



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

Case No: UI-2022-006553  
First-tier Tribunal No:  
PA/53864/2021  
LP/00138/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 05 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**AMAK  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Hussain of Fountain Solicitors.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 21 August 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. The appellant appeals with permission a decision of First-tier Tribunal Judge Pickering ('the Judge'), promulgated following a hearing at Bradford on 26 July

2022, in which the Judge dismissed the appellant's appeal on asylum and humanitarian protection grounds.

2. The appellant is a citizen of Iraq born on 12 April 1993 whose home area is Rania in the IKR.
3. The Judge notes the core of the appellant's case is that he fears honour-based violence due to a relationship he had with a female, referred to by the Judge as C. The appellant claimed he feared return to Iraq as he will be harmed by C's family, who he claims are connected to the authorities, and that he did not believe he would be safe anywhere within Iraq.
4. The Judge records the appellant stating he left his CSID in Iraq, but he could not obtain it as he believes his family have disowned him.
5. The Judge sets out her findings of fact from [23] of the decision under challenge. The Judge begins by discussing the question of whether it was reasonably likely that the appellant was in a relationship with C and had the problems he claims as a consequence.
6. The Judge notes an inconsistency in the appellant's account as to how he was restrained when he claimed to have been assaulted by C's brother and others, which the Judge found significant [26]. The Judge found the failure by the appellant to seek to clarify any misunderstanding in relation to whether he was tied up or handcuffed sooner detracted significantly from the plausibility of his account [27]. The Judge was not satisfied the appellant had given sufficient evidence, of the type that she expected he would be able to give if his claim was credible, in relation to why he started the relationship with C, how it was conducted, and why, such that the Judge felt unable to attach much weight to that part of the evidence [28]. At [30] the Judge wrote:
  30. Weighing the evidence in the round, I was not persuaded that the appellant had discharged the burden upon him to show that there is a reasonable degree of likelihood that he had a relationship with C and that he was harmed as a consequence by C's family. On that basis I do not find that he is at risk on return to Iraq.
7. As the core of the appellant's account had been rejected, indicating no proven risk in his home area, the Judge probably directs herself at [31] that she no longer needed to resolve the issue of internal relocation.
8. In relation to documentation, which the Judge considers from [32], the Judge notes that the appellant's own evidence was that he left his CSID in Iraq. The Judge did not find that the appellant had demonstrated he is unlikely to be unable to obtain the original CSID and/or contact his family in Iraq for assistance with redocumentation. The Judge noted the only reason the appellant gave for a lack of contact with his family was due to his claimed problems with C, which the Judge rejected as not being true.
9. The application for permission to appeal alleges, inter-alia, the Judge had given inadequate reasoning as to why the appellant's explanation for the inconsistency, or representative's submissions failed to address the inconsistency, was not afforded weight, and that the Judge attributed unreasonable weight to this matter without adequate reasoning. It is argued the Judge's conclusion at [28] is not supported by adequate reasons. Ground 2 asserts that paragraph 276 ADE(1)(vi) and Article 8 ECHR were raised in the appeal skeleton argument to which there is no mention made by the Judge in the determination.
10. Permission to appeal was granted by another judge of the First-tier Tribunal on 10 October 2022, the operative part of the grant being in the following terms:
  2. The decision and reasons disclose an arguable error of law.

3. The Judge arguably failed to consider an issue that had been raised by the appellant.
4. According to the appellant's skeleton argument there remained an issue in relation to the appellant's Article 8 rights, and specifically whether he met the requirements of the rules under paragraph 276ADE(1)(vi). No reference is made to this aspect of the appellant's claim in the Judge's decision and reason, and no clarification provided as to whether this still remained a live issue at the time of the hearing. In those circumstances, and assuming that this remained an issue, the Judge's failure to deal with this, arguably amounts to an error of law.
5. Whilst there may be less merit in the other grounds relied on, specifically in relation to the appellant's protection claim, I do not restrict the arguments that can be placed before the Upper Tribunal.

### Discussion and analysis

11. A judge is required to determine all relevant grounds of challenge to a decision. In this appeal the challenge was to the decision to refuse the claim on asylum and humanitarian grounds as well as a challenge asserting that removal of the appellant from the United Kingdom would be a breach of his human rights under the Immigration Rules and Article 8 ECHR.
12. It is correct, as noted in the grounds, that no findings have been made in the determination in relation to the paragraph 276ADE or Article 8 ECHR claims. Failure to deal with an issue raised without good reason is an error of law.
13. The question in this appeal, however, is whether such an error of law is material. The reason for this statement is that a reading of the skeleton argument before the First-tier Tribunal shows that the basis on which the human rights claim was made, both under the Immigration Rules and ECHR, was the same as that relied upon by the appellant in support of his protection claim. He was therefore pleading that because he faced a real risk of harm as a result of his relationship with C it would amount to insurmountable obstacles to return under paragraph 276 ADE and/or would make return disproportionate when considering interference with any private life had formed in the United Kingdom.
14. The Court of Appeal have made it abundantly clear to any appellate judge, including themselves, that they should not interfere with a decision of a judge below unless there is a genuine legal error material to the decision under challenge. To answer that question it is therefore necessary to look at the first ground of challenge which is to the decision of the Judge to dismiss the protection claim.
15. A reading of the evidence and the determination shown the Judge clearly considered the evidence with the required degree of anxious scrutiny. It has not been established otherwise. The Judge was concerned about inconsistencies and the poor quality of the evidence given by the appellant in relation to core issues. At [26] the Judge notes an inconsistency in the appellant's account in that in his asylum interview record he claimed he was handcuffed but in his oral evidence he described being tied up.
16. There is a material difference between a specific claim that an individual was restrained by the use of handcuffs (it is part of the appellant's evidence that one of C's relations is in the police) and being tied up. There is no error in the Judge recording that is an inconsistency. The matter did not end there, however, as the inconsistency was put to the appellant to which he claimed he had never said he was handcuffed, when clearly he had. If the appellant's evidence in relation to his ill-treatment and being restrained by C's brother and others is affected by the material inconsistency this casts doubt upon the core element of the claim.
17. At [6] of the grounds seeking permission to appeal it is alleged the Judge has provided inadequate reasons for why the explanation as to the inconsistency or

submissions made to address the inconsistency were not afforded weight in rebutting the inconsistency.

18. The first comment I made is that weight was a matter for the Judge. Contrary to what is pleaded in the grounds the Judge does give adequate reasons, enabling an informed observer who reads the determination able to understand why the Judge concluded as she did. This challenge is, in reality, no more than a disagreement with the Judge's findings and an attempt to undermine the weight the Judge gave to the evidence. It also important to note that the Judge had the benefit of not only documentary evidence but also seeing and hearing the appellant gave oral evidence.
19. At [7], [8] and [9] of the grounds is a challenge the Judge's findings in relation to the relationship with C. It is asserted the Judge has failed to provide adequate reasons for why it was found the appellant had failed to provide adequate details of his relationship with C. This is again a disagreement with the Judge's findings, a challenge the weight the Judge gave the evidence, and on the face of it an assertion the Judge should have given reasons for her reasons. The reason the evidence given by the appellant was not deemed satisfactory is because the quality of the evidence was not sufficient to enable the Judge to find that the appellant had discharged the burden of proof upon him to prove that what he was saying is true. Although it is argued the appellant provided a detailed account of his relationship with C and addressed aspects of the relationship, that is not the point. The question is whether that evidence satisfied the Judge that the relationship was genuine. The Judge was not satisfied and provides her reasons why.
20. Paragraph [10] of the grounds also challenges the finding at [28] stating it was unclear what aspects/documents of the appellant's evidence the Judge refers to when stating she was unable to attach much weight to that part of the appellant's evidence. The author of the grounds appears to be treating [28] in isolation without reference to the preceding paragraphs of the determination in which the Judge clearly sets out the evidence being considered, namely that relating to the relationship with C.
21. I find no merit in the challenge to the Judge's finding that the appellant's claim to have had a relationship with C, as a result of which he faces a real risk on return as a result of an honour killing, or any other real risk, is not proved to be credible on the evidence. That is a finding well within the range of those reasonably open to the Judge on the evidence.
22. As the core account on which the paragraph 276 ADE and Article 8 ECHR claims were based was found to lack credibility, there is nothing to establish the appellant will face insurmountable obstacles to his return to Iraq or that the decision to return into Iraq is disproportionate. I therefore find that even though the Judge can be said to have erred in law in not specifically dealing with these issues in the determination any such error is not material, as had the Judge dealt with them the decision would have been the same.
23. Disagreeing with the findings of the Judge, suggesting other findings an individual would have preferred the Judge to make, and taking issue with the weight the Judge gave to the evidence, when there is no merit in such challenge, does not on the facts of this appeal established legal error material to the decision to dismiss the appeal.

### **Notice of Decision**

24. No legal error material to the decision of the First-tier Tribunal has been made out. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**21 August 2023**