



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001688

First-tier Tribunal No: PA/55106/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

ANAG
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sadiq a Solicitor

For the Respondent: Mr Bates a Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 30 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity as this is a protection appeal.

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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant was born on 26 February 1987 and is a citizen of Iraq from Erbil in the Iraqi Kurdish Region (IKR). He appeals against the decision of First-tier Tribunal Judge Ali, promulgated on 6 April 2023, dismissing the appeal against the decision of the Respondent dated 12 October 2022, refusing the protection and human rights application.

Permission to appeal

2. Permission was granted by First-tier Tribunal Judge Connal on 17 May 2023 who stated:

"2. The grounds assert that, in a case where the Devaseelan principles applied, the Judge erred in consideration of the new evidence and made inadequate findings; in particular:

a. [28] - The Tribunal failed to grasp the Appellant's case that the Appellant, and indeed the earlier Tribunal, had always referred to the clan, and not the tribe, of the persecutors who he said were a powerful group (namely the Ziarat clan, who form part of the Khoshnaw tribe), and that his position in this regard was therefore not inconsistent with the findings of the previous country expert report.

b. [29] - The Tribunal failed to consider fully or in the round the evidence provided by the Freedom and Human Rights Organisation which was a reputable organisation.

c. [30] - The Tribunal failed to properly consider the evidence received from the Appellant's father, as evidence from a lay individual without concoction or preparation.

3. In the determination, the Judge confirms that the parties agreed that the first issue was whether there should be a departure from the previous findings of the Tribunal which had dismissed the Appellant's appeal on all grounds ([27]), before setting out findings in this regard at [28] to [31]. It is arguable that the Judge failed to engage with, and/or give adequate reasons regarding, the Appellant's claim that his position, namely that Ziarat was the clan rather than the tribe of his persecutors, was not inconsistent with that of the country expert report. This claim is not referred to at [28] (the Judge refers there to the country expert having been instructed to comment on the existence of the "Ziarati Tribe", and again refers to the Ziarati Tribe at [30], although the Judge refers to the Ziarati clan in the summary of the Appellant's claim at [12] (and again at [29])).

4. The other grounds, while less meritorious, are also arguable. Permission to appeal is therefore granted on all grounds."

The First-tier Tribunal decision of 6 April 2023

3. Judge Ali made the following findings:

"28. In support of his Further Submissions the Appellant has provided a number of photos of what purports to be pictures of the village of Ziarat/Top of Safin Mountain (pages 7-8 of ASB). He also relies upon a list of villages of the Khoshnawati Region to show that Ziarat village exists (pages 11-14 of ASB). However, I find that these do not take us any further from the previous determination. In the previous determination the Appellant's legal representatives had instructed Dr Alan George to comment on the existence of the Ziarati Tribe. At paragraph 9 of the previous determination Dr George noted the following, "*I have not before heard of a Kurdish tribe named Ziarati*" and "*...The Safin mountain area is occupied by the Khoshnaw tribe, which is very large and forms a major part of the KDP's support base*". I find that the new evidence (photos and a list of villages) are not sufficient to outweigh an expert whose credentials are well established. The expert found that the Tribe did not exist and I find that the new documents do not overcome the experts report and as a result I attach little weight to those documents.

29. The Appellant also states that since he has been in the UK there has been a further incident. He says that his family home was raided by armed people and that the matter was reported by his father to the Freedom of Human Rights Organisation, who provided a letter/report (dated 25.8.2020). The author of that report is Director Bryar Rahman Mohammad. He states that a committee of more than 40 days was conducted and that the Appellant's father's statements are true. However, I am troubled by the fact that there is no reference to who he spoke to, what their

position are and how he has verified as true any of the accounts he received. The letter does not make any reference to the party that the Appellant or his father fear, not does it make any comment regarding the Ziarati being a powerful clan. The remainder of the report refers to articles that are not applicable to the Appellant's case. Therefore, for the reasons noted above I do not attach weight to this document from the Freedom of Human Rights Organisation.

30. The Appellant has also provided a letter from his father, along with a translation of that document. In assessing the letter I find that the contents are vague and lacking in detail. The Appellant's father makes no reference to the dates of these threats and incidents of harassment. He refers to threats from that family but does not refer to the name of the family or what tribe they belong to. The letter does not state when the raid on the house happened, who the people were or what actually happened. In considering the above I find that the letter is not only very vague but does not establish any links to the alleged Ziarati Tribe and so for those reasons I attach (stet) not weight to the letter.

31. I find in light of the above findings at (stet) paragraphs 28 to 30 and when considering the new evidence in the round, and when considering the case in its totality, the evidence is not cogent enough even to the lower standard of proof to depart from the findings of Judge Chohan, and so I find that the Appellant's appeal on the basis of his original reasons for claiming asylum does not succeed. I have considered the Appellant's new evidence and whether that gives rise to the Appellant's appeal succeeding. Having considered the new evidence and that being to the lower standard, I find that the appeal does not succeed."

The Appellant's grounds seeking permission to appeal

4. The grounds asserted that:

"4) There was a concern in the first determination as to the tribe/clan of the persecutors who it is said by the Appellant to be a powerful group. As part of his fresh claim the Appellant sought to clarify the issue and point it to the fact that he (and indeed the earlier Tribunal) had never referred to the persecutor's tribe, but instead had referred to the persecutor's clan only. The Appellant always referred to a clan, not a tribe. In the circumstances the Appellant provided extensive evidence of the Ziarat clan who form part of the Khoshnaw tribe. That was the position of the Appellant and would not have been inconsistent with the findings of the expert Dr George. There has been a failure to grasp such matter and the finding in paragraph 28 of the determination is thus inadequate.

5) The paragraph at 29 does not consider the fact that the Freedom and human right organisation is a reputable organisation which carries out human rights work in many spheres of human rights work. Evidence of such was provided to the Tribunal and it is notable that the credibility and integrity of the organisation is not commented upon or considered as a factor relevant to the credibility of the letter of the 25th of August 2020. The letter itself of course does not set out the basis for factual fear which the organisation endorses. Such matters are not considered fully of in the round it is respectfully contended. The finding is thus inadequate.

6) At paragraph 30 there is criticism of the letter from the Appellant's father. Such is simply from a lay person and its weaknesses are and were at court acknowledged by the Appellant. Such evidence is reflective of evidence emanating from a lay individual without concoction or preparation considered from such aspect its core content is still of considerable relevance with regard to credibility."

Rule 24 notice

5. The Rule 24 notice stated:

"3. It is submitted that whilst the Expert report submitted and relied upon by the appellant in his previous appeal states that there is no tribe called the Zarati tribe,

given the expertise of the author, that even if a tribe did not exist, mention would have been made of a clan of the same name if it had existed. The previous tribunal concluded as much in the basis for finding against the appellant (Resp Bundle page 60 at ¶10).

4. It has always been open to the appellant to have the expert provide further evidence on this issue, but he has not done so. On the basis of the printout of purported villages and pictures, it was open to the judge to find that the information was not sufficient to establish the existence of the tribe. There was no information to enable the judge to determine the authenticity of the area within the photograph and there is no information as to how the list of villages has been compiled and how their existence was verified.

5. The findings were reasonably open to the judge on the evidence presented ...”

Oral submissions

6. Mr Sadiq submitted in relation to [4] of the grounds that there was inadequate consideration of the distinction between a clan and a tribe. The Appellant had addressed this in his fresh claim. He does not disagree that there is no Ziarat tribe. The 2018 decision refers to a clan at [2] whereas the report from the expert noted in [9] of that decision refers to a tribe. When I asked both representatives if the original report from Dr George and the statement he referred to from the Appellant was available, they both said they did not have it as Mr Sadiq did not then represent the Appellant, and Mr Bates did not have access to the Respondent’s file from the 2018 proceedings. Mr Sadiq said that the whole case turns on the clan issue. In relation to [5] of the grounds, the letter from the Appellant’s father was written by a lay person and reflected the reality of the situation. In relation to [6] of the grounds, there was independent evidence of the Human Rights Organisation.
7. Mr Bates added nothing relevant.

Discussion

8. In relation to ground 1, (the clan/tribe issue), there is no challenge to the assertion that in 2018, the expert Dr George received a statement from the Appellant that identified those he said feared as being from a tribe. The grounds are therefore misleading where they state that the “Appellant always referred to a clan, not a tribe.” Dr George cannot be criticised in basing his assessment on the Appellant’s statement in the 2018 proceedings referring to a tribe. Nor can the Judge in 2018 be criticised for relying upon it. While the Appellant says in his fresh claim that it was a clan, and indeed a clan was referred to in the 2018 decision, there is no evidence that this has been put to Dr George for his opinion then or in the subsequent 5 years. It is for the Appellant to establish his claim that he feared a clan, and the Judge was entitled to find that the evidence of photos and a list of villages were not sufficient to outweigh Dr George’s report. Even if a village had that name, it had not been demonstrated even to the lower standard that there is also a clan by that name let alone it had any reach or influence.

9. In relation to ground 2 (the Human rights organisation issue), and 3 (the father's letter issue), the Judge gave cogent and adequate reasons for placing no weight on the documents they produced which I will not simply repeat.

Notice of Decision

10. The Judge did not make a material error of law.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
30 August 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.

