IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004914
First-tier Tribunal No: PA/55406/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th February 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

DOH (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No attendance
For the Respondent: Mr A Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 6 February 2024

ANONYMITY ORDER

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.

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Failure to comply with this Order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. There are concerns as to the conduct of Mamoon Solicitors, 1319 Ashton Old Road, Higher Openshaw, Manchester M11 1JS. They are addressed below.

2. By means of his grounds of appeal, the appellant raises a serious allegation as to the conduct of a judge. The allegation advanced by Ms Hashmi, a director at Mamoon Solicitors, concerns interaction between herself and a judge at a hearing held at the First-tier Tribunal in Manchester in September 2023. The allegation was unevidenced at the time of the filing of the appeal and remained so to the date of the error of law hearing, despite a direction from the Upper Tribunal requiring the complaining solicitor to provide a witness statement addressing the complaint. Prior to the listed hearing the Upper Tribunal informed Ms Hashmi as to its expectation that she would attend the hearing so that her complaint could examined. Soon afterwards, Mamoon Solicitors came off the Tribunal record.

3. For the reasons addressed below, with no evidence having been provided to support the serious allegation made, the ground arising from the complaint is dismissed. The remaining grounds of appeal are also dismissed.

Compliance with directions

4. In addition to Ms Hashmi's failure to comply with a direction in respect of filing a witness statement, Mamoon Solicitors failed to comply with pre-hearing directions in respect of filing a composite hearing bundle.

5. On 2 February 2024, an Upper Tribunal Legal Officer wrote to Mamoon Solicitors observing that there had been non-compliance with a direction that a composite hearing bundle be filed 9 days before the hearing. In addition, the attention of Mamoon Solicitors was drawn to a further direction issued on 24 January 2024 requiring the appellant to file a composite hearing bundle by 4pm on 25 January 2024. The second direction had also not been complied with.

6. The intervention of the Legal Officer encouraged Mamoon Solicitors to engage with the Upper Tribunal, if only to request that the firm come off the Tribunal record.

7. The Upper Tribunal observes that Mamoon Solicitors were on record at the time compliance with both issued directions was required. The Upper Tribunal can properly expect legal representatives to comply with directions.

8. The Upper Tribunal is left with the understanding that Mamoon Solicitors have in this matter failed to be mindful of their professional duty, and their duty to the Upper Tribunal: rule 2(4) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

9. Mamoon Solicitors are reminded that the Upper Tribunal observes its inherent jurisdiction to govern proceedings before it and to hold to account the behaviour of lawyers whose conduct of litigation falls below the minimum professional standards: *R (Hamid) v Secretary of State for the Home Department* [2012] EWHC 3070 (Admin).

Proceeding in the absence of the appellant

10. The appellant did not attend the hearing on 6 February 2024.

11. By telephone correspondence with a Legal Officer at Field House on Friday 2 February 2024 Ms Hashmi confirmed that the notice of hearing sent in this matter, and subsequent directions, had been received by her firm. She stated that her firm contacted the appellant by WhatsApp on 18 January 2024 to inform him that the Upper Tribunal had listed the error of law hearing. The appellant replied using WhatsApp, stating that the firm should “leave it”, which was understood to mean that he did not wish to proceed with his appeal. The appellant was asked to confirm his instructions in writing, but he had not taken this step to date. Ms Hashmi confirmed that her firm have since endeavoured to contact the appellant by WhatsApp to discuss the provision of instructions, with no response.

12. On 2 February 2024, a Legal Officer called the appellant on the phone number provided by Mamoon Solicitors to ascertain whether he wished to withdraw his appeal. The appellant did not pick up. A voice message was left.

13. A Legal Officer also attempted to send an email directly to the appellant, but received notification that the email was undelivered as the mailbox was full.

14. With the appellant not having attended Manchester Civil Justice Centre on the morning of the hearing, I directed at 10.20am that a Legal Officer again contact the appellant. I received confirmation from a Legal Officer at 10.26am that a phone call went straight to voicemail. A message was left for the appellant requesting that he either call or

email the Upper Tribunal to confirm whether he wished to pursue his appeal. There was no response from the appellant by 11.00am.

15. The case was called on. I observed rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that the appellant, through Mamoon Solicitors who were on the Tribunal record as his legal representatives at the relevant time, had been notified of the error of law hearing. I considered that it was in the interests of justice to proceed with the hearing. The respondent was in attendance and was ready to proceed. I was satisfied that the appellant had decided of his own volition not to engage with the Upper Tribunal nor take steps to confirm to Mamoon Solicitors his continuing interest in his appeal. I therefore concluded that it would be in the interests of justice to proceed with the hearing in the appellant's absence.

16. I heard short submissions from Mr Tan. I dismissed the appeal at the hearing.

Relevant Facts

17. The appellant seeks with permission to appeal a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Ruck) dismissing his international protection and human rights appeal. The Judge's decision was sent to the parties on 14 September 2023.

18. The appellant is a national of Iraq. He is presently aged 25.

19. He entered the United Kingdom on 9 December 2018 and claimed asylum. He contended that three siblings had been found guilty of killing a member of a Kurdish tribe, the Jaff, who live in the borderlands of Iran and Iraq. He detailed that the victim had attempted to assault his sister and was killed by his brother and two of his sisters. The appellant asserts a fear that members of the Jaff tribe will kill him on return to Iraq in revenge for the murder.

20. The respondent initially refused the claim by a decision dated 3 July 2019. The appellant's appeal was dismissed by the First-tier Tribunal on 24 February 2020 with Judge of the First-tier Tribunal Handler concluding that the appellant lacked credibility. Judge Handler did not accept the appellant would be at risk of persecution on return to Iraq. It was further found that the appellant could obtain his CSID card from family members in Iraq.

21. The appellant submitted further submissions on 5 October 2021. He produced new translations of court documents which he stated related to his siblings' court case and a ration card establishing the familial

relationship. The appellant asserted that translations placed before Judge Handler were inaccurately translated.

22. By a decision dated 27 May 2022 the respondent accepted the submissions to constitute a fresh claim under paragraph 353 of the Immigration Rules but decided not to grant leave to remain.

First-tier Tribunal Decision

23. The appeal came before Judge Ruck sitting in Manchester on 11 September 2023. The appellant gave evidence.

24. The Judge considered that the translated documents did not aid the appellant, at [14]-[19]. She concluded on this issue, at [20]-[22]:

> "20. I agree with the previous conclusion by Judge Handler who found the Appellant not to be credible on a number of issues, including in relation to his mother's involvement. None of the new evidence, the documents, the Appellant's further witness statement and oral evidence leads me to depart from the previous findings of Judge Handler who concluded that he did not accept that the Appellant had proved his factual claims – he did not accept that the Appellant's sister was assaulted by Rebwar or that Rebwar was killed by members of the Appellant's family. He did not accept there was a blood feud between the Appellant's family and Rebwar's family and that he was at risk from them.
>
> 21. The Appellant has also provided a new translation of a photograph of Rebwar's gravestone. This does not assist to prove that the Appellant's family were involved in his murder therefore I attach little weight to it.
>
> 22. I have considered the external evidence and various articles on honour killings provided. The latter are all generic and do not relate to the incident that the Appellant claims has led to a blood feud with the Rebwar family. Therefore, I attach little weight to them."

25. Judge Ruck considered photographic evidence, at [25]:

> "25. The Appellant produces new evidence of photographs which he states shows scars to his arms from a stabbing incident. Unlike the photographs produced before Judge Handler, these photographs show the Appellant's face. I agree with Judge Handler, it could be reasonably expected that he would have at

> some point during his interviews have mentioned being stabbed by the Rebwer family. There is no medical evidence in relation to the scars. Having considered the photographs in the round with the other evidence, I attach little weight to the photographs."

26. Judge Ruck concluded, at [26]:

> "26. As I have not accepted the Appellant's account of events in Iraq and I agree with the previous findings of Judge Handler (having placed very little weight upon the new photographs submitted) I conclude that the Appellant is not at risk of harm on return to Iraq."

27. Additionally, the Judge concluded that the appellant's CSID card is located at his family home in Iraq, that he is in contact with his family and that he can therefore obtain his card, at [28]-[29].

Grounds of Appeal

28. The appellant relies upon grounds of appeal prepared by Mamoon Solicitors, who represented him before the First-tier Tribunal.

29. There are various concerns with these grounds. Firstly, they are prolix and unfocused. They fail to adequately particularise the challenge, and primarily seek to restate the appellant's case and/or advance generalisations instead of identifying material errors of law.

30. Whilst the Judge's decision runs to eight pages, the grounds challenging the decision run to thirteen. In this matter, prolixity has served to conceal rather than illuminate the essence of the case being advanced. The document has made the task of the Upper Tribunal more difficult rather than easier.

31. The grounds are drafted unhelpfully. The first two pages are identified as an introduction and provide background to the case.

32. The 'Grounds and Legal Arguments' section is located at pages three and four. Five grounds of appeal are identified. Unfortunately, several grounds are then divided and subdivided: **ground two** is sub-divided into two grounds; **ground three** is sub-divided into six further grounds, with ground 3(iii) then sub-divided into three additional grounds, ground 3(iv) sub-divided into four additional grounds, and ground 3(v) sub-divided into two additional grounds; and **ground five** is sub-divided into two further grounds.

33. It is appropriate to observe that most of the 'grounds' are not actually grounds in the required sense of advancing a challenge in respect of a

material error of law but are either assertions – the appellant “is a refugee under the terms of the 1951 Convention” - or generalisations. Legal representatives drafting grounds of appeal should properly be mindful that the right of appeal to the Upper Tribunal is on any point of law arising from a decision of the First-tier Tribunal: section 11(1) of the Tribunals, Courts and Enforcement Act 2007. The Upper Tribunal should not be required to remind professional lawyers purporting expertise in the field of asylum law that an appeal is not a second opportunity to advance the appellant’s case before a different tribunal.

34. The document then proceeds to cite passages from the well-known decision of *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka** [2002] UKIAT 00702, [2003] Imm AR 1, likely to be one of the most referenced domestic decisions in this jurisdiction and well-known to this expert Tribunal. It is entirely unclear as the necessity of citing [39] and [40] of the decision in full.

35. The author of the grounds then, unfortunately, adopts the approach of working through the Judge’s decision in order of paragraphs, in a manner akin to providing a running commentary. Several of the observations are not related to the numerous grounds of appeal detailed on pages three and four of the document. It is very difficult for this Tribunal to understand the approach adopted of identifying numerous grounds of appeal in the section entitled ‘Grounds and Legal Arguments” only to then raise entirely separate grounds within the body of the document. This Tribunal has been required to proceed on the basis that additional grounds are advanced beyond the several identified at pages 3 and 4 of the grounds. This is unsatisfactory.

36. Paragraph 21 advances an argument that the Judge “should have” followed the respondent’s guidance, though what ‘guidance’ is relied upon is not identified.

37. The document concludes by means of seven paragraphs that purport to be a “conclusion” but amount to raising further grounds of complaint in a discursive manner.

38. I am satisfied that the grounds of appeal filed in this matter are a clear example of a document that fails to meet expected professional requirements.

39. Grounds of appeal must identify as concisely as possible the respects in which the challenged decision of the tribunal below is erroneous in law. Discursive grounds are not concise grounds. In this matter, the style of drafting is strongly suggestive of a lack of adequate focus. Extensive and unfocused grounds of appeal are usually indicative of a failure to appropriately assess the merits of a challenge.

40. Additionally, in this matter there may be as many as twenty grounds of appeal advanced, the majority of which amount to no more that general assertion or restating the appellant's case as advanced before the First-tier Tribunal.

41. I note the observation of Turner J in *Municipio De Marian v. BHP Group PLC* [2021] EWHC 146 (TCC), [2021] Costs LR 97, at [11]:

> "11. The claimants' approach in this case does not amount to a matter of mere formal procedural non-compliance. Their bloated draft grounds serve only to obfuscate rather than to illuminate what they may perceive to be the merits of their challenge. This, in turn, gives rise to the risk that a judge, whether at first instance or on appeal, may be persuaded to give permission to appeal not through a focused analysis but having been worn down by a process of relentless documentary attrition. ..."

42. I observe that extensive, unfocused grounds lead to a waste of valuable judicial resources. Ultimately, legal representatives are to have clearly in mind rule 2(4) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Parties must help the Upper Tribunal to further the overriding objective and cooperate with the Tribunal generally.

43. With Mamoon Solicitor having come off the Tribunal record, and the appellant not attending the hearing, the Upper Tribunal has been left having to navigate these very poorly drafted grounds without aid from the party advancing the challenge.

44. A second concern relates to the presentation of a serious allegation made against the Judge, it being said that the Judge "professionally embarrassed" Ms Hashmi in front of her client, the appellant. Though this complaint as to judicial conduct is properly to be considered serious, Ms Hashmi has to date filed no evidence to support the allegation, despite being subject to a direction to file a witness statement and the Upper Tribunal contacting her in the days leading up to the error of law hearing to remind her that she was personally in breach of a direction.

45. It is perfectly proper for concerns as to judicial conduct to be raised within grounds of appeal, and to be ventilated before an appellate tribunal or court. Such complaint is taken is seriously: *MS (judicial interventions, complaints safety)* [2023] UKUT 00114. However, there is a requirement that a complaint be evidenced, usually by means of a witness statement. It may be possible to listen to a recording of the hearing, though an appellate tribunal or court will be aided by provision of the approximate time when the behaviour complained off

took place to permit it being located on a recording. Assertion by grounds of appeal alone is inadequate as grounds possess no evidential value.

46. Upper Tribunal Judge Sheridan granted permission to appeal on what appears to be the sole meritorious ground. In a decision sent to the parties on 2 January 2024, he reasoned:

> "The grounds argue that it was procedurally unfair for the judge to not adjourn the hearing in the light of the appellant's representative being in a traffic accident on the morning of the hearing. The grounds are unclear about what the judge was told by the appellant's representative but if the judge was informed, as the grounds appear to be suggesting, that the appellant's representative was too unwell to proceed despite being instructed to proceed, it was arguably procedurally unfair to not adjourn the hearing. I also note that what the judge states in the last sentence of para. 6 appears to contradict the grounds."

47. Judge Sheridan directed:

> "At least 14 days before the hearing, Ms Hashmi (the appellant's representative in the First-tier Tribunal) must file and serve a witness statement setting out in detail precisely what occurred at the hearing including what she told the judge about her ability to proceed. It is likely to be helpful if a transcript of the relevant part of the hearing is appended to this statement."

48. Ms Hashmi failed to comply with Judge Sheridan's direction.

<u>Discussion and Decision</u>

49. Consequent to the disjointed way the grounds are drafted, I address them out of turn for ease.

50. I turn initially to ground 5 which comprises a challenge to the refusal of the Judge to adjourn the hearing or to convert it into a CVP hearing. The Judge noted at [6] of her decision:

> "6. On the morning of the hearing, I was informed that the Appellant's representative, Miss Hashmi was running late because she had been involved in a road traffic accident. At approximately 10:50am I was informed by the clerk that Miss Hashmi was at her office and had requested to attend the hearing via CVP. Having made enquiries about the location of Miss Hashmi's office, I was made aware that it was only a short distance from the Tribunal. I requested further information as to whether Miss Hashmi was well enough to conduct the hearing and if so whether there was any reason she could not attend

the hearing in person. I had noted that on refusing an application to adjourn on 6 September 2023, the Tribunal had indicated that the appeal required a face-to-face hearing. At approximately 11:30am, Miss Hashmi attended in person. **Miss Hashmi confirmed that she was well enough to deal with the hearing**." [Emphasis added]

51. The grounds of appeal detail:

> "20. On the morning of the hearing, the Appellant's representative was delayed attending the appeal hearing because she had been involved in a road traffic accident. IJ Ruck declined the Appellant's representative's request to hold the hearing via CVP and insisted on her attendance at Court. At approximately11:30am, (about 1 and ½ hours after the hearing should have commenced) the Appellant's legal representative attended Court in person. The Appellant insisted the case proceed without a clear and sufficient understanding of the effects of the accident on his legal representative. The hearing could not proceed fairly as a result. IJ Ruck professionally embarrassed the Appellant's legal representative by not adjourning the case and relying on the Appellant's wish to proceed come what may. However, the Appellant did not understand the consequences of going ahead due to his mental health issues. In light of the Appellant's instructions, his legal representative proceeded with the appeal hearing; she was left with no real choice but to proceed."

52. This ground references events originating outside the hearing room, for example the provision of advice and instructions. It also references personal feelings said to arise from the act(s) of the Judge, such concern not having been raised before the Judge. In such circumstances and observing that the ground is critical of a judge for professionally embarrassing a legal representative, this challenge should properly have been accompanied by a witness statement from the appellant's representative, Ms Hashmi. It was not. Judge Sheridan could properly have refused permission to appeal on this ground in the absence of a witness statement addressing such events, but he erred on the side of fairness and granted permission. Regardless as to whether the appellant continued to instruct her firm, Ms Hashmi was <u>personally</u> subject to a direction to file a witness statement. By not filing the directed statement, she has not acted in accordance with her duty to this Tribunal.

53. There is no evidence before this Tribunal in respect of the advice and instructions detailed at paragraph 20 of the grounds. No evidence is advanced as to how and why Ms Hashmi felt professionally embarrassed by events at the hearing. There is no witness statement

from the appellant confirming that despite his legal representative's personal concerns he instructed her to proceed with the hearing. There is no evidence asserting that the Judge erred in recording Ms Hashmi's confirmation that she was well enough to deal with the hearing. In the circumstances, the serious allegation that the Judge professionally embarrassed Ms Hashmi is not made out. In the absence of a witness statement from Ms Hashmi, this ground should not have been advanced.

54. I turn to ground 2. It is asserted that the Judge acted unfairly by failing to (i) apply her mind to the 'totality' of the fresh evidence adduced by the appellant and (ii) apply her mind to the fact that the appellant is not to be returned to Iraq because he cannot obtain the necessary identity documentation, 'despite trying to do so'.

55. The Judge did apply her mind to the new evidence, as is clear when reading [13]-[19] and [21] of the decision. The bald assertion to the contrary advanced by the appellant enjoys no merit. Further, the Judge was entitled, applying the guidance in *Devaseelan*, to conclude with the cogent reasons provided that the appellant's CSID card is located at the family home in Iraq, that he remains in contact with his family, and he can obtain it. In the circumstances the appellant is not aided by the country guidance in *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 110 (IAC).

56. This challenge amounts to no more than the appellant restating his case as to his CSID which has now been rejected by both Judge Handler and Judge Ruck.

57. Ground 3 contends that the Judge failed to consider articles 2 and 3 ECHR and to conclude that the appellant is a refugee under the 1951 UN Convention on the Status of Refugees. No detail is provided as to why such failure is material in light of the findings of fact made. This ground highlights the propensity of the author of the grounds to engage in general statements rather than identify material errors of law.

58. Ground 4 is founded upon the Judge failing to correctly apply the guidance in *Devaseelan*. However, the challenge as advanced is confused and ultimately fails to engage with the clear and lawful reasoning of the Judge. Lawful reasons were provided as to why little weight could properly be placed upon the new evidence. The Judge noted the guidance provided in *Devaseelan*, and identified Judge Handler's findings as a starting point, but did not consider the previous findings as determinative of the issues before her. She was not satisfied, to the requisite standard, that the appellant had established his claim. This conclusion was reasonably open to her.

59. I turn to Ground 1, which amounts to no more than a simple assertion that the Judge's decision is irrational on the totality of the evidence. Noting the conclusions above, there is no merit to this ground. It simply restates the appellant's case and no more.

60. Within the 'Legal Framework and Discussion' section, the appellant raises additional grounds of appeal. Without expert evidence establishing that Iraqi court documents do not comply with expected professional standards in respect of correctly naming a party to proceedings, there is no merit in the bald assertion that the Judge erred in her expectation of such professional approach. Again, this ground simply restates the appellant's case and no more.

61. The grounds erroneously engage in supposition as to why a person would not be named on a ration card, in the absence of any evidence supporting such supposition. The tendency of the author of the grounds to engage in supposition, or present their own evidence, is further identifiable when providing reasons as to why the appellant omitted mention of his mother from his account of events in interview.

62. In the circumstances the appellant's appeal is properly to be dismissed.

Directions

63. I observe that Mamoon Solicitors have come off the Tribunal record. Consequent to the serious allegation that a judge professionally embarrassed a legal representative in front of their client, and observing that this allegation has been dismissed, I consider it appropriate to direct that a copy of this decision be sent to both the Judge and to Mamoon Solicitors.

64. I direct:

    i. A copy of this decision and reasons is to be sent by the Upper Tribunal to Judge Ruck at the First-tier Tribunal (IAC), Manchester.

    ii. A copy of this decision and reasons is to be sent to the Resident Judge at the First-tier Tribunal (IAC), Manchester.

    iii. A copy of this decision and reasons is to be sent to Ms B Hashmi, Mamoon Solicitors 1319 Ashton Old Road, Higher Openshaw, Manchester M11 1JS.

Notice of Decision

65. The making of the decision of the First-tier Tribunal sent to the parties on 14 September 2023 did not involve the making of a material error on a point of law.

66. The decision of the First-tier Tribunal is upheld. The appeal is dismissed.

67. An anonymity order is confirmed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 February 2024