



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005906

First-tier Tribunal No: PA/54982/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 Aug 2023

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

ENS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Azmi of Counsel, instructed by Braitch Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard by remote video at Field House on 20 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the Upper Tribunal's decision of 7.2.23 (Judge Owens), the appellant, a national of Iraq, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Dieu) dismissing his appeal

against the respondent's decision of 20.9.21 to refuse his further submissions in support of a claim for international protection first made in 2018.

2. The protection claim was the subject of an earlier appeal before the First-tier Tribunal, dismissed by Judge Hawden-Beal in 2018 and permission was refused for onward appeal to the Upper Tribunal, so that the appellant became Appeal Rights Exhausted (ARE) on 18.11.19. The impugned decision of the respondent rejected the further submissions made on 29.9.20.
3. In summary, the grounds assert that the First-tier Tribunal made material errors of law. At [24] of the impugned decision, Judge Dieu stated that there was no *"basis upon which the previous immigration judge's findings that the identity of the appellant is even known to (the girlfriend's) family can be departed from. I adopt therefore the findings that the appellant can return to live with his uncle without risk."* The grounds argue that Judge Dieu misstated what was found by Judge Hawden-Beal, who only concluded that the girlfriend's family did not know what he looked like, not that they did not know the appellant's identity and that he was in an illicit relationship with (the girlfriend). It is pleaded that Judge Hawden-Beal had accepted the appellant's account as plausible, including an acceptance that he had been contacted by the girlfriend's brother by telephone and threatened, as well as not doubting that the appellant's family members were assaulted by men from his girlfriend's family.
4. The grounds go on to argue an issue as to identity documentation and complain that the judge failed to consider whether a return to his home area would result in his girlfriend's family becoming aware of his return. The remaining grounds are little more than a repetition and overlap with the points summarised above.
5. In granting permission on all grounds, Judge Owens considered it arguable that Judge Dieu erred by making findings at [23] to [25] of the impugned decision, departing from the findings of Judge Hawden-Beal that the appellant's girlfriend's family was aware of his identity, threatened him and attacked his family.
6. However, Judge Owens also questioned whether the arguable errors were material, given that Judge Hawden-Beal also found that the appellant would be safe in his home area because he could live with his uncle and because his girlfriend's family did not have the influence or power to find him.
7. At [40] of the previous decision, Judge Hawden-Beal found that the fact that the family of the girlfriend could not find the appellant whilst he was in hiding means that either they were not looking for him, or alternatively, if they were looking for him, their power, influence and wealth were insufficient to be able to find him, and that any such power and influence as they might hold does not extend beyond Sulaymaniah because he was able to leave through Erbil airport without problem.
8. That some part of the appellant's claim was found plausible by Judge Hawden-Beal (see [32] of that decision) does not necessarily mean that it was all accepted as fact. At [41] that judge stated that notwithstanding that the claim is plausible, *"I do not accept that he is at risk from (the girlfriend's family) as he claims because they were not able to find him. I am satisfied that, since they do not know what he looks like, he will be able to go and live with his maternal uncle in safety and that uncle will be able to support him and obtain the documentation he will need to continue with his life in the IKR. In the alternative, if his family have moved elsewhere, I am satisfied that the maternal uncle will know where they have gone to and will be able to assist the appellant in meeting up with them."*

9. When considering [41] of Judge Hawden-Beal's decision, I am not satisfied that there is any material difference between the girlfriend's family not knowing what the appellant looks like and knowing or not knowing his identity. The findings from the earlier Tribunal appeal were that either the family were not in fact looking for him, or alternatively that they lacked the power and influence to be able to trace him. In that sense, any difference between whether or not they know his identity as in his name or other personal details when they do not know what he looks like is immaterial. The important point is that either they did not look for him or they were not able to find him. Although Mr Azmi repeatedly suggested that the appellant was not found because he was in hiding, he could not gainsay the clear statement of Judge Hawden-Beal at [40] of the 2017 decision that the girlfriend's family did not come looking for the appellant at his uncle's home. I am satisfied that Judge Dieu did not depart from the essence of what had been found by Judge Hawden-Beal on the issue of identity. There is no error of law in this regard.
10. There may be potential for an error of fact in the finding of Judge Dieu at [25] of the decision when stating that "*I do not accept that the appellant's family was threatened and is in hiding.*" However, it is not clear to me that there was any positive finding to that effect by Judge Hawden-Beal in 2017. It appears to me that Judge Hawden-Beal did not go further than finding the claim plausible and did not make any specific findings that the family had been threatened and/or was in hiding. Mr Azmi suggested that the findings were between [8] and [18] of the 2017 decision but as I pointed out, this was all under the heading of the appellant's claim and were not findings of fact.
11. In any event, as Judge Owens suggested, even if there were errors of fact by Judge Dieu, those errors could not be material. There was no need and no basis for Judge Dieu to depart from Judge Hawden-Beal's finding at [41] of the earlier decision that the appellant is not at risk from his girlfriend's family and that he will be able to live safely with his uncle or reunite with his family if they have moved elsewhere. Effectively, even if he were to be at risk from his girlfriend's family, which Judge Hawden-Beal found he was not, internal relocation is open to him and for that reason the claim could not succeed on protection grounds. In those circumstances, whether Judge Dieu was in error at [25] by not accepting that the appellant's family had been attacked by his former girlfriend's family and was in hiding, is immaterial.
12. In summary, even if there was any error of fact by Judge Dieu, it was not a material error of law and could not affect the outcome of a dismissal of the appeal.

Notice of Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands.

I make no order for costs.

DMW Pickup

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Judge of the Upper Tribunal

Appeal Number: UI-2022-005906

Immigration and Asylum Chamber

20 July 2023