



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

Case No: UI-2023-004822

First-Tier Tribunal No: PA/54005/2022  
IA/09746/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 28<sup>th</sup> May 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE WELSH**

**Between**

**KSHA**  
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Masih of Counsel, instructed by MH Solicitors  
For the Respondent: Ms Isherwood, Senior Home Office Presenting Officer

**Heard at Field House on 8 March 2024**

**DECISION AND REASONS**

**Anonymity Order:**

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the Appellant seeks international protection and is therefore entitled to privacy.

## **Introduction**

1. This is an appeal against a decision of First-tier Tribunal Judge Chohan (“the Judge”), promulgated on 18 October 2023. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Secretary of State to refuse his protection and human rights claim.
2. At the conclusion of the hearing, I found that the decision of the First-tier Tribunal involved the making of a material error of law and set aside the decision. I now set out my reasons.

## **Factual background**

3. The Appellant is an Iraqi national of Kurdish ethnicity. In summary, there were three elements to the Appellant’s protection claim:
  - (1) His fear of persecution at the hands of Tazadeen Agha, a prominent leader of the Appellant’s tribe and a man with powerful political links and influence. The Appellant had worked for Agha from the age of nine, ultimately becoming a bodyguard. The Appellant’s case is that he fled Iraq to avoid being murdered for refusing to carry out an order to kill. The order arose because the wife of one of Agha’s sons had an extramarital affair.
  - (2) His sur place activity.
  - (3) He is undocumented and will be without family support on return to Iraq.

## **The decision of the Judge**

4. The Judge dismissed the appeal for the following reasons:
  - (1) He concluded that the Appellant had not demonstrated that he had worked for Agha because (i) the photographs adduced by the Appellant as evidence of him being in the presence of Agha did not in fact have any probative value (ii) the expert report demonstrates that there is no evidence in the public domain capable of establishing the identity of Agha[8].
  - (2) Alternatively, the Appellant’s account of fleeing because he had refused to carry out a kill order is not credible because (i) there is no independent evidence in relation to the causation of the scar on his body (ii) his account of his escape, given the number of people said to be present, is not credible and (iii) if the Appellant’s account, that the Agha and his family are very powerful is true, then it is not credible that the Agha’s son would not have killed his wife himself [10-12].
  - (3) The Appellant’s political profile as result of his activities is not such that he would have come to the attention of the Iraqi authorities [17].
  - (4) The Appellant’s family could assist him to obtain certification documents while the Appellant is still in the United Kingdom using the details from the Family Book or the 1957 Registration Document [22]. The Judge rejected the Appellant’s account that he is not in contact with his family because of his previous findings in relation to the Appellant’s credibility.

### **Grounds of appeal and grant of permission**

5. The grounds of appeal, which I have renumbered, plead that the Judge erred:
  - (1) in his approach to the Appellant's evidence by requiring there to be independent corroboration of his account and/or failed to give reasons why the Appellant's own account was not credible [ground 1];
  - (2) in his assessment of the expert evidence, in that he misunderstood the contents of the expert report [ground 2];
  - (3) by failing to take into account material evidence, namely the photographic evidence and/or failing to give reasons why no weight was attached to this evidence [ground 3];
  - (4) by failing to make any findings as to whether the Appellant would continue his political activity on return and thereby face a real risk of persecution [ground 4];
  - (5) by failing to make material findings of fact in relation to the question of whether the Appellant could obtain the necessary identification document on return [ground 5].
6. Permission was granted, on 9 November 2023, by First-tier Tribunal Judge Seelhof. The grounds upon which permission was granted were not restricted.

### **Upper Tribunal proceedings**

7. I heard oral submissions from both advocates, to whom I am grateful. During the course of this decision, I address the points they made.

### **Discussion and conclusion**

#### **The credibility assessment (grounds 1-3)**

8. Grounds 1 to are 3 interlinked and I therefore consider them together.
9. Ms Masih submitted that the Judge's approach was flawed. He gave no reasons for rejecting the Appellant's account of Agha and, rather than considering the evidence in the round, carried out a compartmentalised assessment which led the Judge to miss the fact that the evidence was mutually corroborative. Ms Masih pointed out the following links, none of which were addressed by the Judge:
  - (1) The Appellant stated that he was a bodyguard for Tazadeen Agha, also known as Barwal Agha Surchi.
  - (2) The photographs adduced showed the Appellant with a small group of men and the Appellant identified one of the men in the picture as being Agha. The photograph is consistent with the Appellant being a bodyguard to the man he identified as Agha, not least because the appellant is armed.
  - (3) Evidence from Facebook shows images of a man, identified as Bawal Agha Surchi, in circumstances from which it can be inferred that he is a man of significance. This person is plainly the same person who appears in the photographs with the Appellant.
  - (4) The expert evidence confirms a familial link between Barwal Agha Surchi and Tazadeen Agha Surchi and links this family to the Appellant's home area.
10. The Appellant is entitled to know why his account was dismissed as being not credible. It is unclear from the Judge's reasoning whether he understood the relevance of the photographs, Facebook entries and expert report in the context of the appellant's case or, if he did, why he

nonetheless reached the conclusion that he did. I am therefore satisfied that the reasoning is inadequate such that it amounts to an error of law.

11. Ms Isherwood submitted that, in any event, any such error is not capable of being material because the Judge went on to consider, and dismiss as not credible, the Appellant's account of fleeing Agha. However, I agree with the submission of Ms Masih that it cannot be said that the Judge's previous adverse credibility finding did not infect his assessment of this aspect of the Appellant's account. I therefore conclude that the Judge erred as pleaded in grounds 1, 2 and 3.

#### **Sur place activity (ground 4)**

12. Ms Masih submitted that the Judge failed to apply the principles in HJ (Iran) [2010] UKSC 31 because he made no findings as to whether the Appellant's political beliefs were genuinely held and whether he would continue to be politically active on return to Iraq. Ms Isherwood maintained that the Judge had done so but I cannot agree: there are no findings of fact at all in this regard and the issue is simply not considered. This ground of appeal must succeed.

#### **Documentation (ground 5)**

13. The Judge's findings in respect of the documentation is premised on his finding in respect of the credibility of the Appellant's account about the lack of contact with his family, which in turn is based on the previous flawed assessment of credibility. It follows that the Judge's findings cannot be sustained.

#### **Notice of Decision**

14. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.

#### **Remittal**

15. I conclude that the appropriate forum for the remaking of this decision is the First-tier Tribunal, not to be listed before Judge Chohan, with no findings of fact preserved. In reaching this conclusion, I apply paragraph 7.2 of the Senior President's Practice Statement and the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

*C E Welsh*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**16 May 2024**