



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

Case No: UI-2023-005619

First-tier Tribunal No: PA/52873/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 19<sup>th</sup> of September 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**JNH**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms L Brakaj a Partner in Iris Law Firm, Solicitors.

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

**Heard at Phoenix House (Bradford) on 4 September 2024**

**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. The Appellant appeals with permission a decision of First-tier Tribunal Judge Hands ('the Judge'), promulgated on 7 December 2022 in which she dismissed his appeal against the refusal of his claim for international protection and/or leave to remain in the United Kingdom on any other basis, dated 11 July 2022.
2. The Appellant is a citizen of Iraq born on 11 March 1994.

3. Having considered the documentary and oral evidence the Judge sets out her findings from [8] of the decision under challenge. The Judge's core finding is that the Appellant was not telling the truth. The Judge did not find the claimed events occurred because of societal norms and the adherence to them by the Appellant and the girl in the period from when he first became a bodyguard for the Commander's family, the girl's father, until he left Iraq.
4. The Judge at [21] also records another matter which led to her not believing the credibility of his account.
5. At [26] the Judge did not find the Appellant is at real risk of serious harm because of an honour killing at the hands of the father, brother or fiancé of a girl, or the KDP. The Judge finds the Appellant's family have not come to any harm since he left, and other than his claim that the Commander called to retrieve his identity documents, there has been no interaction between the girl's family or his. At [27] the Judge finds the Appellant has fabricated his claim in order to substantiate an erroneous claim for protection and that he is an economic migrant.
6. The Judge considers the Appellant's assertion he will face a real risk as a result of his sur place activities from [29] but did not find the Appellant had any real interest in politics as he was not of any political opinion or politically involved prior to leaving Iraq, was not involved in organising demonstrations in the UK, travelled with other people from the mosque, and it was found that he had attended three demonstrations to bolster his asylum claim.
7. The Judge finds there was no reason why the Appellant would come to the adverse attention of the government or authorities on return to Iraq and therefore does not have a well-founded fear of serious harm from them.
8. The Judge considers the issue of redocumentation from [33]. The Judge does not accept the Appellant has lost contact with all his family [39] and that his CSID can be forwarded to him by his family in Iraq.
9. The Judge finds there is no reason the Appellant could not internally relocate to Sulamaniyah if needed, or that there was anything to show that any of those he feared would be able to trace him there.
10. Thereafter Judge dismissed a claim on human rights grounds.
11. The Appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 12 January 2023, the operative part of the grant being in the following terms:
  1. The application is in time.
  2. The grounds assert that the Judge failed to provide adequate reasons for his credibility findings; why the Appellant was not at real risk of persecution/serious harm as a result of his sur place activities; how the Appellant could return to his home area without a CSID or INID.
  3. It is arguable that Judge has made an error in law when assessing whether the Appellant would be able to obtain a replacement CSID from Iraq with the assistance of his family.
  4. The other grounds are much weaker but nevertheless arguable.

### Discussion and analysis

12. The Grounds assert, in summary, (1) flawed decision as a result of lack of reasoning, (2) disagreement with finding of inconsistencies (3) an alternative explanation had been offered by the Appellant and challenging the Judge's finding anyone with whom the girl spoke would immediately recognise she was drunk, (4) a challenge to [17] of the decision, (5) no detailed reasons given for rejecting the Appellants political activities, (6) Sparse findings as to

- documentation with no consideration of the Appellants explanation for the same, (7)the decision fails to consider how the appellant would reach his home area, (8) fails to give reason for the conclusions and simply provides an alternative way of reacting by the Appellant.
- 13.The Judge summarises the Appellant’s case at [14 (a)-(h)] of the decision under challenge.
- 14.The core incident relied upon by the Appellant, which he claims gives rise to a real risk is that at [14 (f) – (g)] in which the Judge writes:
- f. On 30 December 2018, the daughter was home alone and the Appellant was on duty with two others. He received a phone call from the girl asking him to fix the satellite dish so he left his post and entered the house. As he entered, the girl came towards him and started hugging him. She was dishevelled and smelled of alcohol. She said she wanted to be with the Appellant and leave her life, as she was unhappy. The Appellant escorted her to a seat and went to fetch her a glass of water. On his return he heard her speaking, as he approached her, he realised she was speaking on the phone and heard her fiancé’s voice. He realised she was telling her fiancé that he was in the room and asking for sex. He went to switch the phone off and as he did so, she turned the phone round so he saw her fiancé and her fiancé saw him. Her fiancé threatened him with death so the Appellant ran away.
  - g. Around thirty to forty minutes later, the Appellant received a text message from the commander which also threatened him with death. He did not show anyone that text or forward it to anyone. He no longer has that phone as it was lost at sea on 10 January 2019 while he was travelling to Italy.
- 15.At [15] the Judge finds from the evidence there was no physical love relationship between the Appellant and the girl and notes the Appellant’s claim that on the day in question the girl was drunk and made advances to him and that when he rejected her she contacted her fiancé and made allegations against him.
- 16.The Appellant’s evidence was that he was at the house of the Commander where the girl lived as a bodyguard. The Judge finds if the girl was drunk, he would have been able to call his fellow bodyguards to witness what was happening and provide an explanation for her behaviour. Although the Appellant disagrees with that assessment it has not been shown to be a rationally objectionable finding in the circumstances.
- 17.The Judge finds that if the girl’s speech was affected by her drunken state and dishevelled appearance as he claims, her fiancé would have been able to observe that during the video call she made to him. This finding is challenged in the Grounds seeking permission to appeal which, in full, are in the following terms:
1. The Appellant is a citizen of Iraq and fears ill treatment as a result of allegations made against him from his commander’s daughter.
  2. It is argued that the findings are legally flawed due to the lack of reasoning, and the brevity of the findings.
  3. It is not accepted that the appellant has been inconsistent, which was the respondent’s allegation, but instead the account is said to be implausible. The reasons are that alternative actions of put forward as what the Appellant could have done. This is particularly in relation to why the appellant fled when the allegations were made rather than trying to prove to others that the lady making the allegations was drunk. Much seems to rely upon the FTJ concluding that anyone with whom the girl spoke with would immediately recognise she was drunk.
  4. It is noted that the Appellant only realised the girl had been drinking as he could smell alcohol. There is no reason why the fiancé would have therefore known she had been drinking when speaking via video call. There is no reason offered why

the others would believe the appellant rather than the allegation the girl had made. As such whilst an alternative way of acting is offered, there is no reason put forward why this would be the only option.

5. Paragraph 17 notes that the commander would have realised his daughter was drunk had he called her, but this fails to consider the way in which the appellant realised this which was his physical proximity to her.
  6. In considering the political activities there are no detailed reasons given for rejecting the appellant's political activities. The only reason given is that he was not politically active in Iraq. However he had no reason to be whilst he was there. He is clearly among people who engage in similar activities and there has been no engagement with the evidence regarding the activities and the reasons for this.
  7. The findings relating to documentation are sparse. The Appellant states that the ID was taken by his boss and he has no access to it. There is no consideration of the appellant's explanation as to where his documentation is.
  8. If the appellant were returned to an airport not in his area then he would need to travel by land to reach his home area. This would require a CSID or INID. The decision fails to consider how the appellant would reach his home area.
  9. As such the decision fails to give full reasons for the conclusions and simply provides an alternative way of reacting by the appellant.
18. Guidance has been given by the Court of Appeal to the approach to be adopted by appellate judges considering challenges the decision of judges below. A person challenging a decision of a judge of the First-tier Tribunal must have regard to the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462 (see below).

This approach has been repeated in the more recent decision of the Court of Appeal in Hafiz Aman Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 in which Lord Justice Green in giving the lead judgement, with which the other members of the Court agreed, wrote:

UT's jurisdiction and errors of law

26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:

- (i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];
- (ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 at paragraph [45];
- (iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 at paragraph [25];
- (iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see UT (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 1095 at paragraph [27];
- (v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see AA (Nigeria) v Secretary of State for the Home Department [2020] EWCA Civ 1296 at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 at paragraph [107].

Also of considerable relevance is the more recent decision of the Court of Appeal in *Alexander Isaac Hamilton v Mark Colin Barrow (1), Claire Michelle Barrow (2) and Matin Welsh (3)* [2024] EWCA Civ 888 in which Lady Justice Falk, who gave the lead judgment with which the other members of the Court agreed, wrote at [30]-[31]:

### **Approach to the appeal**

30. Mr Hamilton rightly referred us to case law reiterating the approach of this court to appeals on questions of fact. Lewison LJ's summary in *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2] bears repeating:

"The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

- (i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
- (ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
- (iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
- (iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
- (v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
- (vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

31. The appeal court's reluctance to interfere applies not only to findings of primary fact but to their evaluation and the inferences to be drawn from them: *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 at [114]. Absent an error of legal principle, this court will interfere with such findings only in limited circumstances: see for example *Walter Lilly & Co. Ltd v Clin.* [2021] EWCA Civ 136, [2021] 1 WLR 2753 at [85], where Carr LJ said:

"In essence the finding of fact must be plainly wrong if it is to be overturned. A simple distillation of the circumstances in which appellate interference may be justified, so far as material for present purposes, can be set out uncontroversially as follows:

- (i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support.
- (ii) Where the finding is infected by some identifiable error, such as a material error of law.
- (iii) Where the finding lies outside the bounds within which reasonable disagreement is possible."

19. Legal error is not made out by a Judge only providing brief findings per se, provided a reader of the determination can understand what the judge's decision is and how that decision has been arrived at. Indeed, First-tier Tribunal judges have been encouraged in line with modern practice to produce issue-based decisions, devoid of unnecessary content, whilst maintaining the required degree of clarity. A reader of the determination under challenge is able to understand why the Judge found as she has as she has provided sufficient reasoning. It must be remembered that reasons only need to be adequate, not perfect, and that there is no need to give reasons for reasons.
20. It is also not made out the Judge did not consider the evidence with the required degree of anxious scrutiny.
21. While the Appellant may not accept that he has been inconsistent, which is the Secretary of State's position, he claims this has arisen in that alternative actions had been put forward as to what he could have done such as in relation to why he fled when the allegations were made, rather than trying to prove to others that the lady making the allegations was drunk. The core finding of the Judge is that she did not accept the only option available to the Appellant was to run away, to the UK, which has not been shown to be a rationally objectionable conclusion or one outside the range of those available to the Judge on the evidence.
22. The Judge's observations at [19] in relation to the cultural issues are also within the range of those available to the Judge. The Appellant was claiming that a 25 year old woman, the daughter of a powerful commander, with whom as a result of respect for not breaching social norms they had limited their interaction, as a result of an awareness that breaching such norms in Iraq could result in death if dishonour was brought upon the family, consumed alcohol to the point she was drunk and then propositioned the Appellant, when she was an unmarried female without a chaperone engaged to a third party, and started hugging him claiming she wanted to spend her life with him. Cultural gender norms are a matter the Judge was entitled to refer to. The Judge also noted this is a situation in which the property in question was being guarded by other bodyguards, increasing the risk of discovery.
23. The Judge's decision is also not predicated solely upon the conclusion that anyone with whom the girl spoke to would immediately recognise she was drunk. Even if the fiancé would not have been able to ascertain this point on a video call, which is a plausible comment, the claim no reason was offered why others would believe the Appellant rather than the allegation the girl had made is no more than a suggestion by the author of the grounds, but no more. The Judge states the Appellant could have spoken to other bodyguards. That is plausible. He could have put his case and if that failed fled. Instead, it appears he chose to flee which the Judge did not find, when taken with the other evidence, credible. That has not been shown to be a finding outside the range of those available to the Judge on the evidence.
24. It was submitted there is background evidence showing that women act as the Appellant claims the woman did in Iraq, but the Judge is not making a generalised finding but rather a specific finding on the evidence. It was not

- found on the basis of the profile of the Commander's family the Judge been asked to consider that the claim was plausible.
25. The Judge does not dismiss the appeal solely on the basis of this issue. Mr Thompson referred me to [21] of the decision in which the Judge wrote:
21. The alacrity with which the Appellant was able to travel to Turkey adds to my disbelief in the credibility of his account. His family were neither rich or powerful, he has given no indication as to his brother-in-law's occupation or his standing in respect of wealth. An illegal journey using an agent (or people smuggler) from Iraq to the United Kingdom is not cheap and, I am told, would cost around \$10,000. For his brother-in-law to be able to find an agent and the money within two days is simply incredible and it is more likely the journey was in the planning for some time.
26. That is a finding within the range of those reasonably open to the Judge on the evidence.
27. In relation to the sur place activities, the grounds assert that no detailed reasons are given for rejecting the Appellant's political activities when the only reason being given is that he was not politically active in Iraq, as he states he had no reason to do so whilst he was there, whereas in the UK he is amongst people who engage in similar activities. He claims there has been no engagement with the evidence.
28. The Judge does not dismiss this aspect solely on the basis of the fact the Appellant had undertaken no political activities in Iraq. The Judge addresses this issue from [29] noting the limited extent of the Appellant's involvement both in terms of the number of demonstrations and his role. The Judge does not accept his attendance represents a genuinely fundamental held political view as it is clearly the opinion of the Judge that the Appellant had attended the demonstrations to bolster his asylum claim. It is not made out on the evidence the Appellant had the degree of profile that would bring him to the adverse attention of the authorities either in the UK or an Iraqi if he undertook such activities at a low level. Whilst those perceived by the authorities to be against them face a real risk of ill-treatment the Appellant did not provide sufficient credible evidence to show he has such profile.
29. The Judge considers Facebook at [30 - 31]. At [31] the Judge specifically finds the Appellant had no interest in politics, joined the Peshmerga of the KDP and worked for them, with no evidence of any adverse interest. A reader of the determination as a whole shows the finding of lack of any real risk as a result of political activities is a finding within the range of those reasonably opened to the Judge on the evidence.
30. The Judge's findings in relation to documentation is challenged in the grounds. The Appellant gave the exact location of where he registered his CSID in Iraqi, at paragraph 10 of the original skeleton argument, which is said to be Choman, a city in the Erbil Governorate of the IKR.
31. In accordance with current policy the Secretary of State is likely to return the Appellant to Erbil airport but he will still require documentation to travel from there to his home area and to live a normal life in Iraq.
32. The grounds assert the Judge's findings in relation to documentation are sparse with no consideration of the Appellant's explanation as to where his documents are.
33. The Judge deals with documents from [37], finding at [38] it was not sufficient for the Appellant just to state he cannot be re-documented. The Judge examines the documents that have been provided in the bundle and the evidence in relation to the CSID. I accept the Appellant will not be able to obtain a INID without attending in person at his local CSA in Choman, which he will not be able to access, as he will be required to go through checkpoints outside the airport in Erbil, without his CSID.

34. The Judge finds she did not believe the Appellant had lost all contact with his family which is a finding within the range of those reasonably available to the Judge on the evidence. The fact he has such contact supports the Judge's finding that he could obtain the volume and page reference of the entry in the Family Book in Iraq from them, if needed.
35. The Appellant's CSA is one that has transferred to the issue of the INID documents.
36. Of more fundamental importance, however, is the Appellant's claim that his boss took his CSID and all his documents from his house. He stated they did not hurt his family because the family said they blamed him and disowned him. He claimed to have lost contact with the family around February 2022. The Appellant claimed he spoke via his brother-in-law's Facebook account but that it had been deleted so he had no contact with them since. He claims the family could not go to the CSA office on his behalf as it is a small area and they would get into trouble. He also confirmed he went to the Iraqi Consulate in Manchester who were unable to help him but this is not surprising if he could show no official evidence confirming who he was.
37. The key issue here is that the Appellant had claimed he did not have any identity documents as they had been taken from him by his boss who was the Commander, the father of the girl in question, from his house. The Judge finds the Appellant's claims lack credibility and are a lie. That is a sustainable finding on the evidence as a whole. As the events involving the woman in question never occurred, the Appellant's claim the Commander came and took his documents as a result of that event also could not have occurred. The reality therefore is that the Appellant's explanation for why he had no documents is also lacks credibility.
38. The burdens upon the Appellant to prove what he is claiming, and the reason he claims not to have access to a CSID, is true. He has been shown to lack credibility and has failed to discharge the burden of proof upon him to the required standard to show he does not have access to his CSID.
39. He claims he left his identity documents with his family. The Judge's finding he had not proved he had lost contact with the family, meaning he must have contact with them, it is sustainable finding. The Appellant's family live in the IKR. It was not made out before the Judge they would not be able to meet him at the airport or send documents to him if required, or that he will not be able to return to live with them and live a normal life in Iraq.
40. Whilst the Appellant disagrees with the Judge's findings I have looked at this matter through the guidance provided by the Court of Appeal above. Having done so I conclude the Judge's findings have not been shown to be outside the range of those reasonably open to the Judge on the evidence. The core finding that the Appellant lacks credibility and is no more than an economic migrant is clearly within the range of findings reasonably open to the Judge.

### **Notice of Decision**

41. No legal error material to the decision to dismiss the appeal is made out. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**10 September 2024**



