Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11234/2019**

THE IMMIGRATION ACTS

Heard at Manchester (via Skype)	**Decision & Reasons Promulgated**
On 17 February 2021	**On 03 March 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

RGA
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Bedford instructed by Freedom Solicitors.
For the Respondent: Mr Melvin Senior Home Office Presenting Officer.

DECISION AND REASONS

1. On 12 February 2020 First-tier Tribunal Judge Gribble ('the Judge') dismissed the appellant's appeal on protection and human rights grounds.

2. Permission to appeal was granted by another judge of the First-tier Tribunal on 19 August 2020 the operative part of the grant being in the following terms:

> 2. The grounds assert that the judge had erred in finding that the appeal had not been advanced on the grounds of ethnicity or political opinion as these issues had been raised in the skeleton argument and it was clear that the appellant had been politically active in the UK; the judge had made errors of fact as letters from the Red Cross had been produced at interview; that the evidence produced as to the shooting incident had been produced from the Internet and

the website address was clearly visible which could have been independently checked; that the judge had erred in finding that it was reasonable for the appellant to have produced photographs of the farm in Iraq and that she had not produced names at interview as he had not been asked; that having accepted that the appellant was a Sunni Kurd from a formally contested area who had posted anti-regime material on Facebook she had failed to properly consider and follow the CG case of **SMO, KSP, IM (Article 15 (c); identity documents) Iraq CG [2019] UKUT 00400 (IAC).**

3. The judge had found at [9] that the claimant was not based on ethnicity or political opinion but referred to PSG grounds only, which were not identified. At [43] she states that the first question is whether he is a member of a PSG but nowhere in the decision does she decide. It was clear from her findings at [64] and [66] that the appellant had been politically vocal in the UK but no consideration was given to this aspect of the appeal and seemingly had been rejected in her finding at [66] that he will be returning to Diyala as a young Sunni Kurd "without".

4. The judge at [57] found that there was evidence which could have been produced to substantiate the claim and to settle the issues which were troubling her but there is merit in the assertion that sufficient evidence had been before her, noting her finding at [58] that if the appellant had been in a secret relationship and his partner had been killed by her family that he would be at risk.

5. The assessment of the appellant's credibility is important in assessing the risk to the appellant on return. The incorrect focus of the appeal has arguably tainted the judge's findings and may amount to an error of law.

3. In the respondents Rule 24 response dated 17 February 2021 it is written:

Judge Scott Baker finds it arguable that the claim which was advanced on Ethnicity, Political opinion and Particular Social Group [PSG] none of which appears to be considered in the Decision of Judge Gribble.

Ground 1 argues mistakes of fact …
Ground 2 argues General credibility
Ground 3 argues risk on return … Advanced risk category … as posted anti govt material on facebook

Ground 1 … Submissions

The Judge, p8 (a) when considering the HO RFRL, notes that the Refusal notice considers religion and political opinion yet that neither were pursued before her.

The Respondent does not have a copy of the ROP and the Presenting Officers hearing minute make no mention of ethnicity and political opinion being pursued by Ms Bhachu at the hearing. It maybe, in the absence of a statement from Ms Bhachu who did not settle the Grounds of appeal, that the Tribunal will be able to shed light on that Ground of Appeal. It appears that the concentration was on the core claim which is the blood feud {PSG} which the judge deals with.

It is further submitted that the failure to consider the Red Cross evidence which does not appear to have been before the FtT cannot be material as it was incumbent on his representatives to provide the Tribunal with any evidence they thought would assist his claim. A judge cannot be called into error if the evidence was not produced. The Representative had a copy of the Home Office Bundle which

was served on 2 December 2019 with the hearing on 28 January 2020 some 57 days later and a such would have been aware what was included and what was not.

It is further submitted that Judge has assessed credibility on the whole of the claim not just the failure to produce Red Cross letters which in any case take the matter no further as it is unknown what evidence was given to the Red Cross on which they will make enquires.

As for the news article it is submitted that the judge was entitled to reach a conclusion on that evidence before her. This part of Ground 1 is an argument against the interpretation/ findings on that piece of evidence which is a matter for the judge unless the finding is irrational which it is not.

Ground 2 ... Submissions
The credibility findings were open to the judge to reach on the evidence presented
The judge has assessed the core claim from P43 of the decision directing herself to the correct standard of proof and proceeding to assess the evidence, whether this appellant is a member of a PSG, and noting the importance of credibility.

The judge considers the regular contact that he has with his uncle (p48) and rejects the appellant's oral evidence that none of his family members had CSID's and finding that his uncle could provide his CSID and INC to aid the re-documentation process.

The judge also has concerns that the document provide only was sent a few days prior to the hearing and relates to an event from 2017 but in any event considers the document in line with Tanveer Ahmed. (p54)

Further consideration and findings on the core claim continue at 55, 56 and 57 and drawing all of the threads together (p64) the judge rejects the credibility of the claim giving her reasons and finding that he is not a member of a PSG and as such not a Refugee.

The Judge proceeds to consider the Qualification Directive (QD) [Article 15 C] from p65-72 of the decision.

Ground 3 Submissions on risk on return / advanced risk categories

With respect to the author of the grounds of appeal posting anti govt rhetoric on facebook is hardly indicative of opposition to the Government of Iraq.

It is submitted that firstly, these do not appear to have been pursued at the hearing before the FTT and secondly, if you carefully read the decision in SMO, not just the headnote (5) which is qualified, from paragraph 297 the Tribunal qualify the sliding scale analysis required by Article 15(c)

From paragraph 268-272 of SM the U/T reject 15 (C) in Diyala province considering Dr Fateh's evidence of "ethnically heterogenous nature of Diyala".
This appellant Has produced no evidence of who is in control of his local area or why as a Sunni Kurd he would be persecuted. His evidence is that he was from a farming family who had nothing to do with politics, in his 29 years, prior to his asylum claim.

The Tribunal note the opposition to the GoI/ KRG (p293 (v & vi)) where the UNHCR May 2019 guidance with, at 299, Journalists being a risk category and, at 300, minority ethnic groups are considered with a "contextual evaluation rather than a presumption required."
The Respondent fails to see, on the evidence before the FtT, how Ground 3 has any merit and again without a statement from Counsel with a record of proceedings

(RoP) as to what was actually argued before the FtT as to how this appellant could bring himself within any of the enhanced risk categories.

The Respondent submits that the GoA have no merit and are no more than an attempt to re-argue this appeal.

As a side issue the Respondent notes that no issue is taken with the findings on the CSID

Error of law

4. Ground 1 asserts the Judge erred in law when stating no claim was pursued on the grounds of ethnicity or political opinion. At [9] of the decision under challenge the Judge writes:

> 9. The essential test is whether the appellant has a well founded fear of persecution if returned to Iraq by reason of his membership of a particular social group. There was no asylum claim pursued on the ground of ethnicity or political opinion. This was confirmed with Ms Bhachu before evidence was heard.

5. There has been no statement from Ms Bhachu, the advocate who represented the appellant before the First-tier Tribunal, to suggest otherwise or to support the claim the Judge was mistaken. The appellant in Ground 1 asserts the issue of ethnicity and political opinion were raised in the skeleton argument prepared by counsel for the appellant in relation to the issue of risk.

6. That Skeleton is dated the 28 February 2020 and sets out the Convention reason the appellant was seeking to rely upon between [4 – 8] which clearly focuses upon the question of whether the appellant is a member of a particular social group. The opening line of [4] reads "blood feuds are capable of falling within PSG".

7. It is not made out the Judge misunderstood or failed to appreciate the Refugee Convention ground being relied upon by the appellant. Even if others may have argued ethnicity and political opinion the Judge was entitled, especially having checked the position with the appellant's representative, to take the view that such additional matters were not being pursued and had been abandoned (if they were ever live).

8. The Judge did, however, consider in the alternative the appellant's claim that given his own circumstances there will be a breach of Article 15(c) of the Qualification Directive. Such only being applicable if the appellant was not found to be a refugee.

9. In relation to the assertion the Judge erred by failing to accept the appellant had approached the Red Cross as there was no proof of the same, which the Judge refers to at [47] where it is written:

> 47. He also, more significantly, said he had been in touch with the Red Cross about his mother and sister's whereabouts. There was no supporting evidence for such a claim. I accept that it is well known that the Red Cross are massively overloaded with requests and have been for some months. I am aware however that when an initial query is made it is responded to quickly and officially by post or email. There is a paper trail created even on an initial

> enquiry. The appellant could not produce any evidence to confirm he had made such an enquiry never mind had it taken to the next stage. I remind myself that the appellant has had highly experienced solicitors involved in his case and I am confident he will have been given appropriate advice on efforts he needed to make to substantiate his case. That there is no evidence to suggest an approach to the Red Cross has ever been made is striking.

10. The appellant asserts the Judge erred as evidence of the appellant's approach to the Red Cross was provided in forms of letters at his asylum interview. Even if that is the case that is not the specific finding of the Judge which is that there was no evidence before the First-tier Tribunal to support the claim. This is factually correct. It is not disputed at this stage before the Upper Tribunal that an application was made for the Red Cross letter to be admitted as evidence, but that does not establish legal error on the basis of the evidence before the Judge. A copy letter from the Red Cross, provided by Freedom Solicitors with a notice dated 4 February 2021, is dated 25 January 2019 acknowledging a Tracing Enquiry made by the appellant, stating such enquiries had started but that it may take some time before they have anything to report. The letter from the Red Cross also contains a notice to the recipient which reads:

> *"In the view of the British Red Cross, the fact that a Tracing Request is or is not opened should not be considered as evidence that the sought person is/is not missing, or indeed that the person does/does not exist. Neither should the opening of a Tracing Request be considered as credible evidence of efforts to contact family members, nor should the decision not to open a Tracing Request be seen as absence of such credible evidence. In the same way, a request to transmit a Red Cross Message, or a failure to do so request, should not be considered as evidence of the relationship between the sender and the addressee, or of the status of the sender or addressee."*

11. Other than as evidence that a tracing request was made this letter takes the appellant's case no further. That evidence is not, however, sufficient to undermine the Judges adverse credibility findings as a whole.

12. The appellant raises a further issue in relation to [52 – 53] of the decision in the of the grounds asserting the Judge made a mistake and that there was no contradiction in the appellant's evidence, which the Judge found did exist, and a general attack upon the Judges adverse credibility findings; in Ground 2.

13. It is clear the Judge considered the risk on return and all the written and oral evidence with the required degree of anxious scrutiny. It was having done so the Judge writes at [64]:

> 64. So, drawing the threads together the requirements of paragraph 339L are not met. He has not shown he is credible and I do not find his account of his relationship reasonably likely to be true. Accordingly, I find he is a Sunni Kurd from a formerly contested area of Iraq. He has an INC at home. He has a CSID at home. He has maternal relatives in Kirkuk who are fit and well. He has posted some anti regime content on Facebook. These are the primary facts. He is not a member of a particular social group. He cannot be a refugee.

14. Just as a judge considering whether a court below has erred in law cannot find the same by imposing their own personal view of how the evidence should have been interpreted, as the Court of Appeal have recently reminded us, the same applies to those drafting grounds of appeal. Whilst the author of the grounds may believe the Judge should have made different findings having assessed the evidence it is not made out the Judge's conclusions in relation to the asylum claim are infected by material legal error such as they are outside the range of those reasonably open to the Judge on the evidence. The Judge's findings are adequately reasoned and the weight to be given to the evidence was a matter for the Judge. It is important to read the decision as a whole. The finding the appellant had not given a truthful account has not been shown to be an unsafe or unreasonable conclusion on the evidence.

15. From [65] the Judge considers the Article 15(c) argument noting the appellant has posted anti government posts on Facebook at [66], but also noting there was no evidence his Facebook entries had come to the attention of the authorities in Iraq or that the appellant had come to their adverse attention as a result of the same. The Judge repeats in this paragraph that as a young Sunni Kurd from Diyala, without more, he would not be at risk of indiscriminate violence on the evidence.

16. A reading of the decision shows the Judge clearly considered the relevant country guidance caselaw. Ground 3 refers to what is described as risk on return relating to enhanced risk categories, setting out an argument for how the appellant would be at risk as a result of coming in an enhanced risk category, but this was an issue clearly considered by the Judge. The Judge was not required to set out chapter and verse in relation to each and every aspect of the claim and a reader of the determination can quite clearly understand why the Judge came to the conclusions set out in the decision that the appellant had not established, notwithstanding his Kurdish ethnicity and religious beliefs, that he fell within a class of those entitled to a grant of international protection or leaving of any format. The Judge's conclusion that on the evidence there was no Article 3 risk made out is a finding within the range of those available to the Judge on the evidence.

17. Whilst the appellant disagrees with the outcome and clearly seeks a more favourable resolution to enable him to stay in the United Kingdom, the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

18. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

19. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 22 February 2021