



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004428
First-tier Tribunal No:
PA/50582/2022
IA/01637/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 April 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MH
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No Appearance

For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 3 April 2024

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside of the decision of First-tier Tribunal Judge Mathews which had dismissed the appellant's appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant is a national of Iraq of Kurdish ethnicity, born on 1 February 1995, from the IKR. He claims to have arrived in the UK on 8 May 2018. He claimed asylum on 8 May 2018. His claim was refused on 1 November 2018 and his appeal against that decision was dismissed on 20 November 2020. He became appeal rights exhausted on 7 December 2020. The appellant made further submissions on 2 August 2021 which were treated as a fresh claim, but were refused in a decision of 28 January 2022, giving rise to another appeal which the appellant exercised. That appeal was in turn dismissed by the First-tier Tribunal on 13 July 2022 and was the subject of the appeal before the Upper Tribunal which, in a decision issued on 17 October 2023, set aside the First-tier Tribunal's decision in part.

3. The appellant's asylum claim was based upon his relationship with a girl, A, who sent him naked pictures of herself and whose family members were connected to people in the PDK and the PUK and threatened him when they found out about the relationship and attacked him. In a decision of 20 November 2020 dismissing the appellant's appeal against the respondent's decision to refuse his claim, First-tier Tribunal Judge Lever found the appellant's entire account to have been manufactured and considered that he was at no risk on return to Iraq and that he would be able to obtain the necessary documentation to allow him to return to the IKR.

4. In his further submissions made on 2 August 2021, the appellant claimed that his former girlfriend had been a victim of an honour killing in Iraq, as had other family members. He claimed further that he was at risk on return to Iraq owing to his *sur place* activities in the UK which consisted of posting anti-regime material online on Facebook and having participated in demonstrations outside the Iraqi Embassy on 4 May 2021 and 20 July 2021. He also claimed to have no access to any Iraqi ID documents and to have lost contact with his family in Iraq so that he was unable to obtain a CSID.

5. In his decision of 13 July 2022 dismissing the appellant's appeal against the respondent's decision of 28 January 2022 refusing that further claim, First-tier Tribunal Judge Mathews reached the same conclusion as Judge Lever about the appellant's account of his relationship and did not accept that there had been any honour based violence as claimed. Judge Mathews did not accept the appellant's claim to have lost contact with his family in Iraq and did not accept that he was unable to access his ID documentation. As for the appellant's claim in regard to his *sur place* activities in the UK, Judge Mathews found it significant that the appellant had never previously expressed any political views or concerns and he did not accept that the appellant held any political views. He considered that the appellant had attempted to create an online political profile in order to support his protection claim and that, in any event, his activities would not have come to the adverse attention of the authorities in Iraq and would not put him at risk on return to Iraq. Judge Mathews accordingly dismissed the appeal on all grounds.

6. The appellant appealed against that decision and, following the grant of permission, his appeal came before Upper Tribunal Judge Kamara on 14 September 2023. Judge Kamara summarised the grounds of appeal as follows:

- i) In respect of the issue of enforced removal to Baghdad, there was a failure to make a finding as to the whereabouts of the appellant's original identity documents;
- ii) the application of the incorrect burden of proof regarding whether the relevant civil affairs office has transferred to the INID system;
- iii) there was a factual error in the finding that the appellant had not previously expressed political views in his earlier protection claim;

iv) a failure to consider background evidence relating to online activity

7. Judge Kamara found that the first and second grounds were not made out but that the third and fourth grounds had been made out. She found that Judge Mathews had erred in his consideration of the appellant's *sur place* activities and she set aside his decision on that limited basis. She directed that all other findings were preserved and that the decision was to be re-made in so far as it concerned the appellant's *sur place* activities and risk on return to Iraq.

8. The case was listed for a resumed hearing on 19 January 2024 for the decision to be re-made in accordance with Upper Tribunal Judge Kamara's directions. However an adjournment request was made by the appellant's solicitors on the basis of difficulties filing supporting documentary evidence with the Tribunal and the hearing was adjourned by Upper Tribunal Judge Norton-Taylor on 17 January 2024, with directions for the filing of the evidence and relevant deadlines for doing so

9. The matter was then re-listed for hearing before myself for today, 3 April 2024. No further documents had been filed with the Tribunal and there had been no compliance with Upper Tribunal Judge Norton-Taylor's directions. Following enquiries made by the Tribunal to the appellant's solicitors in that regard prior to the hearing, an urgent adjournment request was made on 2 April 2024 by the appellant's solicitors on the basis of the relevant caseworker being sick. The adjournment request was not granted and directions were made for the solicitors to attend the hearing to provide a further explanation, given the particular background to the case and to the adjournment request.

10. Later that day the Upper Tribunal received an email from the appellant's solicitors stating as follows: "*Following an appointment with the appellant today, he instructs us that he wishes to withdraw his application for permission to appeal as he intends to instead proceed with a fresh claim for protection.*"

11. Clarification was sought by the Tribunal in regard to that request, given that the appellant's application for permission to appeal had already been granted and the First-tier Tribunal's decision set aside.

12. In an email in response, the appellant's solicitors stated "*we confirm that the appellant wishes to withdraw his case in the Upper Tribunal and withdraw his permission to appeal application.*"

13. At the hearing, Ms Rushforth objected to the entire case being withdrawn by the appellant, given that there were preserved findings made by First-tier Tribunal Mathews and that the only outstanding issue was the appellant's claim on the basis of his *sur place* activities. She proceeded to make submissions in that regard and asked that the decision be re-made by dismissing the appeal.

Analysis

14. The appellant has requested that his case before the Upper Tribunal be withdrawn and wants to "*withdraw his permission to appeal application*" as he intends to make a fresh claim. However he is not able to withdraw his application for permission to appeal as that application has already been considered and determined by the Upper Tribunal in its decision of 17 October 2023, whereby Judge Mathews' decision was upheld in part and set aside in another.

15. Rule 17 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides that a party may give notice of the withdrawal of its case or part of it, subject to the consent of the Upper Tribunal. Consent cannot be given in this case, where the Upper Tribunal has already made a decision on the grounds of appeal. The most that can be said, therefore, of the request made by the appellant's solicitors, is that the appellant no longer pursues his appeal against the respondent's decision in so far as it relates to the matters still to be determined, namely the risk arising from *sur place* activities.

16. In any event, I agree with Ms Rushforth that the appellant cannot succeed in making out his claim to be at risk on return to Iraq on the basis of those activities. Whilst it may be that the appellant referred, in his asylum interview, to having attended a demonstration in Iraq, it was relevant to note that there had never been any acceptance of his account of events prior to leaving Iraq and, in any event, he had not given any indication otherwise of being politically active or holding strong political views in Iraq so as to indicate that his *sur place* activities in the UK were an expression of genuinely held views rather than an attempt to bolster an otherwise weak claim. As Ms Rushforth submitted, the appellant had not specifically relied upon any politically held views, or an expression of such views, since being in the UK, when he appeared before Judge Lever. There was, in any event, no evidence to suggest that the appellant's mere presence at one or two demonstrations in the UK would have attracted the attention of the Iraqi authorities or the authorities in the KRI or would have led to them having any interest in him on return to Iraq. That is indeed consistent with the information provided in the CPIN: "opposition to the government in the Kurdish Region of Iraq (KRI) July 2023" at paragraph 3.1.2, as relied upon by Ms Rushforth. Likewise, there is no evidence to suggest that the appellant's Facebook activity would have come to the attention of the authorities or would have led to any adverse interest in him giving rise to a risk on return. As Ms Rushforth submitted, the case of XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23, albeit concerned with Iran rather than Iraq, was nevertheless relevant in its guidance that any risk could be neutralised by the account being closed or deleted where it had otherwise not come to the attention of the authorities.

17. For all these reasons the appellant has not shown that he would be at risk on return to Iraq and his appeal accordingly fails on that basis.

DECISION

18. The making of the decision of the First-tier Tribunal having been set aside, the decision is re-made by the appellant's appeal being dismissed on all grounds.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 April 2024