of a series of marriage proposals and his flight with his now-wife. I accept that he was attacked after one of the marriage proposals and shot at when he attempted to visit his sick mother".

6. The judge then went on at paragraph 51 to consider whether the appellant could internally relocate within the IKR, finding that he could not. In doing so, he discounted the implausibility of the appellant's account and finding that he had no good cause to doubt that he no longer had his CSID card. The judge also noted that the appellant would face difficulty in reaching the IKR, finding at [52] that it was at least reasonably likely that Halabja had now introduced the INID system, country guidance in SMO making it clear that the move from CSID to INID was well under way.
7. The Secretary of State sought permission to appeal on two grounds: first, that the judge erred in purporting to allow the appeal on both asylum grounds and humanitarian protection grounds and in failing to have proper regard to the relevant country guidance demonstrating that he could relocate internally even if his account were credible. The second ground is that the judge erred by not making findings as to the assistance the appellant might receive from family on return in obtaining replacement documentation, giving inadequate consideration to the background findings in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110.
8. I turn first to ground 1. I am satisfied that there is an error of law in that the judge has failed properly to explain why he allowed the appeal on asylum and humanitarian protection grounds. These grounds are mutually exclusive. A person who is entitled to refugee status is for that reason alone not entitled to humanitarian protection. Further, although the judge does refer to a possible particular social group earlier in his determination there is no explanation of what he thought that particular social group was, how it was defined or what the nexus was between that group and the persecution that the appellant feared.
9. I do not however find that there is any other error as set out in ground 1. Whilst there are references to internal relocation in SMO the judge gave adequate and sustainable reasons as to why that would not be available on the facts of this case and the paragraphs referred to in SMO, that is [16], [390] and [391], relate primarily to obtaining documentation. The difficulty that this appellant faces is that on the facts as found he does not have a CSID card and would need to go to a local office to obtain an INID card.
10. I turn to ground 2. Whilst it may at the relevant time have been clear that in the past, the appellant could have got a family member to go to the local CSA office to assist in obtaining relevant documents, as Ms Ahmed accepted, the uncle with whom he was in contact was a maternal uncle

and was estranged from the rest of the family. In those circumstances it cannot properly be argued that the judge erred in concluding that there would not be any effective assistance in obtaining documentation given it was unlikely that the maternal uncle would have any access to the Family Book himself. Second, although the decision in SMO postdates the appeal in this case it cannot be said that the judge erred in concluding that it was likely that Halabja had adopted the INID system. It is not inconsistent with the detailed evidence set out in SMO and in any event if it were speculation rather than deciding what was likely to have happened on the ground, it would appear to be borne out by SMO. That disposes of the first two paragraphs within ground 2.

11. The third paragraph in ground 2 is in effect simply a disagreement with findings on the basis that the judge noted that there were no documents to back up the appellant's claim. This is in effect seeking to reargue the case. For the reasons I have already indicated I conclude that the judge had given a detailed consideration to the Secretary of State's case and reached findings as to credibility which were clearly open to him on the facts and I consider that those are sustainable and adequately reasoned. Therefore, this part of ground 2 does not identify any error of law either.
12. The fourth paragraph of ground 2 is in effect an overlap with ground 1, stating that the appellant can internally relocate as per the guidance given in the headnote of SMO at paragraph 16. I am not satisfied for the reasons I have already given that that identifies an error of law.
13. Accordingly for these reasons I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law on a narrow point. That is a failure to explain why the appellant was entitled to be recognised as a refugee as opposed to being entitled to humanitarian protection. It will therefore be necessary to re-make the decision on that point. I see no reason why I should not do so now. The point is a narrow one. The judge was entitled to conclude that the appellant would be at risk of serious harm on return to Iraq and that therefore the appellant was entitled to humanitarian protection.
14. Having heard brief submissions from Ms Ahmed I am satisfied that there is on the facts of this case no sufficient nexus between the harm feared and the Refugee Convention. It is not suggested in the appellant's case that there is any nexus to the Refugee Convention other than a possibility that the family with whom he has a dispute are connected with the PUK. It is suggested in the skeleton argument before the First-tier Tribunal that a potential victim of honour crimes are a particular social group. I am not satisfied that such a group falls within the definition of particular social group. This would cover on the appellant's account both men and women in widely differing situations and it is difficult to see what factors would unite them such that they would be a group or otherwise fall within the definition.

15. Accordingly I am not satisfied that the appellant's fear is on account of his membership of a particular social group in that such a group cannot properly be identified.
16. For these reasons I re-make the appeal by dismissing the appeal on asylum grounds but allowing the appeal on humanitarian protection grounds. Having reached these conclusions it follows also that the appellant's appeal falls to be allowed on human rights grounds given that the fear would engage Article 3 of the Human Rights Convention. In those circumstances it is unnecessary for me to reach any conclusions regarding Article 8 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 appeal by
 - (a) dismissing the appeal on refugee convention grounds
 - (b) allowing the appeal on humanitarian protection grounds
 - (c) allowing the appeal on human rights grounds.

Signed:

Date: 19 June 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal
Immigration and Asylum Chamber