



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10422/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House
On 11 February 2021

Decision & Reasons Promulgated
On 1 March 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

AHQ
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Vokes, Counsel instructed by CB Solicitors
For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

DECISION AND REASONS

1. In 2008 the appellant entered the UK and claimed asylum. His claim was refused and subsequent appeal dismissed. In the decision dismissing his appeal, dated 14 January 2010, it is stated that the appellant had not been

truthful and that “no part of his account of past events in Iraq may be relied upon.”

2. In 2019 the appellant made further submissions. These were refused by the respondent on 30 September 2019. The appellant appealed to the First-tier Tribunal, where his appeal was heard by Judge of the First-tier Tribunal Thapar (“the judge”). The judge dismissed his appeal. The appellant is now appealing against that decision.
3. The appellant is a Kurdish citizen of Iraq from Kirkuk born in May 1989. His case, in summary, is that he cannot safely return to Kirkuk because of the status and profile his uncle, whom I shall refer to as SQ. The appellant claims that SQ is a former police chief in Kirkuk who, following the Kurdish independence referendum, fled to the IKR after being issued with an arrest warrant and attacked. The appellant also claims that he does not have, and cannot obtain a replacement, civil status identity document (“CSID”) and therefore he will be exposed to conditions breaching Article 3 ECHR.
4. The appellant submitted to the respondent several articles about SQ. One of the articles (from the newspaper Kurdistan 24) includes a copy of an arrest warrant for SQ, a letter issued by the Central Investigation Court of Baghdad instructing the arrest of 13 high-ranking officials including SQ, and instructions from police of Kirkuk (relating to the arrest of the aforementioned 13 officials).
5. The respondent, in the refusal letter dated 30 September 2019, accepted that the appellant is a relative of SQ but not that the articles about SQ were reliable. The respondent also stated that:

“In the alternative, even if it was accepted that the articles were reliable, it does not follow that there is any reasonable likelihood that those who carried out the attack have any interest in you. You have been outside the country for almost 7 years. You had no involvement in the military or police when you lived in Iraq. There is no credible reason as to why those who carried out the attack would have any interest in you, or even be aware that you had returned to the country.”

6. The appellant supported his claim by submitting a report by a recognised and well respected expert on Iraq Dr Fatah, dated 20 March 2020. The report discusses the authenticity of the three aforementioned documents published by Kurdistan 24. Dr Fatah stated that because of the presentation of the documents (an image in a news article) it was difficult to authenticate them. However, he was of the view that they were genuine primarily because (a) Kurdistan 24 is a newspaper affiliated with the KDP which would not publish a document claiming to be from the Iraqi authorities if it was not; and (b) he was aware – from his own knowledge – of several arrest warrants being handed to senior Kurdish officials following the independence referendum,

including SQ. Dr Fatah also stated in the report that the arrest warrant and documents concerning the apprehension of SQ were token gestures and “more of a derogatory statement than an actual intent to arrest”, and a “pretext to re-enter Kirkuk”.

7. Dr Fatah’s report did not express a view on the respondent’s position, as set out above in paragraph 5, that even if SQ was attacked as claimed there is no reason why those who attacked him would have an interest in the appellant.

Decision of the First-tier Tribunal

8. The judge took as her starting point the negative credibility findings made by the First-tier Tribunal in 2010 as well as the acceptance by the respondent that the appellant is related to SQ.
9. The judge found that the documents about SQ were not reliable. With respect to Dr Fatah’s opinion, the judge stated at paragraph 20:

“I am mindful of Dr Fatah’s comments in that his ability to authenticate the scanned documents was limited, the documents were missing some customary features and **crucially that the documents do not hold an intent to arrest. I do not find that the comments of Dr Fatah indicate that the documents are definitively genuine or authentic** and rather he speculates that they hold similar characteristics to documents issued by the Iraqi government. Consequently, and in light of my own observations I find that the documents are unreliable. [Emphasis added].

10. The judge found at paragraphs 22 that the documents about SQ did not indicate that the appellant would himself be at risk from the Iraqi authorities; and at paragraph 24 that the appellant would not be targeted on account of his uncle’s role in Iraq. Although not stated explicitly, reading the decision as a whole, I am satisfied that these findings are made in the alternative: that is, the judge found that even if the documents about SQ are genuine it does not follow that the appellant would be at risk, or targeted, in Iraq.
11. The judge also found, in the light of *SMO, KSP & IM (Article 15(c); identity documents) CG Iraq* [2019] UKUT 400, that the conditions on return were not such that the appellant is eligible for humanitarian protection. With respect to obtaining a replacement CSID, the judge found that the appellant has family in Iraq and therefore has the means of obtaining the relevant information required to obtain a CSID in the UK.

Grounds of Appeal

12. The arguments in the grounds of appeal, considered together with the submissions made by Mr Vokes at the hearing, can be divided into three distinct grounds/submissions.

13. First, it is argued that, when considering the three documents concerning SQ that were assessed by Dr Fatah, the judge overlooked important aspects of Dr Fatah's opinion, failed to take into account that SQ fled to the IKR and applied the wrong standard of proof.
14. The second submission is that the judge failed to give reasons for finding that the appellant would not be targeted because of SQ's role.
15. The third argument is that the judge failed to consider whether the appellant would be at risk on return to Baghdad because he would be perceived to be against the Iraqi government. It is submitted that he would be at risk from Shia militia travelling from Baghdad to Kirkuk (or the IKR) because of his connection to his uncle. The grounds contend that the appellant would fall within paragraph 5 of the headnote to *SMO*, as a person perceived to be against the Iraqi government.

Analysis

16. I agree with Mr Vokes that the judge fell into error in her assessment of the reliability of the three documents concerning SQ.
17. Firstly, the judge appears to have not taken into consideration that Dr Fatah was able to independently corroborate, based on his own knowledge, that SQ was subject to an arrest warrant and had fled to the IKR. This strongly supports the appellant's claims about SQ and therefore it was necessary for the judge to address it.
18. Secondly, one of the reasons the judge appears to have found that the documents were not reliable is that Dr Fatah stated that there was no actual intent to arrest SQ. This appears to reflect a misunderstanding of Dr Fatah's evidence. Dr Fatah did not state in his report that because there was not an intent to arrest the documents are less reliable. Rather, this was part of his explanation for the documents: that they were a derogatory statement and pretext to enter Kirkuk.
19. Thirdly, the wording used in paragraph 20 of the decision (describing the evidence of Dr Fatah as being that the documents were not "definitively genuine") indicates that the judge applied too high a standard of proof.
20. For these reasons, I am satisfied that the judge's findings regarding the documents about SQ are undermined by an error of law. However, I am not satisfied that the error is material. It was not sufficient for the appellant to establish that SQ is a former police chief who, following the independence referendum, was subject to an arrest warrant and attack, and fled to the IKR. It was also necessary for the appellant to establish that he would face a risk of

persecution or treatment contrary to article 3 ECHR because of his relationship with SQ.

21. The grounds argue that the judge did not provide reasons for finding that the appellant would not be targeted because of his uncle. I disagree. The judge's reasoning on this is extremely brief, but it is sufficient. The reason given (in paragraphs 22 and 24 of decision) is that the evidence submitted by the appellant does not indicate that he would himself be at risk from the Iraqi authorities. Having reviewed for myself the evidence that was before the First-tier Tribunal, I am satisfied that this conclusion was plainly open to the judge.
22. None of the articles about SQ adduced by the appellant indicate that the authorities in Iraq are pursuing the families (let alone the extended families) of the senior officials who were made subject to arrest warrants. Dr Fatah, in his report, did not express a view (one way or the other) on whether, as a general matter, the extended families of the senior officials referred to in the articles are at risk or specifically address whether the appellant might face a risk because he is SQ's nephew.
23. Mr Vokes argued, when I put this to him, that it was axiomatic that family members are deemed responsible and that the appellant will be at risk of detention and questioning because of his relationship to SQ. I do not agree. In my view, it is not in any way self-evident or obvious that the appellant, who has been out of Iraq for over a decade, was not involved in the military or police, and did not have a political (or other) profile in Iraq, would be targeted or at risk because of his uncle. The burden (to the lower standard) was on the appellant to establish his case. In the absence of any expert or objective evidence to support the contention that a nephew might be at risk because of his uncle the judge was plainly entitled to find, as she did at paragraphs 22 and 24, that even if the evidence about SQ was accepted and taken at its highest, the appellant would not be at risk because of him.
24. Paragraph 5 of the headnote to *SMO* identifies personal characteristics which need to be considered in the "sliding scale" analysis required under article 15(c) of the Qualification Directive. The grounds argue that the appellant falls within these categories because his connection to his uncle means that he would be perceived to be against the Iraqi government. However, paragraph 5 to the headnote of *SMO* states that opponents of the government may face a greater risk, not that their family members do. The judge therefore did not err by failing to consider this part of *SMO*.

Decision

25. The appeal is dismissed and the decision of the First-tier Tribunal stands.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's 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.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 12 February 2021