IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-003166
UI-2022-003165
UI-2022-003167
First-tier Tribunal Nos:
PA/54235/2021 IA/12515/2021
PA/54234/2021 IA/12509/2021
PA/51237/2021 IA/12517/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

S I S (1)
M S I (2)
A S I (3)
(ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Holmes (of Counsel)
For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 24 May 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. This is an appeal against the determination of First-tier Tribunal Judge Alis, promulgated on 10th June 2022, following a hearing at Manchester on 26th May 2022. In the determination, the judge dismissed the appeals of the Appellants, whereupon the Appellants subsequently applied for, and were granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The Appellants are Iraqi nationals. The second and third Appellants are the children of the first-named Appellant. They were born on 24th May 1970, on 5th March 1999, and on 12th August 2001 respectively. They arrived by boat in this country as a family with the first-named Appellant's wife, on 10th September 2019, and claimed asylum on the same day. They appeal against the refusal of their application by the Respondent on 12th March 2021.

The Appellants' Claim

3. The first-named herewith, hereinafter referred to as 'the Appellant', was a landowner and a farmer and his sons worked on the land and tended cattle. They lived in Kirkuk as a family until 2017 when ISIS moved into the area. The Appellant and his family left Iraq fearing for their safety. However, they then returned back to Iraq when ISIS had moved away believing that they could resettle, whereupon they continued to live in Iraq experiencing no problems until July 2019. This is when problems arose with the Al-Shahabi group, because of their Kurdish ethnicity. About 30 Al-Shahabi members attended the Appellants' farm and dispossessed him of his property and beat up the second Appellant. Subsequently they went to stay at a friend's house in Mosul, from where they left Iraq on 10th August 2019, through the services of an agent, who helped them to avoid various checkpoints, and they left with their CSID cards with them. The Appellant claims that before he left an arrest warrant was issued against them all. His father had been a supporter of the Ba'ath Party and he was considered a traitor. The Appellant now claims that he has a fear of the Al-Shahabi group, is not in contact with any of his family members, and that internal relocation is impossible for them. Given that his father was a supporter of the Ba'ath Party, the Appellant himself is also a supporter of the Ba'ath Party and would be considered as a traitor, just as his father was. The Appellant suffers from ill-health and is currently taking medication.

The Judge's Findings

4. In a detailed and extensive determination, the judge observed that although there was a consistent account about the issues both in relation to ISIS and Al-Shahabi, and that it was reasonably likely that they did flee because of ISIS, the fact was that "the Appellants' return to their home address and effectively picked up their lives again", and "they recovered their properties and were handed back livestock and machinery that they had given to neighbours when they fled"(at paragraph 52). There was also objective evidence that the majority of people who were forced out of Kirkuk governate when ISIS attacked had returned back to the area as well (at paragraph 53). The country evidence demonstrated that although the general situation in Kirkuk governorate was both fragile and

complex, nevertheless, ISIS has no control over the governorate (paragraph 55). The judge did not accept the Appellant's claim that he would face problems because he worked as a driver for the Ba'ath Party (paragraph 60). Indeed, the Appellants had never experienced any issues because of the Appellant's former employment or because of his father's position in the Ba'ath Party (paragraph 61). The Appellants had also left Iraq with their CISD cards (paragraph 62). The judge concluded that the Iraqi authorities would allow an Iraqi national from the United Kingdom to re-enter Iraq as long as he is in possession of either a current or an expired Iraqi passport or a Laissez Passer (paragraph 69). The appeal was dismissed.

The Grant of Permission

5. The Appellant submitted two distinct grounds of appeal and on 14th July 2022 the First-tier Tribunal rejected the application for permission to appeal. On 7th October 2022, however, permission to appeal was granted by the Upper Tribunal, on the basis that it was arguable that the judge failed to reach clear findings on material parts of the evidence.

Submissions

6. At the hearing before me on 24th May 2023, Mr Holmes, appearing on behalf of the Appellant, submitted that essentially, the core elements of the protection claim, were what was in issue. This was to do with the fact that the Appellants originated from Kirkuk, were farmers, and encountered difficulties twice, namely, in 2017 and again in 2018, when they returned back to their own place and took up their former lives. When they returned they encountered difficulties with the CMF, who had inserted themselves into the power vacuum, and here the judge resolved the question in favour of the Appellants. The Appellants had encountered difficulties on three occasions and on one occasion they were beaten up. This, submitted Mr Holmes, was the core of the claim of the Appellants.

7. Mr Holmes, with his customary care and skill, then went on to explain how the decision of the judge below was in two halves. The first half was detailed. The second half, however, was not. The judge had carefully set out the factual background and narrative (at paragraphs 13 to 32). However, when it came to the second part, where the judge made her findings of fact, the determination was far less detailed and was not comprehensive. The reason why this was important was that the judge had herself pointed out that "credibility forms a large part of these claims and looking at their claims holistically I accept they gave a consistent account about their issues with both ISIS and Al-Shahabi" (paragraph 52). The judge accepted that the family fled from the CMF. The judge also accepted (at paragraph 54) that the PMF were active in the area, and the majority of such militias were Shia. Thereafter, the judge was clear that "the Appellants each provided a similar account which may fit in with the country evidence" (at paragraph 54), and accepted that "there is evidence that Sunni Arabs young men were targeted and there were other abuses, killings and discrimination" (paragraph 56). At the end of it, the judge, after applying the lower standard or proof, stated that, "I am prepared to accept that the Appellants may have had some issues with the authorities …" (paragraph 57). However, what the judge then does is to suggest (at paragraph 59), that she did not find it credible that the PMFs would allow the Appellants to remain as it was claimed, and she did not accept, therefore, that the Appellants "were forced to flee from

Al-Shahabi." In so doing, Mr Holmes submitted, the judge had first failed to resolve the actual factual dispute; and second, failed to give proper reasons for why she concluded, as she did.

8. Mr Holmes went on to state that there were three instances where the judge made findings, averse to the Appellant, which could not be sustained. First, the judge stated that "applying the lower standard of proof I am prepared to accept that the Appellants may have had some issues with the authorities but whether their problems were as described is a different matter" (at paragraph 57). On the evidence, Mr Holmes submitted that the judge could only have concluded that the problems were precisely on account of what they had described. Second, the judge concluded that, "I did not have any evidence, other than the Appellants' own evidence that their problems were as bad as they claimed, especially as the country evidence suggested that when ISIS were forced out the PMF filled the void but they did not take the Appellants' property despite them not being there." In these circumstances, the judge held, "I ask myself whether it is credible that the militias would wait until the Appellants returned to re-establish themselves on the same land they wanted to seize" (at paragraph 58). What the judge had here done, submitted Mr Holmes, was to have raised the question, but then to have left it hanging in the air, without answering it.

9. Third, the judge had stated that,

> "Whilst corroboration is not required in protection claims, they can be corroborated by country evidence but in this case I found their account of problems lacked credibility. Whilst it was argued the PMFs were not as vicious as ISIS nevertheless I did not find it credible they would allow the Appellants to remain as it is claimed. Taking all the evidence on this aspect of their claim together I do not accept they were forced to flee from Al-Shahabi."

However, submitted Mr Holmes, it was wholly speculative to say that the PM could have taken their land but still have allowed the Appellants to remain. One cannot know what was in their mind. Thus, taken in their entirety, these grounds demonstrated that the Appellants were not in a position to know why their claims had been rejected.

10. For his part, Mr McVeety submitted that what the judge is doing (at paragraph 58) is asking herself a rhetorical question when stating, "I ask myself whether it is credible that the militias would wait until the Appellants returned to re-establish themselves on the same land they wanted to seize". The question raised by the judge did not require an answer. It answered itself. Second, when the judge stated (at paragraph 59) that she did not find the account of problems to have credibility, she had explained that she could not understand on the lower standard how it was that with the PMFs having taken over, that "they would allow the Appellants to remain". This suggested that if the Appellants did remain as they have claimed, then she did "not accept they were forced to flee from Al-Shahabi" (paragraph 59). That was a finding open to the judge.

No Error of Law

11. I have considered the matter on the basis of the findings of the original judge, the evidence before her, and the submissions that I have heard today. I am satisfied that the making of the decision does not disclose an error of law such

that it falls to be set aside. The reason is that the judge has provided perfectly adequate reasoning for coming to the findings that she did.

12. First, when the judge states (at paragraph 57) that in applying the lower standard of proof, while she is prepared to accept that the Appellants may have had issues with the authorities, "but whether their problems were as described is a different matter", the judge is effectively stating, for the reasons that she has given, that the problems were not as identified by the Appellants.

13. Second, the judge gives reasons (at paragraph 58) that given the power vacuum that had been left after the exit of ISIS, it was not credible that "the militias would wait until the Appellants returned to re-establish themselves on the same land that they wanted to seize", and it is plain that the judge is not leaving this question hanging up in the air, but has effectively answered it.

14. Third, the judge simply does not accept (at paragraph 59) that the PMFs would have allowed the Appellants to remain as was claimed, and that if they did, then that plainly, "I do not accept they were forced to flee from Al-Shahabi" (paragraph 59). These findings were not speculative. They were based upon the evidence as the judge interpreted it. Accordingly, there is no error in the determination.

Notice of Decision

15. There is no material error of law in the judge's decision. The determination shall stand.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21st July 2023