



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

Case No: UI-2021-000600

First-tier Tribunal No:  
PA/53053/2020  
IA/01010/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 29 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between  
KHK**

**(ANONYMITY ORDER MADE)**

**and**

**Appellant**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

**For the Appellant: Ms G. Patel, Counsel instructed on behalf of the appellant**

**For the Respondent : Mr M. Diwnycz, Senior Presenting Officer**

**Heard at (IAC) on 11 November 2024**

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the determination of the First-tier Tribunal( Judge Cox) promulgated on 3 August 2021. By its decision, the Tribunal dismissed the appellant's appeal on all grounds against the Secretary of State's decision dated 10 December 2020 to refuse his protection and human rights claim.
2. The FtTJ did make an anonymity order, and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. 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.

The background:

4. The factual background can be summarised as follows. The appellant is a national of Iraq of Kurdish ethnicity. He arrived in the UK on 21 October 2019 clandestinely and claimed asylum the following day.
5. The basis of his claim was that his father was a Peshmerga commander in Iraq between 1980/83-2006 and his group had raided the house of a mercenary called J during the night and killed two men from the Basaki tribe. The appellant's father left his position as a Peshmerga in 2006, and he was attacked by members of the Basaki family in 2008 or 2009. The appellant's father tried to reconcile with the family but was unsuccessful and decided to move to Iran in 2009. The appellant then lived in Qalerash in Iran with his family.
6. The appellant worked in Iran in agriculture and helped smuggle goods such as TV's and air-conditioning to Iran from Iraq through the border. The appellant did not possess legal status to stay in Iran although his family had been given a green ID card.
7. One night when he was transporting TVs near Sardasht 5 armed men stopped his vehicle. They informed the appellant that they were with the KDPI and forced him to drive to another area of Sardasht. As the appellant approached the checkpoint they forced him to drive through it. The Iranian authorities started shooting at the car and punctured the tyre. The appellant stopped the car abandoned it, leaving behind his ID documents and his mobile phone. He escaped while the 5 KDPI men started shooting at the Iranian authorities.
8. The appellant managed to get to the house of a friend of his father. The appellant's father came to see him and advised him to leave the country for his safety. They met an agent, and he travelled with some smugglers to Turkey by car and by foot. The journey lasted 5 days and he stayed in Turkey for one week. Whilst travelling to Turkey, he learned from the smugglers that the Etalaat had raided his house and were looking for him. They had also arrested his father and brother.
9. The appellant then went to Greece and stayed there for a year (Home Office records show that his fingerprints were taken there on 16 January 2018). He claimed asylum but was refused.
10. In January 2019 the appellant was returned to Turkey and after being detained for one month, he was returned to Iraq, in approximately February 2019. He stayed in Iraq one day. He located a paternal uncle in Erbil, who found an agent to help the appellant out of Iraq. He travelled by car and by foot to Turkey which took a week. He stayed there for 3 months

under the care of smugglers and then travel to Bosnia where he remained for 3 months with another smuggler. He was taken to France and later travelled to the UK.

11. The appellant has not had any direct contact with his family since leaving Iran. The appellant cannot return to Iran or Iraq. He fears that the Iranian authorities will kill him and fears that members of the Basaki family will kill him if he is returned to the IKR.
12. In a decision taken by the respondent on 10 December 2020, the appellant's asylum and human rights claim was refused. Whilst the respondent accepted the appellant's nationality and that he was a Sunni Kurd from the IKR, the respondent rejected the appellant's claim that his family had to leave Iraq due to a family feud with the Basaki family and did not accept that the Iranian authorities had taken an adverse interest in him. When assessing credibility the respondent relied also upon section 8 of the 2004 Act. The respondent concluded that the appellant had failed to demonstrate that there was a reasonable degree of likelihood of him being persecuted on return to Iran or Iraq.
13. The appellant appealed that decision, and it came before the FtTJ Cox. In a decision promulgated on 2 August 2021, FtTJ Cox dismissed the appeal. The FtTJ found that on the totality of the evidence the appellant had not satisfied him that he had given a truthful account of his circumstances, including why his family left Iraq and that he would not be of adverse interest to the Iranian authorities.

#### The appeal before the Upper Tribunal:

14. Grounds of appeal were submitted on 16 August 2021.
15. Permission to appeal was refused by the First-tier Tribunal on 27 October 2021. A renewed application for permission to appeal was made. There has been a significant delay in the appellant's application being considered. This was caused in part by an administrative error by the Upper Tribunal which was rectified by way of a set aside decision made by Upper Tribunal Judge Keith and sent out on 24 January 2023.
16. Upper Tribunal Judge Norton -Taylor granted permission to appeal on 13 June 2024 :

"Turning to the merits of this application, Judge Cox made a number of positive findings on the appellant's claim but concluded that two particular aspects (when the father was arrested and a failure to have subsequently enquired as to the father) were of such significance as to render the account untruthful.

The concisely drafted grounds of appeal make two points. First, it is said that whilst weight was a matter for the judge, the circumstances of this case, the overall conclusion on credibility was irrational. Second, it is said that the judge failed to take evidence provided at the hearing into account in respect of the appellant's failure to have enquired after his father.

I am well aware that perversity challenges involve an elevated threshold. I am also aware that weight is, first and foremost, a matter for the fact-finding tribunal and that the judge had stated that he was considering the evidence as a whole.

Having said that, in my judgment it is (albeit just) arguable that the judge erred in the manner described in the grounds.

It is important for the efficient consideration of this case at the error of law hearing that the relevant Upper Tribunal Judge understands the respondent's position as to what was or was not said at the hearing below. Therefore, when providing the rule 24 response, the respondent must confirm whether or not he accepts what is said at paragraphs 5 and 6 of the grounds".

17. The appeal that was listed originally before the Upper Tribunal was adjourned so that the recording of the relevant part of the proceedings could be heard by both of the advocates so that the direction set out in the grant of permission could be complied with. Both advocates attended at the tribunal hearing centre along with a clerk on 14 October 2024 to hear the relevant part of the proceedings, and to take notes of what was said. It had further been directed that following this meeting the respondent should file her rule 24 response. Mr Diwnycz, Senior Presenting Officer subsequently filed a rule 24 response setting out the respondent's position.
18. At the hearing Ms Patel relied upon the written grounds of challenge. She had also provided on an earlier occasion her skeleton argument.
19. Ground 1: failing to take into account material evidence. It is submitted that when determining the appeal, the FtTJ had found in favour of the appellant over a majority of the points said by the Respondent to undermine the Appellant's credibility- see paragraphs 26 to 28, 30, 33, 35-37 and 39 of the FtTJ's decision. In her oral submission Ms Patel took the Tribunal to those findings.
20. Whilst weight is a matter for the First-tier Tribunal, Ms Patel submits that the matters taken against the appellant are so minor when set against the totality of the evidence, that they cannot rationally be said to undermine the appellant's credibility as a witness. Therefore the FtTJ engaged in perverse or irrational reasoning.
21. She submitted that the FtTJ takes 2 matters against the appellant. Firstly, at paragraph 38 the FtTJ finds that the appellant gave inconsistent evidence over the arrest of his father and brother. Whilst at first glance the appellant's account is inconsistent, this inconsistency of a single day is so minor when set against the totality of the evidence and cannot on any rational view be said to undermine an otherwise detailed and consistent account.
22. The second matter taken against the appellant is set out at paragraphs 39-41 and 44-45. The FtTJ finds against the appellant because he did not enquire about his family's well-being in Iran when he met his uncle in Iraq. The FtTJ dedicates several paragraphs to this aspect of the appellant's

evidence and finds against the appellant due to his independent view of how a reasonable person would have behaved in the circumstances.

23. It is submitted in the written grounds and the skeleton argument that this matter was not taken against the appellant by the respondent . Rather, this matter was canvassed for the first time by the FtTJ. The written grounds set out at paragraph 5 that the following matters took place during the FtTJ's questions, following cross-examination:

"FtTJ: did you ask (your uncle) to contact your family in Iran?

Appellant: I did not ask him questions; he just told me to be ready for tomorrow. I will take you to the agent and I will leave. They have found me there and the trouble would have gotten bigger, and they would already have been scared and I had to leave."

24. The written grounds refer to earlier in the evidence and that in response to the respondent's theory of the case that the appellant should have asked those who smuggled out of Iraq as to his families circumstances in Iran. The grounds set out the appellant's evidence as follows:

"ZH. Did you not ask any questions about your father and brother?

Appellant: we could not ask questions. The surveillance is very strong in Iran that the smuggler was not in touch with my family.

ZH; I put it to you that it is not plausible that you did not ask afterwards what had happened to them in detail?

Appellant: I have no authority to ask. If the Iranian authorities knew that my family had knowledge, they would have been in trouble."

25. Ms Patel submits that when reaching his findings, the FtTJ failed to take into account the appellant's evidence in respect of his fear of putting his family in danger should he seek to make contact with them, when considering the inherent probability of his account of not attempting to contact them via his uncle.
26. Mr Diwnycz on behalf of the respondent relied upon his Rule 24 response.
27. In answer to the question posed in the directions, Mr Diwnycz agreed that at approximately 1 hour and 13 minutes into the playback, FtTJ Cox did indeed ask the appellant the question as set out by Counsel who attended that hearing ( not Ms Patel) and who subsequently lodged the grounds. The Rule 24 response states that any differences in the actual wording of the question and answer are so small as to be inconsequential. It is therefore accepted by the respondent that the FtTJ did ask the question of the appellant as described in the grounds.
28. However, Mr Diwnycz submits that it is expressly noted that the Judge's question came directly after the HOPO's cross-examination, and after counsel for the appellant had declined any re-examination. It is further expressly noted that following his question to the appellant, Judge Cox

asked both representatives if anything arose from it. Both representatives declined to take anything further.

29. Mr Diwnycz referred to Upper Tribunal Judge Norton-Taylor's direction in his grant of permission and that the position of the respondent was that it was accepted that the FtTJ did indeed ask the question at paragraph 5 of the appellant as set out in the grounds. As regards paragraphs 5 and 6 of the grounds, it was also accepted that the grounds do accurately reflect the one actual question put to the appellant by the HOPO, and its answer. The second part of paragraph 6, quotes the HOPO as saying the following:-

*ZH: I put it to you that it is not plausible that you did not ask afterwards what happened to them in detail?*

*Appellant: I had no authority to ask. If the Iranian authorities knew that my family had knowledge, they would have been in trouble.*

30. It is submitted that this is not a question but is a bald statement. Had the HOPO gone on to suffix the statement asking the appellant whether he agreed with it, the issue may have gone further, but as it stands, it takes matters nowhere and is otiose. The punctuating of the statement with a question mark does not render it an effective question. The appellant's putative answer may therefore be disregarded in its entirety, as may the statement.
31. It is submitted on behalf of the respondent that the appellant was represented by experienced Counsel at the hearing. Judge Cox asked his question after the cessation of cross-examination, and Counsel indicated no re-examination was necessary. After posing the question to the appellant, Judge Cox once again canvassed the representatives regarding anything arising. Both indicated they had no issues with the Judge's question. If there had been any concern as to the ambit and consequences of the question and answer, the appropriate time to have raised it was then, immediately following the Judge's question. Counsel could have indicated that an adjournment to take instruction was necessary. Counsel did not so do, and as such, Judge Cox asked a reasonable question of the appellant, which arose as a need to clarify the extent of communication between the appellant and his family. No objection was raised, and despite Judge Norton-Taylor being only just persuaded an arguable error occurred, the respondent takes the opposite view. In summary, the respondent submits that the judge of the First-tier Tribunal directed himself appropriately.
32. Ms Patel in response argued that the FtTJ did not take into account the appellant's explanation for not contacting his family in Iran and therefore paragraph 6 is not relevant, and that counsel would only ask a question in re-examination if they needed do so. She further submitted that the submissions made on behalf of the appellant are not based on procedural unfairness but on the basis that the FtTJ failed to take into account the appellant's explanation as to why there was no contact.

33. When asked about paragraph 6 of the grounds, which referred to the evidence given about the smuggler which the FtTJ found in favour of the appellant at paragraph 34, Ms Patel submitted that the FtTJ had accepted at paragraph 39 the appellant's evidence that he could not ask questions of the smuggler. She submitted that the point made in the grounds is that at paragraph 44 the FtTJ should have taken into account that evidence. She submitted the FtTJ "forgot" what he had accepted at paragraph 39 when making his findings at paragraph 44. The same reasoning would apply as to why he did not want to contact his family because of this.

Decision on error of law:

34. I am grateful for the help and assistance given from both advocates during their submissions. Having had the opportunity to hear those submission and in the context of the written grounds and the decision of FtTJ Cox and the evidence before him , I have reached the conclusion that the FtTJ did not err in law in the way advanced in the grounds. These are my reasons.
35. There is only one ground of challenge advanced on the basis that the FtTJ failed to take into account material evidence. The evidence which it is said that the FtTJ failed to take account of is recorded in the written grounds at paragraph 6 and that when reaching the adverse findings of fact between paragraphs 39 - 41 and 41 - 45 concerning contact with family in Iraq, it is submitted that the FtTJ failed to take into account the appellant's evidence in respect of his fear of putting his family in danger should he contact them when considering the inherent probability of not attempting to contact them via his uncle.
36. There is also another issue raised in the grounds and the submissions made by Ms Patel which seek to challenge the FtTJ's finding at paragraph 38 where he found that the appellant had given inconsistent evidence concerning the arrest of the appellant's father and brother. In this respect it is submitted that the appellant's account varies by day and is so minor that the FtTJ engaged in "perverse and irrational reasoning (see paragraphs 2 and 3 of the grounds).
37. To consider the submissions it is necessary to look at the evidence and the factual findings made by the FtTJ. As with any decision, the findings of a First-Tier Tribunal Judge should be read together. It is clear from reading the decision that the FtTJ undertook a careful assessment of the factual account given by the appellant and the appellant's overall credibility and that he reached his decision by undertaking an overall assessment of the "totality of the evidence" ( see his assessment at paragraphs 46 and 47).
38. There were 2 strands to the appellant's claim. Firstly he feared return to Iraq based on his father having been involved in a blood feud from 1980 - 83 which led the family to move to Iran in 2009. Secondly, he feared return to Iran based on adverse interest in him by the Iranian authorities following the incident in 2017 and that after he had left he had been informed that his father and brother were arrested.

39. As to the account of risk based on a blood feud, the FtTJ's findings need to be carefully read in the context of the evidence. Whilst the FtTJ accepted that it was plausible that the family had left Iraq (see paragraph 27) that was set against the generalised evidence of blood feuds which the FtTJ sets set out at paragraph 25. This was not evidence that related to the particular blood feud the appellant had claimed but was general background information the tribal disputes turn into blood feuds and remain a common occurrence in Iraq. The respondent had set out in the decision letter that the appellant's account of the blood feud was vague, inconsistent and lacking in detail (see decision letter between paragraph 58 - 70). This was considered by the FtTJ at paragraph 28 who drew no adverse inference for his failure to provide a detailed account on the basis that he was very young when he moved to live in Iran and had been told very little about the feud. However the FtTJ went on to find that the evidence that he had provided took matters no further. The FtTJ set out the evidence at paragraph 29 which consisted of screenshots from Facebook which the appellant had said were photographs of senior members of the Basaki tribe and that they can be seen with leading members of the PUK and KDPI. However as the FtTJ noted when assessing the evidence, the text accompanying the photographs was not translated and where there was reference to the names of men the FtTJ observed that the other men in the pictures were not identified and as such he did not know who they were. The FtTJ was entitled to consider that this was evidence of little evidential value, and it led to his assessment at paragraph 30 where the FtTJ returned to the issue of the appellant's of lack of knowledge concerning the background of the feud( plainly referring to the issue of future risk) and stated, " whether I accept to the lower standard that the appellant's family were in a blood feud with the Basaki tribe will stand or fall with my overall credibility findings." When the findings are read together they do not demonstrate as the grounds appear to suggest, that the FtTJ made a positive assessment of the appellant's factual claim to be at risk of harm due to a blood feud.
40. As to the other limb, his claim that he had come to the adverse attention of the Iranian authorities, the FtTJ's findings are set out between paragraphs 31 - 45. Again they need to be read together.
41. The grounds seek to challenge the findings made concerning the arrest of the appellant's father and brother on the basis of the consistency being so minor that such finding was perverse and irrational.
42. There is no error of law disclosed in the FtTJ's assessment of the evidence. At paragraphs 31 and 32 the FtTJ referred to the generalised country materials as to the position of Kurds in Iran and that family members of people associated with Kurdish political parties may be harassed and detained. As a consequence the claim made that the authorities raided the house and conducted an arrest was plausible. The FtTJ also considered some of the issues raised in the decision letter. At paragraph 36 the judge did not find his response as to when he ran away during the incident to be inconsistent and at paragraph 37 by reference to the appellant's account



where he said that he did not know whether the security services saw him as he did not look back, the judge found that this was not inconsistent with his claim that the car was being followed. At paragraph 35 whilst the appellant did state the men told him to take them “somewhere near Sardasht” which the respondent considered was vague and lacking in detail, the FtTJ noted that the Immigration Officer during the interview did not ask the appellant to be more specific and thus the FtTJ stated that he drew no adverse inference from that. However whilst the FtTJ had set out the generalised background evidence as to family members being detained, the FtTJ considered the evidence given in respect of this particular factual claim as follows:

“38. However, in my judgement the appellant’s account of what happened afterwards has been internally inconsistent. The appellant stated that the day after the incident his father came to his friend’s house (where he had been hiding) and took him to a village near the border with Turkey. He was then handed to a smuggler. However, the appellant also stated that the smugglers told him that the authorities arrested his father and brother “a day after my car was seized by the authorities” (question 85 of the AIR). I note that the appellant subsequently stated that he did not know when the authorities raided his house (question 91 of the AIR). As was noted by the respondent these statements are inconsistent (his father could not have been with him, if he had been arrested). Following the respondent’s decision, the appellant stated that his “father and brother were arrested 2 days after he left Iran” (paragraph 24 of his witness statement). However, he did not explain why the information provided during his substantive interview is inconsistent.”

43. The grounds do not suggest that the FtTJ was wrong to find that there was an inconsistency in his evidence. There plainly was. Nor can this be said to be a minor inconsistency as Ms Patel submits. The point that the FtTJ was making was that the core issue of his claim was that he had to leave Iraq because the Iranian authorities wanted him and as a result they raided the house and arrested his father and brother, but this was a factual account that was not consistently given by the appellant. As the FtTJ set out, the appellant’s account of the actual events was inconsistent. Not only on the basis that he said in interview he did not know when the authorities raided his home (see question 91) but that the account provided by the appellant could not be true as his father could not have been with him if he had been arrested which was a matter the respondent had highlighted in the decision letter. As the FtTJ observed, it was only after the respondent issued the decision raising this at paragraph 53 that the appellant then gave a different account in his witness statement that said his father and brother were arrested 2 days after he left Iran. The FtTJ was not in error to find that there was such an inconsistency and the FtTJ was entitled to find as identified that what was also missing from the appellant’s evidence was that he did not explain why the information provided during his substantive interview had been inconsistent.
44. Whilst the grounds submit that the inconsistency was minimal, the weight attached to that was a matter for the FtTJ to assess. It had not been the case that there had been an issue of the dates for example 16 rather than 17 i.e. the date was wrong but as the FtTJ found the appellant had given a

factually different account which was unexplained. Between paragraphs 42 - 43 the FtTJ gave his reasons as to why he considered this was a finding worthy of weight when he considered the inconsistency in the light of the circumstances of the claim which he found to be a “relatively simple narrative” and thus the inconsistency went to the core of the account as to the claimed events in Iran. The FtTJ was entitled to find that the appellant’s failure to give an explanation for the discrepancy that had arisen undermined his credibility.

45. As to the submission that it was perverse, the decision in *R(Iran & Others (CA) [2005] EWCA Civ 982* sets out the following at paragraph 11, “ *It is well known that "perversity" represents a very high hurdle. In Miftari v SSHD [2005] EWCA Civ 481, the whole court agreed that the word meant what it said: it was a demanding concept. The majority of the court (Keene and Maurice Kay LJ) said that it embraced decisions that were irrational or unreasonable in the Wednesbury sense (even if there was no wilful or conscious departure from the rational), but it also included a finding of fact that was wholly unsupported by the evidence, provided always that this was a finding as to a material matter*”.
46. The threshold to meet is a high one and the FtTJ’s finding was not a perverse finding, nor can it be said that it was irrational finding and was one that was on the evidence rationally open to the FtTJ to make.
47. Turning to the second part of the grounds, the FtTJ set’s out the appellant’s account that had not spoken to his family since the events in 2017. In his oral evidence he maintained this (see paragraph 39). The FtTJ records the cross-examination of the respondent’s Counsel who put it to the appellant that it was not credible that he had not asked about his family when the smugglers told him what had happened to his father and brother. The FtTJ recorded his answer given and that the appellant was “worried to death” about his family and wanted to ask, but did not do so as he was under the control of the agent and “had no authority”. This is the extract of the evidence set out in the grounds at paragraph 6. The FtTJ considered the evidence to be plausible ( see paragraph 39). However the evidence the FtTJ was considering here was in the context of the questions asked about what the appellant had or had not asked the smugglers ( the basis that they must have had contact with his family as it was the smugglers who told the appellant that his family and brother had been arrested). Thus the evidence related to why he had not contacted his family (after knowing of the arrest from the smugglers) nor to ask the smugglers about his family.
48. However the adverse credibility finding made by the FtTJ between paragraphs 40-41 and 44 - 46 related to a different part of the evidence and that when the appellant had the opportunity to ask one of his relatives about his family’s well-being he did not do so (see paragraph 40). The FtTJ set out the oral evidence given by the appellant at the hearing where he confirmed that he had one paternal uncle in Erbil and 3 in Sulaymaniyah and it had been the uncle in Erbil that had helped him leave Iraq. The FtTJ set out the response given cross-examination to the question as to how he had been able to contact his uncle in Erbil recording that the appellant did

not answer the question. When the question was repeated by the FtTJ, the appellant stated that when he got to Erbil “he asked around”. His uncle was a taxi driver, and he asked other taxi drivers. The FtTJ recorded the appellant’s evidence at paragraph 41 where he stated that he had not asked his uncle to contact his family in Iran and that his uncle just told him to get ready as he was going to get him to an agent to take him out of Iraq.

49. The FtTJ’s conclusion on this evidence is at paragraphs 44-45:

“44. Further, I am very troubled by the appellant’s evidence that when he met his uncle in Iraq, he did not enquire about his family’s well-being. Especially as his uncle was his father’s brother, and, on the appellant’s account he had not had any contact with his family for over a year. The appellant may not have had a meaningful relationship with his family in Iraq, but his father must have had some contact with his brothers in Iraq, given that the appellant knew that his uncle drove a taxi in Erbil.

45. Overall, if as the appellant said, he was “worried to death” about his family in Iran, then it is to be not credible that he would not have asked his uncle about his family. At the very least, I would have expected him to ask whether his uncle had had any recent contact with his family, given that the appellant is aware that the Iranian authorities treat Kurds suspected of being antiregime very harshly. However the appellant maintained that he did not ask his uncle about his family and this is simply not credible. If the appellant’s account were true, in my judgement, there is not a reasonable degree of likelihood that he would not have asked his uncle about his family. In the circumstances, given the simplistic nature of the narrative provided and an inconsistency, which goes to a core part of the appellant’s claim, I have been driven to conclude that the appellant’s evidence is unreliable.”

50. The point made by the FtTJ about the evidence here is not about the lack of contact with his family but that the appellant did not even ask or enquire about them when he met his uncle. The extract of the evidence set out at paragraph 5 of the grounds relates to the evidence given by the appellant in cross-examination about his lack of enquiry with the smugglers and not his uncle. The grounds misread the decision of the FtTJ who accurately recorded the evidence of the appellant in relation to questions asked and answers about the smugglers but also when asked about the circumstances when with his uncle in Iraq. The FtTJ identified a lack of credibility which went to the core of his account for the reasons set out between paragraphs 44 - 46. In so far as it is argued that this was based on the FtTJ’s independent view of how a reasonable person would behave, that is not made out as the FtTJ had considered that evidence in the context of both the factual claim made, the appellant’s own evidence and the background material which he referenced at paragraph 45. It was a finding reasonably open to the FtTJ to make that if the appellant was “worried to death” about his family it was not credible that he would not have even asked his uncle about the family. As the FtTJ put it, *“at the very least I would have expected him to ask whether his uncle had any recent contact with his family, given the appellant is aware that the Iranian authorities treat Kurds suspected of being antiregime very harshly.*

*However the appellant maintained that he did not ask his uncle about his family, and this is simply not credible.”*

51. Consequently the FtTJ was entitled to find that if the appellant’s account were true (i.e. that his father and brother were arrested on the account of the appellant being suspected by the authorities) it was not reasonably likely that he would not have asked his uncle about his family members. The appellant’s evidence was that he had not even asked his uncle and when set against the factual context of the claim the FtTJ was entitled to find that this undermined the reliability and truthfulness of his account.
52. At paragraph 46 the FtTJ made a finding on the totality of the evidence that the appellant have not satisfied him that he had given a truthful account of his circumstances. This is based on the adverse findings made which went to the core of his account.
53. At paragraph 46 of the FtTJ said *“in particular I reject the appellant’s claim that he has not had any contact with his family and cannot contact them (either directly or through his uncle’s in Iraq)”*, I read this as a rejection of the appellant’s evidence based on his findings of fact set out above. The inference raised is that he did not ask about his family because they were not in danger.
54. Having found the appellant had not given reliable evidence, it was therefore open to the FtTJ to find that his failure to provide evidence in support of his claim that his father had left Iraq because of a blood feud, led him to the conclusion that he did not give a truthful account as to why the family had left Iraq. Thus in his overall conclusion at paragraph 47 that the appellant did not satisfy him that there was a real risk of him suffering serious harm in Iran or Iraq was an overall assessment open to the FtTJ on the evidence.
55. As to the evidence relating to contact with the family generally, the grounds appear to refer to the issue having been raised by the FtTJ for the first time, however this was raised in the interview questions and in the decision letter where adverse credibility points were raised in relation to this issue ( see paragraph 55 where the respondent set out that the appellant had given to internally inconsistent reasons for the lack of contact). Thus the FtTJ was entitled to ask questions about this issue. The question asked is set out at paragraph 5 of the grounds. As Mr Diwnycz points out, the FtTJ asked the question and gave the advocates the opportunity to ask any further questions arising out of that but neither advocate sought to do so. Ms Patel submitted that the point raised in the ground is not a procedural fairness point. I agree. The question asked by the FtTJ was one he was reasonably entitled to ask and the FtTJ quite properly invited both advocates to ask any questions they wished to after his question which demonstrates that the FtTJ conducted the proceedings entirely fairly.
56. It is also not the case as Ms Patel submits that the FtTJ “forgot” the earlier evidence that the appellant had given about why he had not asked about

his family when with the smugglers or as set out at paragraph 6 of the grounds. The judge was plainly aware of the evidence upon which he made his finding at paragraph 39. However the FtTJ was referring to the appellant's own evidence where he confirmed that he had not even asked his uncle about his family. The evidence recorded at paragraph 5 of the grounds reflects that answer and it was that which the FtTJ found to be wholly incredible when set out against the particular factual matrix that had been claimed.

57. For those reasons, the factual findings made by the FtTJ were ones that were reasonably open to him on the totality of the evidence, they were reasoned findings and cannot be said to be either perverse or irrational. The grounds are therefore not made out and the decision of the FtTJ shall stand.

Notice of Decision:

The decision of the FtTJ did not involve the making of an error of law and the decision of the FtTJ shall stand.

Upper Tribunal Judge Reeds  
Upper Tribunal Judge Reeds

15 November 2024