



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2024-000677
First-tier Case Number: PA/50511/2023
LP/01114/2023

THE IMMIGRATION ACTS

**Decision & Reasons
Promulgated
On 20 June 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**JQ
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Malik, Hanson Law Ltd, Solicitors
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 12 June 2024

The Appellant

1. The appellant is a citizen of Iraq of Kurdish ethnicity born in 1989. He appeals against a decision of Judge of the First-tier Tribunal Meyler dated 11 December 2023 which dismissed his appeal against a decision of the

respondent dated 17 January 2023. The respondent's decision refused the appellant's application for international protection.

2. **Anonymity.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials JQ. 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.

3. The appellant left Iraq on 16 September 2023 arriving in the United Kingdom by lorry on 19 November 2023. He claimed asylum the same day.

The Appellant's Case

4. The appellant's case was that he had experienced severe difficulties with his wife's family. His wife's cousin (or brother) was an influential man referred to as G in the determination. G was using the appellant's home to conduct a love affair with a neighbour to which the appellant objected. This prompted G to send his, G's, younger brother and a number of G's associates to attack the appellant. They also took away the appellant's wife and child. The appellant attempted to resist this unsuccessfully. On the same day of the attack the appellant divorced his wife which meant that G now wanted to kill the appellant. The appellant was advised by a relative to leave Iraq which he promptly did. The appellant had no documents with him when he arrived in the United Kingdom as they had been taken away by an agent.

The Decision at First Instance

5. The judge found that the appellant's case lacked credibility and in the course of her determination from [24] to [35] pointed to a number of inconsistencies in the account between the screening interview, substantive asylum interview, written statement and oral evidence. These discrepancies included: whether the appellant's wife was the sister or cousin of G; whether the wife and child were taken on 16 September 2019 (according to the appellant's oral evidence) or 24 December 2018 (according to his interview). The problems with the appellant's in-laws started either in December 2018 or earlier in 2016. He either went to his uncle's friend for help on 16 September 2019 or that was the day he left Iraq altogether. He either went to a court to complain about what had happened or to the local police. G was either working for both the PUK Peshmerga and the KDP or just the PUK. The appellant either had divorce papers (which he told the respondent he would produce) or he had divorced his wife orally. He had nothing on his mobile phone when it was returned to him by the Home Office or he had photographs of his family which he was able to print.

6. At [37] to [41] the judge dealt with the issue of whether the appellant could return to Iraq and if so how. The judge found that the appellant was most likely still in contact with his aunt and uncle who could obtain the appellant's CSID and send it to him. The judge had before her the CPIN dated October 2023 dealing with returns to Iraq. According to the CPIN July 2022 failed asylum seekers could be removed to any airport in Iraq or the Iraqi Kurdistan region (IKR). The judge dismissed the appeal.

The Onward Appeal

7. The appellant appealed against this decision making six main points. The first was that the appellant's statement had explained the timeline but that explanation had not been properly considered by the judge. Secondly, the judge had not looked at a video produced at the hearing which concerned G. Thirdly, the judge was wrong to speculate that with the appellant's wife taken away the appellant was no longer at risk from G. The appellant had divorced his wife which had brought shame upon her and would cause G to seek retribution. Fourthly, it was unfair of the judge to find a discrepancy between the appellant's screening interview and subsequent evidence as judges had been reminded by the Court of Appeal in the case of **JA [2014] EWCA Civ 450**. Fifthly, in finding that the appellant was still in contact with family members in Iraq the judge had failed to take into account the efforts made by the appellant to locate his family documented by the Salvation Army and the Red Cross. Sixthly, the judge was wrong to find that the appellant had access to a CSID. Without such a document the appellant would be unable to pass through the checkpoints which were outside each airport in Iraq. He would also be unable to enter the IKR without a CSID. The CPIN referred to failed asylum seekers being returned to various airports they did not include enforced returns which the appellant would be subject to.
8. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal after the application was renewed. It was considered arguable that the judge was wrong to take a point against the appellant about an earlier statement when no such statement existed. It was arguably speculation by the judge to consider that the appellant was no longer at risk because he had divorced his wife. The judge arguably failed to consider evidence of attempts to trace the appellant's family and had arguably erred in rejecting the argument that the appellant's documents had been taken from the appellant by an agent. It was also arguably unlawful for the judge to find that the appellant could be returned to Erbil or Sulaymaniyah airports.

The Hearing Before Me

9. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there

was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.

10. For the appellant Mr Malik relied on his skeleton argument and submitted that the Tribunal should exercise caution before making adverse credibility findings against the appellant. A claim for asylum could be accepted even if the person assessing it had doubts about certain aspects of the evidence.
11. In relation to ground 1 the appellant had been consistent in his account of when he experienced difficulties with G. It was unfair that the appellant had not been asked in interview about the problems starting from 2016. The judge had held that an earlier witness statement was not before the tribunal and yet had concluded that it undermined the appellant's case when no such statement existed. As to ground 2, the judge was wrong to conclude that it was not necessary to view the video the appellant produced. In relation to ground 3 the judge was not in a position to know what the social effect on the appellant's wife would be following the divorce or what shame she would experience.
12. As to ground 4 there would not be any written evidence for the divorce because the appellant had divorced his wife orally. As to ground 5 there was no evidence that the appellant was still in contact with his family. Rather the evidence was that the appellant had tried to contact his family but without success. As to ground 6 there was no evidence before the tribunal that the appellant still had his CSID document which had been taken from the appellant by an agent. The determination should be set aside in the matter remitted back to the first-tier to be heard again.
13. In reply the presenting officer said that the grounds of onward appeal for all their length were no more than a disagreement with the findings of the judge. The issue of whether there was or was not an earlier statement dealing with the disappearance of the appellant's brother and father was a red herring since that was not material to the appellant's case. Similarly the evidence about the video was not relevant, the issue was not whether G existed the issue was whether the appellant was at risk from G. Ground 3 was also not relevant. The judge was entitled to form a view about whether the appellant would or would not be at risk. The question of the appellant's divorce was not material to the overall conclusion either. Neither the Red Cross nor the Salvation Army were able to do anything to assist the appellant because they were only able to assist the appellant based on what he told them. The judge was entitled to reject the appellant's claim regarding his CSID, the family could return that to the appellant as they had the old one. If the appellant was returned to the IKR he would be questioned and then allowed to go on. The key finding was that there was such a CSID in existence which the family could return to the appellant.

14. In conclusion Mr Malik noted that the judge had accepted certain facts about the case which undermined the negative findings.

Discussion and Findings

15. This is in essence a reasons based challenge by the appellant to the dismissal of his asylum appeal. The appellant had a rather complicated account he wished to put across and it is evident from the many inconsistencies to which the judge drew attention in her determination that the appellant had only a limited grasp of this account. I remind myself that the judge had the benefit of seeing the appellant give evidence and be questioned and she was able thereafter to arrive at her conclusions. I would agree with the submission made to me by the respondent that the onward appeal is in reality only a lengthy disagreement with the findings of the judge and an attempt to re-litigate the appeal. Credibility was very much a matter for the judge who in a detailed determination gave cogent reasons for her conclusions.
16. The appellant claimed that his identity documentation had been taken from him whilst he was under the control of an agent travelling to the United Kingdom. The judge rejected this argument finding that the most likely scenario was that the appellant's CSID document was still in Iraq where the appellant's relatives his uncle and aunt who had assisted him to leave the country could retrieve and forward it to the appellant. This would enable the appellant to pass through checkpoints found outside Iraqi airports. The appellant's claim to have made enquiries about the whereabouts of his family through the Salvation Army and the Red Cross did not take matters significantly further since the appellant was either in contact with his family or he was not. If he was as the judge found he was very clearly he had not given relevant information to either agency to assist them with their enquiries.
17. There were a number of complaints made by the appellant about the findings of the judge. Some of those complaints were peripheral to the case for the reasons given by the respondent that they were not matters on which the appellant's case rested. Others did not take account of the fact that the burden of proof was upon the appellant. For example it was argued that the judge should have viewed a video concerning the individual G. The video however appears only to confirm the existence and importance of G. Crucially it seems, what it does not deal with is what if any was the connection between the appellant and G. If there had been a connection a transcript of the video would have revealed that connection and the judge could have then decided whether to view the video. Since the video did not deal with any such connection there was no reason for the judge to waste the time of the court by looking at evidence which did not take the case any further.
18. There were a number of serious inconsistencies in the appellant's account for which the appellant had no proper answer. The appellant had been

able to produce photographs of his family which were on his phone in circumstances where he had also claimed that there was nothing on his phone when it was returned by the respondent. This seriously undermined the appellant's claim not to still be in contact with his family. It was a matter for the judge at trial as to what how much weight to place on this evidence. The judge evidently felt this was a significant discrepancy a conclusion which was open to her.

19. Although in granting permission to appeal the Upper Tribunal found it arguable that it was unlawful to indicate that the appellant could be returned to Iraq, it is difficult to see how in the circumstances and factual matrix found by the judge that could be so. The judge had been taken to the October 2023 CPIN. The situation regarding returns to Iraq has changed over the last few years and the 2023 CPIN is an attempt by the respondent to bring matters up-to-date. At 3.6.2 thereof it states: "Decision makers must start by considering (i) where the person would be returned to (noting failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq (other than Kirkuk) and to Erbil and Sulaymaniyah airports in the KRI" At 3.6.4 it continues: "Decision makers must therefore assess whether a person will be returned to Iraq in possession of the necessary civil documentation or could obtain a replacement INID in a reasonable timeframe. If the original documentation still exists and is held by family members in Iraq, the document can be provided by family members meeting them on arrival or sent by secure post to the person in the UK."
20. The judge found that the appellant would be returned to Iraq as a failed asylum seeker with no profile of any interest to the authorities. For the reasons given by the judge the appellant would have access to identification documentation and would be able to gain access to the IKR. Ultimately it was a matter for the judge who directed herself correctly. She found the appellant could have access to documentation and could therefore be safely returned. It was open to the judge to hold that the appeal could be dismissed without breaching this country's obligations under either the Refugee Convention or the Human Rights Convention. I do not find there was any material error of law in the judge's determination and I dismiss the appellant's onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

Signed this 12th day of June 2024

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Judge Woodcraft
Deputy Upper Tribunal Judge