



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01744/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 5th July 2019**

**Decision & Reasons Promulgated
On 12th July 2019**

Before

**UPPER TRIBUNAL JUDGE RIMINGTON
and
UPPER TRIBUNAL JUDGE MANDALIA**

Between

**HF
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. I Palmer, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Ms. A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. Although no application is made before us, the appeal concerns a claim for asylum and international protection and in our judgement, it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. HF is granted

anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. It is common ground between the parties that the appellant is an Iraqi national, of Kurdish ethnicity, and that he is from Khanaquin. Mr Palmer informed us that Khanaquin is within the Diyala region, a contested area outside the IKR. The appellant first left Iraq in or about August 2006 and having travelled through a number of European countries, he first arrived in the United Kingdom in May 2008. On 23rd July 2008 the appellant claimed asylum. Checks completed by the respondent revealed that the appellant had previously claimed asylum in Germany and in March 2009, he was removed to Germany. The appellant claims that he returned to Iraq, from Germany, in December 2009. He claims that he left Iraq again on 15th April 2016, and on the 9th June 2016, he again claimed asylum in the UK. His claim was refused by the respondent for the reasons set out in a decision dated 6th February 2019. The appellant's appeal against that refusal was heard by FtT Judge Lucas, and dismissed for the reasons set out in a decision promulgated on 16 April 2019. It is that decision that is the subject of the appeal before us.

The decision of FtT Judge Lucas

3. The appellant's immigration history is set out at paragraphs [3] and [4] of the decision. A summary of the claim made by the appellant regarding events in Iraq following his return to Iraq in December 2009, is set out at paragraph [6] of the decision. The appellant claims:

“... He met someone called [GA] in June 2015 and that she gave him her mobile number. The relationship progressed and she continued to visit him in his shop. He then proposed to her in April 2016 (or December 2015). Her father objected because the appellant is Sunni and the family were Shia. He stated that he was

threatened after the first proposal. He made a further proposal in February 2016 but this was again rejected. However, he maintained contact with [GA] and met her on 3rd April 2016 but they were spotted by a cousin who informed her father. On the 10th April 2016, the father and cousin came to the appellant's barber shop to beat him up and they took his phone. The appellant stated that he is in fear of his life because there were intimate photographs of the couple kissing on his phone."

4. At paragraphs [13] to [24] of the decision, the FtT Judge sets out the evidence before the Tribunal. The Judge noted the claim by the appellant that he cannot relocate within the KRG because it is not far from his home, and he would be found. The Judge also noted the claim that the appellant does not have an Iraqi passport or a CSID document, and noted that the appellant attended the Iraqi Embassy on 19th March 2019 with Mr Saeed, but was told he would not be eligible for a passport without Iraqi identity documents. The Judge refers, at [17], to the online application to the Iraqi Embassy and the short witness statement from Mr Saeed that was before the Tribunal.
5. The findings and conclusions of the Judge are set out at paragraphs [29] to [49] of the decision. The Judge found the "*..Appellant is far from a reliable or plausible witness.*". The Judge noted, at [32] and [43], that there is no evidence of the appellant's presence in Iraq between 2009 and 2016, his entry or exit. The Judge considered that having previously left Iraq and having made a claim for asylum, including a claim in Germany, it would have been "*an odd thing for him to do*", to return to Iraq following his removal from the UK to Germany. The Judge noted, at [32], that there is no explanation why the appellant did not simply remain in Germany, or indeed claim asylum in any other country on his way back to Iraq.
6. In any event, the FtT Judge rejected the appellant's account of the events that he claimed occurred, when he returned. At paragraphs [39] and [40] the Judge states:

"39. The appellant made an asylum claim in 2006 on the basis that he was wanted by a gang in Iraq. That claim has now been

abandoned and he has now concocted another claim based on his proposal to the daughter of a strict Muslim family.

40. This claim is quite clearly a concoction. There is no evidence to show that he was ever actually within Iraq at the time in question. There is no evidence that he worked in a barber shop.”

7. The Judge rejected the appellant’s account that he is undocumented, as being without foundation and simply opportunistic. At paragraphs [35] and [36] of the decision, the FtT Judge states:

“35. ... the appellant is not a credible witness and has now launched an asylum claim, in part, to try to fit himself within the recent authority of AAH. The Tribunal does not accept that he neither has identity documents nor could have obtained them. If he is correct, he was able to re-enter in Iraq from Germany in 2007 (*sic*) without difficulty.

36. He states that he worked in Iraq and has maternal and paternal family there. He undoubtedly also had family friends, schoolfriends and a variety of locals who used his barber shop. Yet, he has no contact with any of them. He has produced no evidence from any independent source to show of any attempt that he has made to contact any of the above individuals. There was nothing from the Red Cross or even his own efforts to make contact with the numerous individuals who knew him, or had contact with him in Iraq.

8. At paragraph [38], the FtT Judge concluded as follows:

“It is not accepted that the appellant is or would be undocumented. This aspect of his claim has quite clearly been manufactured in order to lend - or attempt to lend - credence to claim that is otherwise lacking in plausibility.”

9. The FtT Judge concluded, at [49], that it is not accepted that the appellant is either without identity documents or could not access them if he wishes to.

The appeal before the Upper Tribunal

10. The appellant advances three grounds of appeal. First, the FtT Judge has embarked on a substantially different case theory than that put by the respondent. Second, the FtT Judge failed to take matters into account and made adverse credibility findings on matters that were

never challenge. Third, the FtT Judge has not properly applied the country guidance set out in AAH (Iraqi Kurds – internal relocation) (CG) [2018] UKUT 212.

11. Permission to appeal was granted by FtT Judge Hollingworth on 17th May 2019. The matter comes before us to determine whether the decision of the FtT Judge contains a material error of law, and if so, the remake the decision.
12. At the hearing before us, Mr Palmer informed the Tribunal that the appellant had that morning provided him with two documents, both written in German, that provide strong *prima facie* evidence that the appellant did in fact return to Iraq following his removal from the UK to Germany. One of the documents was said to emanate from the International Organisation for Migration (“IOM”), and the second, was said to be from the German authorities responsible for immigration matters. The documents are said to pre-date the hearing before the FtT, and Mr Palmer informed the Tribunal that the appellant claims that the documents had been brought to the attention of the caseworker dealing with the matter on his behalf, but for reasons that remain unexplained, they were not relied upon and brought to the attention of the FtT Judge at the hearing of the appeal.
13. We declined to admit the documents. The appellant was represented at the hearing of his appeal before the FtT. The Grounds of Appeal to the Upper Tribunal were settled by Counsel, who we note, appeared before the FtT. There is no reference to any such documents, which would have been crucial to the core of the appellant’s claim, having been available. Furthermore, directions were issued by the Upper Tribunal on 17th June 2019, and surprisingly if it is correct that the appellant brought the documents to the attention of his representatives, no Rule 15(2A) application has been made identifying the nature of any further evidence to be adduced, and explaining why it was not submitted to the FtT.

14. Mr. Palmer adopted the grounds of appeal. Rightly in our judgement, Mr. Palmer acknowledges that the first ground of appeal cannot succeed, if we accept that the respondent had challenged the appellant's claim regarding his return to Iraq following his removal from the UK in 2009. We have carefully read the respondents decision of 6th February 2019. Having set out the account of events relied upon by the appellant, at paragraph [45] of the decision, the respondent accepts the appellant is an Iraqi national, of Kurdish ethnicity and that he is from Khanaquin. The respondent does not accept any other aspect of the claim and paragraph [46] of the decision, expressly states that the respondent rejects the appellant's account of the problems he faced in Iraq, due to a relationship. Although we accept that the respondent did not expressly reject the appellant's claim that he had returned to Iraq following his removal to Germany in terms, neither did the respondent accept that he had. In the absence of express acceptance of that claim by the respondent, it must have been apparent to the appellant and his representatives from the limited concession made by the respondent at paragraph [45] of the decision, that it was for the appellant to establish that he had returned to Iraq, and is now at risk upon return because of events that had occurred, after he had returned.
15. The grounds of appeal acknowledge that the focus of the hearing before the FtT Judge was upon the appellant's claim as to what had happened to him in Iraq between his return there, and his subsequent departure in 2016. The Judge has not created his own case theory, but has considered the credibility of the claim being made by the appellant, who was aware that his claim had been rejected by the respondent. The adverse credibility findings made by the Judge were open to the Judge, and cannot be said to be perverse, irrational or unreasonable, or findings that were wholly unsupported by the evidence. The Judge had the benefit of hearing from the appellant, and of having his evidence tested in cross examination. It was for the appellant to establish that there is a reasonable degree of likelihood that he faces a risk upon

return, and it was for the Judge to make his findings on whether, and to what extent, the appellant's account is credible. The appellant's first ground of appeal amounts, in our judgement, to nothing more than a disagreement with findings that were properly open to the Judge.

16. As to the second ground of appeal, Mr. Palmer submits that the FtT Judge gives insufficient reasons for reaching those adverse credibility findings. We are satisfied that having carefully considered the appellant's evidence and the evidence of Mr Saeed relied upon by the appellant, it was open to the Judge to reach the conclusion that the account advanced by the appellant is a fabrication to support an asylum claim. The Judge has set out, with reasons, how and why he arrived at the decision that the appellant is not at risk upon return to Iraq. In our judgment, a careful reading of the decision of the FtT Judge establishes that the FtT Judge reached his overall findings by reference to a combination of factors including a lack of detail or sufficient explanation, inconsistencies in the evidence, and matters that appeared to the Judge, to be implausible. The decision of the Judge is not based simply upon implausibility's in the account that was proffered by the appellant. The Judge did not consider irrelevant factors, and the weight that he attached to the evidence was a matter for him.
17. We also reject the claim that the FtT Judge failed to properly apply the country guidance. The appellant is from Khanaquin and it does not appear to be in issue that Khanaquin is in a contested area. Although the appellant may not be able to return to Khanaquin, there remains the issue of internal relocation to the IKR. The FtT Judge did not accept the appellant's claim that he does not have identity documents, and also rejected his claim that he could not obtain them. The FtT Judge clearly had regard to the application made by the appellant to the Iraqi Embassy and the supporting statement from Mr Saeed. They are referred to at paragraphs [17] of the decision and [37] of the decision. We reject the claim that the Judge's finding, at [37], that the appellant's lack of documentation is "*without foundation*", is illogical.

18. The appellant claims that his father has disowned him for bringing shame onto the family because of his relationship with [GA]. We note from counsel's note of the evidence given by the appellant at the hearing of his appeal, that he claimed that he has been unable to speak to his mother because the line is no longer active, and that he has not spoken to his father since 2016, because his father has disowned him. It is to be noted that the FtT Judge rejected at the appellant's account of the events, arising from his relationship with [GA], and found his claim to be a "concoction".
19. In rejecting the appellant's claim that he is, or would be, undocumented, it was in our judgement open to the FtT Judge to note that the appellant has produced no evidence from any independent source to show any attempts made to contact any of his family and friends, or the Red Cross. In fact, as Mr Palmer accepts, in his screening interview, the appellant acknowledged, (Q.6.3), that he will be able to obtain his nationality certificate.
20. We also note that in the substantive interview completed on 6th February 2018, the appellant stated (Q.26) that he has a good relationship with his family, and, (Q29 -33) that he had been in touch with his mother about a month before the interview. The appellant repeated during that interview, (Q.35) that he has an Iraqi ID card in Iraq that he could ask for. In view of the appellant's own evidence in his interviews as to the availability of his CSID, although the Judge did not expressly refer to the answers given in interview, that failure was not material.
21. The appellant is an Iraqi national of Kurdish origin, and the issue for the Tribunal Judge was whether the appellant has originals or copies of his Civil Status ID ("CSID"), or will be able to obtain one, reasonably soon after arrival in Iraq.

22. It was in our judgement open to the FtT to conclude that the appellant has access to his CSID and has fabricated this part of his claim, in an attempt to present an obstacle to his return to Iraq. Even on the lower standard of proof, the appellant has failed to establish that he does not have the CSID or that he would not be able to obtain his original identity documents from family. He was confident that that could be achieved, on the two occasions when he was interviewed by the respondent. At paragraph [34] of the decision, the Judge found that in a broader context, it is implausible that the appellant who has spent time in a number of different European countries and who has a number of aliases, would not have the wherewithal or ability to obtain an Iraqi identity card.
23. The Tribunal confirmed in AAH that for an Iraqi national of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical, and can be made without a real risk of the individual suffering persecution, or serious harm. It was in our judgement, open to the FtT Judge to conclude that the appellant does have access to his identity documents and could therefore, internally relocate, without being at risk on return.
24. In our judgment, the grounds advanced by the appellant amount to mere disagreements with the reasoning of the FtT Judge, and a claim that the Judge failed to consider each facet of the evidence, to the extent desired by the appellant. The obligation on a FtT Judge is to give reasons in sufficient detail to show the principles on which the Tribunal has acted, and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. It is sufficient that the critical reasons to the decision, are recorded. We are satisfied that the FtT Judge considered the evidence, and reached conclusions that were open to the Judge.

NOTICE OF DECISION

25. The appeal is dismissed and the decision of FtT Judge Lucas shall stand.

Signed

Date

8th July 2019

Upper Tribunal Judge Mandalia

FEE AWARD

We have dismissed the appeal, but in any event, as no fee is paid or payable, there can be no fee award

Signed

Date

8th July 2019

Upper Tribunal Judge Mandalia