



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
PA/02313/2018**

**APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Decision and Reasons  
Promulgated**

**On: 9 May 2019**

**On: 17 May 2019**

**Before**

**Deputy Upper Tribunal Judge Mailer**

**Between**

**MR A K I  
ANONYMITY DIRECTION MADE**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Mr M Jones, counsel, instructed by Hasan Solicitors**

**For the Respondent: Mr L Tarlow, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

**Direction Regarding Anonymity**

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction

applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a national of Iraq, born on 10 January 1995. He appeals with permission against the decision of First-tier Tribunal Judge Parkes, promulgated on 22 March 2019, dismissing his appeal against the decision of the respondent dated 3 February 2018, to refuse his application for asylum dated 22 August 2015.
2. Judge Parkes found at [21], that taking the evidence overall and having regard in particular to the expert report of Dr Ghobadi of the appellant's ability to leave the IKR on his own passport, he had not shown that he was genuinely involved in anti-KDP reporting in the IKR and that he is not of adverse interest to the prevailing regime. Threats by Isis no longer constituted a danger. He can return to the IKR.
3. On behalf of the appellant, Mr Jones, who represented him before the First-tier Tribunal, submitted that the Tribunal misconstrued the facts of the claim and did not have proper regard to the dates and chronology.
4. The appellant had asserted that prior to his departure from the IKR, he worked as a journalist and raised issues concerning the state's relationship to Iran and the treatment of Peshmerga. He believed that it was these articles, published through a website which he and two colleagues ran, which led to the threats which eventually caused him to leave the IKR. These articles were published in late June 2015.
5. Following the circulation of these articles within the public domain, the appellant received threats towards the end of July 2015. These were recorded on his phone and were transcribed and translated for the purpose of his asylum appeal.
6. Within a few days of receiving these threats, the appellant made a decision to leave the IKR. He fled using a conventional border crossing as well as his own passport. Whilst threats had been made against him at that time, there had been no official condemnation of his activities.
7. It was only after the appellant fled the IKR that a warrant was issued for his arrest on 15 August 2015. That warrant was not disputed by the Home Office and no questions were raised or submissions made challenging its veracity.
8. The warrant for his arrest had been brought back to the UK by a friend who was visiting the IKR. This was documented in the appellant's evidence, including the relevant flight details. His lawyer in the IKR had, by that stage, already fled the country on account of threats to his own life, having represented the appellant.
9. Mr Jones submitted that the fact that the appellant was able to flee the IKR on his own passport was thus not indicative of the fact that he was not at risk of persecution given that, at the date of his departure, an arrest

warrant was yet to be issued. There was no evidence that information had at that stage been communicated to the personnel who controlled the border crossing.

10. Mr Jones accordingly submitted that the decision of the Tribunal presupposed that the appellant was recorded as a wanted person at the date of his departure although that had not formally taken place until some two weeks after his departure. That, he submitted, explained his ability to leave the jurisdiction without suspicion.
11. Mr Jones also referred to the evidence of Mr Mahmood Ali which is set out at [12] of the Tribunal's decision. It was accepted that he is a journalist who was granted refugee status on account of his risk of persecution posed by his journalism within the IKR.
12. He submitted that the Judge failed to record or consider his evidence that as a fellow journalist critical of the IKR government, he was aware of and respected the appellant's articles, which he considered to be credible. His evidence relating to the credibility of the articles and their content accordingly increased the likelihood that the IKR government would react in the same way they did towards the appellant as the public were more likely to trust the contents of the article and by analogy, hold a critical view of the government.
13. It was Mr Ali's evidence that the credibility of the appellant's articles and content increased the likelihood that the government would react in the same way and that he would similarly be at risk as a consequence of this, on his return.
14. Dr Kaveh Ghobadi had provided a report in which he authenticated the arrest warrant issued against the appellant. Based on his knowledge and experience, he concluded that the document is genuine.
15. In his report dated 9 July 2018, Dr Ghobadi stated at paragraph 73 that it is not possible to say for sure whether the appellant is really wanted by the Kurdish government for the articles he has allegedly published. However, it could be said that had he attracted the adverse attention of the Kurdish authorities, he would not not have been allowed to leave the country legally.
16. Mr Jones submitted that Judge Parkes went further, stating that if the appellant had attracted adverse attention, he would not have been allowed to leave.
17. On behalf of the respondent, Mr Tarlow stated that in the light of the submissions made, he did not seek to oppose the appeal.
18. Both parties submitted that in the circumstances, if the decision is set aside, the matter should be remitted to the First-tier Tribunal for a fresh decision to be made.

### **Assessment**

19. The crux of the appellant's case was that he had been able to leave the IKR on his own passport, as at that stage an arrest warrant had not been issued. That warrant was only issued two weeks later. Although threats were made against him prior to his leaving, there was no evidence that adverse information had by then already been communicated to those controlling the border crossing. At that stage the appellant was thus not officially sought by the government.
20. I accept that there has accordingly been a misunderstanding as to the chronology of the appellant's claim. As Mr Jones submitted, the implicit assertion that the telephone threats alone were sufficient for the border guards to have been notified of a requirement to prevent his exit, was not substantiated on the evidence.
21. Further, as noted by First-tier Tribunal Judge Grant Hutchinson, in granting the appellant permission to appeal, the Judge failed to place sufficient weight on the evidence of Mr Mahmood Ali, as a fellow journalist who had been granted refugee status on account of his risk of persecution posed by his journalism within the IKR. It was his evidence that the credibility of the appellant's articles and content increased the likelihood that the IKR government would react in the same way and that the appellant would accordingly also be at risk as a consequence on his return.
22. I accordingly set aside the decision. It will have to be re-made. It is accepted that this is an appropriate case to remit to the First-tier Tribunal for a fresh decision to be made.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and remit the case to the First-tier Tribunal (Birmingham) for a fresh decision to be made by another Judge.

Anonymity direction continued.

Signed

Dated: 15 May 2019

Deputy Upper Tribunal Judge Mailer