Case No: UI-2022-004741

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

First-tier Tribunal No: PA/00001/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 July 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

PAM
(Anonymity Direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R O'Ryan, instructed by Turpin & Millar LLP
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 11 July 2023

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim following the making of a deportation order against him.

2. The appellant is a national of Iraq born on 13 February 1993 in Al Hawijah. He entered the UK clandestinely on 13 August 2018 and claimed asylum the following day after being arrested and served with illegal entry papers. He attended a screening interview on 14 August 2018, when an initial asylum registration questionnaire was completed.

3. Between 2 and May 2019 the appellant committed two sexual offences against a 12 year old female. He was convicted on 25 September 2020 of cause/ incite a female child aged under 13 to engage in sexual activity (no penetration), for which he was sentenced to three years' imprisonment, and adult meet a girl under 16 years of age following grooming, for which he was sentenced to three years imprisonment, both sentences to be served concurrently. A sexual harm prevention order was made against him.

4. On 15 October 2020 the respondent made a decision to deport the appellant pursuant to the Immigration Act 1971 and the UK Borders Act 2007, and invited him to give reasons as to why he believed that he should not be deported from the UK, to which the appellant responded. On 28 June 2021 the appellant was provided with a preliminary information questionnaire in which he was given the opportunity to provide details of his asylum claim. On 29 June 2021 the appellant was notified of the respondent's intention to exclude him from the protection of the Refugee Convention on section 72 grounds, and he was invited to rebut the presumption that he had been convicted of a particularly serious crime and constituted a danger to the community. The appellant responded to that on 19 July 2021. On 28 October 2021 the appellant was interviewed about his asylum claim in a SEF interview.

5. The appellant's asylum claim was based upon a fear of persecution for various different reasons. Firstly, he claimed to be at risk because people believed that his father had joined ISIS. He claimed that his father had gone missing in 2017 and his neighbours were saying that he had gone away with ISIS. The appellant claimed to have gone to live with his aunt in Kirkuk when his father disappeared but he left his aunt's house when the army Hashdishaedi came to arrest him at her house, at a time when he was not there. Secondly, the appellant claimed to be at risk on return because he had lost faith in the Muslim religion and had decided to be Jewish, but had also gone to church with some Kurdish friends when he was in prison. He had spoken against the Muslim religion and Muslim society on Facebook. Thirdly, he was at risk because he was gay or bisexual. He had had a boyfriend for a couple of months since coming to the UK, having first realised that he was interested in men when aged between 12 and 14 and had kissed a male relative when living in Iraq. Fourthly, he was at risk because he had no identity documentation and would fall into destitution as a result. The appellant claimed to have left Iraq with the help of a smuggler, travelling through Turkey and then Greece or Italy and France. He claimed that the military Hashishaedi or the Kurdish army would kill him if he returned to Iraq.

6. On 3 December 2021 the respondent signed a Deportation Order against the appellant under section 32(5) of the UK Borders Act 2007 and made a decision the same day to refuse his protection and human rights claim. In that decision the respondent certified that the presumption in section 72(2) of the NIAA 2002 applied to the appellant as it was considered that he would continue to pose a serious risk of harm to the community if he was to remain in the UK. The respondent advised the appellant that Article 33(2) of the Refugee Convention accordingly applied such that the Convention did not prevent his removal from the UK.

7. The respondent did not accept the appellant's claim to be gay or bisexual, noting that his evidence in that regard was inconsistent. The respondent did not accept the appellant's claim to have converted to Judaism and did not accept his claim to have criticised the Muslim religion on Facebook as he had provided no further details of either. It was considered further that he had failed to provide any credible explanation why his father would have joined ISIS and that there was no reason why ISIS would

have had any interest in his father given his age and lack of experience in conflict. The respondent considered that the appellant had fabricated his account in all respects in order to enhance his asylum claim and that the security forces had no adverse interest in him. The respondent considered that the appellant had family in Iraq who could assist him on return and that he would not be at risk. Consideration was given to the appellant's claimed mental health problems, but the respondent considered that neither Article 3 nor Article 8 was engaged on that basis. The respondent considered that the appellant could not meet the requirements of paragraphs 399 or 399A of the immigration rules on the basis of family and private life and that he would be able to re-integrate in Iraq. The respondent concluded that there were no very compelling circumstances outweighing the public interest in the appellant's deportation.

8. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Horton and First-tier Tribunal Judge Davidge sitting as a panel, on 8 August 2022. The appellant gave oral evidence at the hearing. The panel was not satisfied that the appellant had rebutted the presumption in section 72 of the NIAA 2002 and considered that he remained a danger to the community of the UK. As such, the judges found that the ground of appeal under the Refugee Convention fell to be dismissed and that the appellant was excluded from a grant of humanitarian protection. The judges went on to consider whether the appellant was at risk of harm for the purposes of Article 3 of the ECHR but concluded that he was not. With regard to the appellant's claim to be at risk on the basis of suspected links to ISIS because of his father, the panel noted that there was no evidence of the appellant having difficulties or being threatened from 2017 when his father left to 2018 when he stayed with his aunt in Kirkuk and they accepted the respondent's view that it was implausible that ISIS would be interested in his father. They rejected the appellant's claim that his father had joined ISIS or was suspected of so doing and found that the appellant was not at any risk on that basis. As for the appellant's claim to be bisexual, the panel noted that the issue of his sexuality had only been raised after the October 2020 notification of deportation action and that his account varied as to when was his first homosexual experience, and considered it implausible that he would wish to hide his sexuality from an unknown interpreter in 2018 when completing his asylum questionnaire, but later enter a relationship with a male known in his community as being gay. The panel accordingly rejected the appellant's claim to be bisexual or gay. Likewise, the panel rejected the appellant's claim to be an apostate, referring to the inconsistencies in his account of the changes in his religious views. Finally, the judges considered the risk to the appellant on the basis of a lack of identity documentation, rejecting his claim to have lost contact with his aunt and concluding that he would be able to contact family in Iraq and obtain his CSID from them. It was found that his removal to Iraq would not breach Article 3 and, likewise, the panel found that there would be no breach of Article 8. The appellant's appeal was accordingly dismissed in a decision promulgated on 22 August 2022.

9. Permission was sought on behalf of the appellant to appeal against that decision to the Upper Tribunal, on three grounds. Firstly, that the judges had made a mistake of fact leading to an error of law when rejecting the appellant's account of being perceived to have links to ISIS, by finding that the appellant had had no difficulties in 2017 and 2018 when his evidence had been that the army had come to his aunt's house to arrest him, Further, that the judges' finding, that it was implausible that ISIS would be interested in the appellant's father, was an unreliable approach. Secondly, that the judges had given inadequate reasons for their findings on the appellant's sexuality; and thirdly, that the judges had given inadequate reasons for their findings on documentation and lack of contact with relatives in Iraq.

10. Permission was granted in the First-tier Tribunal on 22 September 2022 on all grounds, although with particular reference to the first ground. The respondent did not serve a Rule 24 response.

11. The matter then came before me. Both parties made submissions. I shall address those submissions in my discussion below.

Discussion

12. The appellant's case is that the judges' credibility assessment is materially flawed for various reasons. The first is that the judges made a mistake of fact when finding against the appellant in respect of his claim to be at risk as a perceived ISIS supporter through his father's involvement. That mistake arose, it is submitted, from the finding at [32] that the appellant had no difficulties from 2017 when staying with his aunt, whereas his evidence at question 72 of his interview had been that the army Hashdishaedi came to arrest him at his aunt's house. Mr O'Ryan relied upon the case of E v SSHD [2004] EWCA Civ 49 in submitting that that mistake of fact amounted to an error of law.

13. Whilst it does seem that the judges may have overlooked the appellant's evidence in his interview in that regard, we agree with Mr McVeety that that was not fatal or material to their rejection of the appellant's account of being linked to ISIS, given that that was not the sole reason for disbelieving his account. The appellant's grounds suggest that only one other reason had been given by the judges, namely the implausibility of ISIS being interested in the appellant's father owing to his age and lack of military experience, which is asserted was a flawed basis for rejecting the appellant's account. However the judges clearly based their findings upon wider concerns and did so by endorsing the respondent's view that the appellant's account of his father joining ISIS was implausible, for reasons set out at [71] to [77] of the refusal decision. Specifically, at [30], the judges referred to the point made by the respondent at [74] of the refusal decision, where they noted the absence of any evidence supporting the appellant's claim that one of the soldiers shown in a video of ISIS soldiers had been seen with his father. More significantly, at [31], they endorsed the respondent's view as set out at [76] of the refusal decision, finding it implausible that ISIS would be interested in the appellant's father given his age and lack of experience in armed conflict. Although Mr O'Ryan submitted, with reference to HK v SSHD [2006] EWCA Civ 1037, that caution should be exercised in making decisions on the basis of plausibility alone, it is clear from [76] of the refusal decision that there was in fact an evidential basis for that finding. In the circumstances nothing material arises from the judges' failure to refer to the appellant's evidence at question 72 of his interview, given the various other sustainable reasons for rejecting the appellant's account of his perceived association with ISIS.

14. The second challenge to the judges' credibility findings was in relation to the issue of the appellant's sexuality. The grounds assert that the basis for rejecting the appellant's account in that regard relied upon only two reasons: firstly, that his account varied as to whether his first sexual encounter had been in Iraq or the UK and secondly, that the appellant's explanation for not having revealed his sexuality issues prior to his interview was implausible. With regard to the first reason, Mr O'Ryan submitted that the appellant's evidence in his preliminary information questionnaire, that his first experience of sexual intercourse with a man was a few months before he was arrested in the UK, was not inconsistent with his evidence at his SEF interview at question 51, that he kissed a male relative when aged between 12 and 14 in Iraq, and that his evidence had therefore not varied. However the judges were referring, at [39],

to the OASys report whereby, at page 33 of 55 of the report, the appellant's evidence clearly suggested that he had never had any homosexual feelings prior to being in the UK. It seems to me that the judges were therefore perfectly entitled to view the appellant's evidence as inconsistent in that regard and to draw the adverse credibility findings that they did. Likewise the judges were fully and properly entitled to have concerns about the appellant's explanation for not having raised the issue of his sexuality in any of his evidence prior to the notification of deportation proceedings. As Mr McVeety submitted, it was not the delay in revealing the issue of his sexuality in itself which led the judges to have such concerns, as Mr O'Ryan suggested, but it was the implausibility of his explanation for that delay. I agree entirely with Mr McVeety that the judges were entitled to consider that the appellant's explanation, namely that he had not wanted to reveal the issue in front of an interpreter from his own community, was inconsistent with his subsequent actions in entering into a gay relationship with a man known in his community to be gay. In the circumstances it was entirely open to the judges to reject the appellant's account of his sexuality and I do not find the grounds to be made out in that respect.

15. The appellant's third ground challenges the judges' findings on his lack of identity documentation and contact with his family in Iraq. Having previously provided evidence that his identity card was with his aunt in Iraq and that she could send it to him if needed, the appellant claimed to have subsequently lost contact with his aunt. The judges did not believe that that was the case, and provided various reasons for so concluding, including their overall general credibility concerns (at [51]) and the unlikelihood of his aunt having ceased contact with him given her previous support for him (at [50]). The judges also included in that consideration the appellant's proficiency in Facebook Manager which he could use to communicate with his aunt ([48]), and they considered further, with respect to his evidence about having land which he could sell, that there would be documents proving his title to the land ([49]). The appellant's grounds criticise the latter two reasons as being irrelevant, although it seems to me that the judges were perfectly entitled to reach their adverse findings on the appellant's claim to have lost contact with his aunt irrespective of those latter two reasons. In any event the judges' reference to the land was clearly a reflection of the respondent's finding at [120] of the refusal decision from which it is clear that they were relying upon the title deeds of the land as a form of identification for the appellant. Further I see no reason why the judges were not entitled to take account of the appellant's previous ability to contact his aunt via Facebook messenger as an added reason for rejecting his claim to have no means by which to contact her.

16. For all these reasons I do not consider there to be any merit in the grounds. The judges were perfectly entitled to make the adverse credibility findings that they did and they provided full and cogent reasons for so doing. The conclusions reached were fully and properly open to them on the evidence before them. There has, quite properly, been no challenge to the judges' adverse findings in relation to the appellant's claim based on apostasy and neither has their decision on the section 72 certificate and Article 8 been challenged. Accordingly I find no error of law in the judges' decision and I uphold the decision.

Notice of Decision

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 July 2023