IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006275

First-tier Tribunal No: PA/53757/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SKA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. A. Bhachu, Counsel instructed by Freedom Solicitors
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 10 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Mills, (the "Judge"), promulgated on 1 November 2022, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse a grant of asylum. The Appellant is an Iraqi national of Kurdish ethnicity.

2. Permission to appeal was granted by First-tier Tribunal Judge Boyes on 30 December 2022 as follows:

> "2. The grounds assert that the Judge erred in numerous regards. Firstly in relation to the making of presumptions which were not supported by the evidence, in the assessment of the factual matrix, in the assessment of the credibility of the appellant vis a vis facebook and in relation to the availability of the CSID card.
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> 3. For the reasons given in the application, permission is granted as they are all arguable. In particular, ground 1 discloses, arguably, a real difficulty for the viability of the decision as it, arguably, imports matters into the judgment which were not part of the factual matrix or judicial notice and which had clearly infected and influenced the decision making process.
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> 4. Permission is granted on all matters raised."

The hearing

3. The Appellant attended the hearing. At the outset, Mr. Lawson stated that the Respondent agreed that the grounds were made out and that the decision involved the making of material errors of law. In particular he accepted that there was no evidence to support the Judge's findings, and that they were speculative. He accepted that the findings could not stand and that the decision needed to be remade.

4. I stated that I was in agreement that the grounds were made out. I set aside the Judge's decision aside.

Error of law

5. Ground 1 submits that the Judge made findings based on assumptions which were either incorrect, or for which he had no evidence before him. At [58] the Judge states:

> "I heard extensive evidence for the appellant, and he did not strike me as someone who lacked intelligence. Indeed, the fact that he was able to establish a successful car modification business in his early twenties suggests that he is a very bright and able person. I find it very hard to believe that such a person, having lived all of his life in a war-torn country where he will have seen men gain and maintain influence through the use of violence, and having been the recent victim of such violence himself, would assume that the death threats made by the bodyguard were simply bluster, and would therefore choose to go and meet him."

6. As stated in the grounds, the Appellant "originates from a relatively stable part of Iraq (Sulaymaniyah) which cannot rightly be described as 'war torn' and so his life experiences will not be those assumed by the Judge." Further, the grounds state that although the Appellant had experienced violence shortly before his escape, "there was no evidence before the Judge that [the Appellant] had either witnessed or experienced such violence earlier in his life".

7. I find that the Judge has made assumptions as to the Appellant's background which were not made out on the basis of the evidence before him. These assumptions have affected the way that he has considered the Appellant's account, and therefore have affected his credibility findings. Further, as set out in the Skeleton Argument, there are no reasons given for not attaching weight to the evidence which was before the Judge in relation to why the Appellant went to meet the bodyguard. I find that these are errors of law.

8. The Judge further states at [65]:

> "Also, I find it damaging to his credibility that the appellant has been unable to provide any evidence of these events being reported more widely. His claim is that his Facebook post, in which he implicated very senior PUK officials as being involved with corruption and violence, 'went viral' and was being widely shared around Sulaymaniyah. I have little doubt that such an event would have been picked up by local newspapers and reported upon, and that such reports ought to be traceable by the appellant from the UK, or his family who remain in the area (seemingly without any problems from the bodyguard), and yet he provides no such evidence."

9. The Judge has made an assumption about the reporting of a viral Facebook post in Sulaymaniyah. There was no evidence before him on which to make the finding that this would have been reported in the local press. I find that this is another assumption on the part of the Judge which has led him to make adverse credibility findings against the Appellant. I find that this is an error of law.

10. In relation to the evidence about the car "being returned" referred to in Ground 2, the Judge states at [61] that it was inconsistent that "the bodyguard and his associates would be so powerful that they could use serious violence in a place where there were several witnesses, with no fear of any consequences from the police, and yet they would feel the need to return the appellant's car to him." The evidence before the Judge was not that the car had been returned to him by the bodyguard and his associates. The Appellant said at Q87 that the police called him to say that they had found his car. At Q88 he said that the police told him he should withdraw his complaints, and advised him not to take it further. They advised him "just take your car back so we can close the file". The Judge has made a mistake of fact when he states that they returned the car to the Appellant, which has led him to find that the Appellant's evidence was inconsistent, thus affecting his credibility findings. I find that this is an error of law.

11. Ground 3 refers to the Judge's finding against the Appellant due to his failure to provide evidence that he attempted to recover his Facebook access by contacting Facebook. At [63] and [64] the Judge states:

> "I agree with the observations of the respondent at paragraph 34 of the decision letter, and echoed by Mr Aigbokie in his submissions, that the appellant appears to have done relatively little to seek to establish his case by trying to obtain evidence from Facebook. He says that he has been unable to log back into his account, but when asked on cross-examination confirmed that he had not made any contact with Facebook itself, in order to try and recover the account.
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> While it is not necessary for an asylum seeker to provide corroborative evidence of their claim, given the difficulties involved in either taking that evidence with you when you flee the country, or obtaining it once you have left, as the Court of Appeal observed in TK (Burundi) v SSHD [2009] EWCA Civ 40, where evidence that could reasonably be expected to be provided is absent, a judge is entitled to make an

> adverse inference. I do draw such an adverse inference in this case, in light of the absence of any evidence confirming the Facebook posting, which I consider could reasonably have been recovered by the appellant with the assistance of his solicitors."

12. It was submitted in the grounds that there was "no evidence before the Judge that contacting Facebook would have enabled the Appellant to recover access to his Facebook account." I find that without such evidence the Judge has erred in holding this against the Appellant. I find that this is a further error which infects the Judge's credibility findings.

13. I find that the errors of law set out at Grounds 1 to 3 are material, as they go to the credibility findings, and the core of the Appellant's case.

14. Ground 4 is in relation to the findings regarding the Appellant's documentation and the feasibility of return. It was accepted by the Respondent that the Appellant could not obtain a CSID or INID prior to his return. The Appellant's claim was that his CSID had been taken by the bodyguard, and therefore the issue of documentation turned on the Appellant's credibility.

15. At [67] the Judge rejected this claim on the basis that he had not accepted the Appellant's core claim. He stated:

> "I find that his CSID is almost certainly still with his parents in Sulaymaniyah, where he left it. I see no reason why they would not be able to send it to him in the UK prior to his return to Iraq, and thus facilitate his easy return back to his home without any risk of getting stuck at checkpoints, or facing circumstances amounting to destitution."

16. I have found above that the Judge has materially erred when considering the Appellant's credibility. It therefore follows that his findings in relation to the Appellant's documentation cannot stand.

17. I find that the decision involves the making of material errors of law. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

> *"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*
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> *(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."*

18. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I have found that the decision involves the making of material errors of law. I have found that these errors infect the credibility findings and therefore none of the findings on the core of Appellant's account can stand. I find that is appropriate in these circumstances for the appeal to be remitted to the First-tier Tribunal to be reheard.

Notice of Decision

19. The decision of the First-tier Tribunal involves the making of material errors of law.

20. I set the decision aside. No findings are preserved.

21. The appeal is remitted to the First-tier Tribunal to be reheard de novo.

22. The appeal is not to be listed before Judge Mills.

Kate Chamberlain

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