IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-001911

First-tier Tribunal Nos: PA/55510/2023
LP/00921/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SKA (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A. Bhachu, Counsel instructed by Primus Solicitors
For the Respondent: Mr A. McVeety, Senior Home Office Presenting Officer

Heard at Field House and via CVP on 9 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 from the decision of First-tier Tribunal Judge Hawden-Beal promulgated on 8 March 2024 ("the Decision"). By the Decision, Judge Hawden-Beal dismissed the appellant's appeal against the decision of the Secretary of State made on 3 August 2023 to refuse his protection claim.

Relevant Background

2. The appellant is a national of Iraq, who was born on 11 March 1994. He claimed asylum on 7 August 2020. The basis of his asylum claim was fear of the Hashed Al Shaabi militia (aka "the PMF"), on account of the fact they allegedly held him responsible for the death of the son of a militia member, and fear of the Iraqi/KRG authorities on account of his political activities in the UK.

3. In the refusal decision, the respondent accepted that he had taken part in protests in the UK and had posted on Facebook, but did not accept his account of having fallen foul of the PMF.

4. As to his *sur place* activities, he was not a high-profile activist and since he fell into the category of a low-level protestor, he would not be at risk of harm on return to Iraq/IKR.

5. His return to the IKR was feasible as he was a former resident of the IKR and he was in possession of a copy of his CSID. Alternatively, he could get a Laissez-Passer to return to the IKR, and there was no external evidence to suggest that he would be required to pass through any checkpoints to reach a CSA office where he could obtain a replacement CSID or INID.

The Decision of the First-tier Tribunal

6. The appellant's appeal came before Judge Hawden-Beal sitting at Birmingham on 1 March 2024. Both parties were legally represented, with Ms Bhachu of Counsel appearing on the behalf of the appellant. The Judge received oral evidence from the appellant who was cross-examined and answered some questions from the Judge.

7. In the Decision, the Judge found against the appellant on all three issues. He held that the appellant would not be at risk due to a blood feud; that he had only been a low-level political activist in the UK, and so would not be on the radar of the Iraqi or KRG authorities; that he originated from Iraq, not the IKR, and that the copy CSID that he had on his phone would enable him to pass through a checkpoint to get to his home area of Daquq where he could obtain an INID.

The Grounds of Appeal

8. The grounds of appeal to the Upper Tribunal were settled by Freedom Solicitors. Ground 1 related to the blood feud. Ground 2 related to the *sur*

place claim. Ground 3 related to the Judge's finding that the appellant would be able to travel safely within Iraq to his home area.

The Reasons for the Grant of Permission to Appeal

9. On 19 January 2024 First-tier Tribunal Judge Dainty granted permission to appeal on Grounds 2 and 3. It was arguable that the conclusions on political activity were infected by an error of law by virtue of the application of certain assumptions, errors about the evidence and/or findings on matters that were not put. It was arguable that there was a real risk that the appellant would encounter problems passing through checkpoints if he was only in possession of a photocopy of his CSID.

The Hearing in the Upper Tribunal

10. At the hearing before me to determine whether an error of law was made out, Mr McVeety conceded at the outset that the Decision was vitiated by a material error of law for the reasons identified in the grant of permission.

11. Although his stance was not determinative of the issue, I was satisfied that the respondent's concession was reasonable.

12. Accordingly, I ruled that a material error of law was made out, with short written reasons to follow.

Discussion and Conclusions

13. Under Ground 2, the errors conceded by Mr McVeety include the following:

(a) The Judge made an untested assumption that the appellant had access to the internet during the Covid pandemic, and thereby unfairly drew an adverse credibility inference from his "delay" in starting his political activities;
(b) At para [43] the Judge said there was no evidence of the appellant posting on the political groups he had joined, but in fact there was such evidence in exhibit SKA 3 at pp72-108.
(c) The Judge referred to this evidence at para 44 but misunderstood its significance.
(d) The Judge misunderstood at para 45 the effect of the appellant turning off his Messenger application – it did not preclude people from sending messages, it just meant that they could only be read if the application was turned on.

14. Cumulatively the above errors were material as they underpinned the Judge's finding that the appellant was only a low-level activist, not an activist who had acquired a high-profile in the UK so as to be at risk on return.

15. Under Ground 3, Mr McVeety is in agreement with Ms Bhachu that the course of action postulated by the Judge runs contrary to country guidance, and it would not work. In the circumstances, the error is clearly material, as under the scenario envisaged by the Judge the appellant would be exposed to a risk of serious harm contrary to Article 3 ECHR.

16. Accordingly, the Decision is unsafe and, while the Judge's findings on the blood feud claim are not in themselves vitiated by an error of law, the Decision must be set aside in its entirety and remade.

17. I have carefully considered the venue of any rehearing, taking into account the submissions of the representatives. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I have considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statement.

18. I consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and I therefore remit the appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains an error of law, and accordingly the decision is set aside in its entirety, with none of the findings of fact being preserved.

This appeal is remitted to the First-tier Tribunal at Birmingham for a fresh hearing before any Judge apart from Judge Hawden-Beal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
24 September 2024