



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-005775

First-tier Tribunal No: PA/00258/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 15 September 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**M R M**

**(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Sepulveda (LR)

For the Respondent: Mr P Lawson (Senior Home Office Presenting Officer)

**Heard at Birmingham Civil Justice Centre on 27 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. This is an appeal against the determination of First-tier Tribunal Judge D. S. Borsada, promulgated on 31<sup>st</sup> October 2022, following a hearing on 20<sup>th</sup> October 2022. In the determination, the judge dismissed the appeal of the Appellant,

whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

### **The Appellant**

2. The Appellant is a male, a citizen of Iraq who was born on 23<sup>rd</sup> April 1995. He appeals against the decision of the Respondent dated 21<sup>st</sup> January 2021 refusing his application for a protection claim under the Refugee Convention.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that he is of Kurdish ethnicity from Kirkuk, outside the Kurdish Autonomous Region in the country. He claims to have experienced problems from the extremist Islamic group known as ISIS, who wanted his father to work for them and helped them in their terrorist activities including bombing. ISIS intimidated him, abducted him, and held him for ten days. The Appellant's father pretended to cooperate. Eventually he went to the police and disclosed the ISIS secret operation cell in Kirkuk. Some of the extremists were then arrested. ISIS discovered the Appellant's father had done this and threatened the family. The Appellant left the country in 2019, after the decision was taken by the family to help him escape from threats, once the Appellant's uncle had paid an agent. The Appellant now maintains that he has lost contact with his family and is fearful of returning to Kirkuk because ISIS still operates in the area. He has no means of obtaining his Iraqi national ID. In addition to fear of ISIS the Appellant also fears other Shia militias operating in Kirkuk. In the UK, the Appellant has become active in his opposition to the government of Kurdistan, and has opened a Facebook account which is openly critical of the regime.

### **The Judge's Findings**

4. The judge began by observing that, "I note the appellant's propensity to not tell the truth and that he was convicted of deception in respect of an attempt to obtain leave in the UK" (paragraph 10). He then went on to add that, "It is difficult not to draw the conclusion that the appellant is an unreliable witness from this criminal behaviour and particularly that he is prepared to lie about matters relating directly to his leave to remain application ..." (paragraph 11). This being so, the judge concluded that, "I place no reliance on the appellant's evidence beyond the fact that the appellant is of Kurdish ethnicity and also from Iraq", explaining that, "I do not accept the veracity of the account provided of his father's problems with ISIS and/or the appellant's fear on return from ISIS or PMF" (paragraph 12). The judge went on to say that, "Turning to the anti-government activity in the UK: the evidence he has provided of this is primarily his Facebook account", but that this was "part of an attempt to bolster a weak asylum claim and that the appellant cannot be regarded as sincere in his political activism" (paragraph 13). The judge referred to "the general points made about this in the case of **PJAK Iraq** about Facebook but I am not satisfied that there is sufficient reason or country information to clearly indicate that this Facebook activity would come to the attention of the authorities ..." (paragraph 14). On this basis, the judge did not find the appellant to be credible and dismissed his claim (at paragraph 15).

### **The Grounds of Application**

5. The grounds of application state that the judge had placed undue reliance on the Appellant's previous criminal conviction in assessing his credibility with respect to his asylum claim. The judge also made unsupported assertions that the Appellant was likely to lie about matters again simply because he had lied previously. He also placed no weight on independent documents put before him and failed to give adequate reasons. Permission to appeal was granted by the First-tier Tribunal on 24<sup>th</sup> November 2022 on the basis that the judge arguably made an error in placing undue weight on the previous criminal conviction of the Appellant in assessing his overall credibility now; failed to give adequate reasons for rejecting the core details of the Appellant's claim to be at risk from ISIS and/or the PMF; and failed to properly identify the relevant country guidance case law with respect to the Appellant's *sur place* activities when he referred to **PJAK Iraq** rather than to the correct citation of **XX (PJAK)**. The full citation of this, it may be noted, is **XX (PJAK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23** (IAC)

### **Submissions**

6. At the hearing before me on 27<sup>th</sup> July 2023, Ms Sepulveda began by relying upon her Grounds of Appeal. She repeated that the judge had placed excessive weight on a previous criminal conviction. It was wrong to punish the Appellant twice and the judge was duty bound to consider the evidence objectively with respect to the Appellant's protection claim. The fact that he had attached overwhelming weight to the previous criminal conviction meant that he had failed to look at all the evidence in the round. He had begun (at paragraph 11) with the assertion that "it is difficult not to draw the conclusion that the appellant is an unreliable witness from this criminal behaviour ...". This suggested that the judge had already made up his mind. He had ended that paragraph with the observation that, "The simple statement that the appellant has made that he has learned his lesson and is now telling the truth is difficult to accept given the very serious nature of the criminal conviction and I am not persuaded that I have sufficient reason to find him truthful" (paragraph 11). Indeed, when it comes to making his findings, the judge's entire approach is based upon the previous conviction when making the assessment. The reality was that the Appellant's particular case had not been assessed by the judge. The reference to "a bogus attempt to bolster a weak asylum claim" through the provision of Facebook evidence (at paragraph 14) overlooks the fact that the Appellant would have social networks which would make him well-known and thereby place him at risk.
7. For his part, Mr Lawson submitted that one had to begin by asking the question as to what the Appellant was exactly convicted of. He was convicted of seeking leave to enter or remain in the UK by exercising deception and for this he received a twelve month sentence. When the judge asserts that he notes "the appellant's propensity to not tell the truth" (at paragraph 10), the judge also refers to "the history of his two illegal entries into the UK", and how "The appellant was not a child when these things occurred and there is no evidence that he was particularly vulnerable". The judge did not accept that the appellant would have been so cowered by the agent that he would have acted in a deceitful way "particularly given that he later claimed he had a valid asylum case", and "did, for quite some time, continue to lie about the fact that he was a minor and only changed his story when the authorities indicated to him that an age assessment was to be carried out" (paragraph 10).

8. Mr Lawson submitted that it was plain that the judge was carrying out a weighing-exercise of all the evidence. The judge had also then gone on (at paragraph 11) to refer to “the inconsistencies in the evidence given at the previous interviews and also at the hearing which all significantly contribute to my concern about a lack of truthfulness” (paragraph 11). He then added that, “That concern would have existed anyway because of the criminal conviction” (paragraph 11). The fact that the judge cites the case of **XX (PJAK)** wrongly is not relevant given that the judge’s conclusion is that the Facebook evidence will not come to the attention of the authorities because the Appellant has not been sincere in his suggested activism, and that this would be known to the authorities upon return to his country.
9. In reply, Ms Supulveda submitted that one had to remember that the judge at the outset (at paragraph 10) begins by drawing attention to the previous conviction and making it clear that “the appellant’s propensity to not tell the truth” was something that would weigh heavily with the judge. It is in that context that the judge then follows on to refer to the lack of truthfulness on the part of the Appellant (at paragraph 11).

**No error of law.**

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law such that it falls to be set aside. Whereas the reference to “the appellant’s propensity to not tell the truth” (at paragraph 10) by the judge may on first impression be construed as the judge having closed his mind to the facts of the appeal before him, closer analysis shows that this is not the case. Thus, in paragraph 10 itself, the judge states that the Appellant only accepted that he was a minor when it was suggested to him that an age assessment was to be carried out. What the judge is here implying is the Appellant’s determination to mislead. This is why the judge goes on to say that “it is difficult not to draw the conclusion that the appellant is an unreliable witness” (at paragraph 11). However, this is not without the judge referring to “the inconsistencies in the evidence given at the previous interviews” (paragraph 11).
11. So the judge does consider the inconsistent evidence before him even though he goes on to add that “that concern would have existed anyway because of the criminal conviction” (paragraph 11). As a result, the judge’s conclusion here is that, “I am not persuaded that I have sufficient reason to find him truthful” (paragraph 11). On the facts, as found by the judge before him, he concludes that, “I am not satisfied that, as an ordinary Kurdish man returning to Iraq, there is a risk to his personal safety simply by virtue of his living in those places discounting any fear he has of ISIS or PMF” (paragraph 12). As for the Appellant’s alleged anti-government activity in the UK, this is based upon his Facebook account, and here the judge makes the finding that “the Facebook account is very recent and there is no cogent evidence of the older account the appellant claims to have previously had” (paragraph 13).
12. As a result, the judge concludes that “the very late inclusion of this Facebook evidence is consistent with a bogus attempt to bolster a weak asylum claim” (paragraph 14). His conclusion that he is “not satisfied that there is sufficient reason or country information to clearly indicate that this Facebook activity would come to the attention of the authorities or that given his lack of sincerity he could not delete his account in good time before his return to Iraq” (paragraph 14) is

sustainable. For all these reasons, this is a decision that cannot be impugned for lack of rationality.

**Notice of Decision**

13. 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

**12<sup>th</sup> September 2023**