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

Case No: UI-2024-003604
PA/51172/2023
First-tier Tribunal Nos: PA/01415/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 18 November 2024**

**Before**

**UPPER TRIBUNAL JUDGE BULPITT**

**Between**

**H R**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Mr T Hussain, Counsel instructed by Lei Dat & Baig Solicitors
For the Respondent: Mr J Thompson, Senior Home Office Presenting Officer

**Heard at Field House on 7 November 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.* This is the appellant's appeal against the decision of Judge C J Williams which was promulgated on 28 May 2024. In that decision Judge Williams dismissed the appellant's appeal against the respondent's refusal of his protection claim.

*2.* The background to that appeal is that the appellant is a 26 year old Iraqi national of Kurdish ethnicity who entered the United Kingdom on 15 November

2021 and three days later formally claimed asylum. The respondent refused that claim in a decision issued on 4 February 2023. The appellant then appealed against that decision to the First-tier Tribunal.

*3.* The issue identified at the hearing before the Judge was a narrow one. It was common ground that in May 2021 a man referred to as MHR, was granted humanitarian protection in the United Kingdom on the basis that he had witnessed a murder in Iraq and consequently was at risk of serious harm if returned to Iraq. The issue for the judge was whether he was satisfied on the lower standard of proof that the appellant was with MHR and also witnessed the murder when it occurred in Iraq. It was accepted and agreed that if the judge was so satisfied he should grant the appellant humanitarian protection in line with MHR because in those circumstances the appellant would also be at risk of suffering serious harm in Iraq.

*4.* Having heard evidence from both appellant and MHR, the judge gives his analysis of the disputed issue in the "findings" section of his decision beginning at paragraph [12]. At [17] the Judge records that MHR made his protection claim on 10 March 2020 and that it was accepted on 8 May 2021 following an appeal to the First tier Tribunal. At [18] the Judge notes that the appellant claimed asylum six months later on 18 November 2021 and says: *"I have had regard to the timing between MHR's appeal and the claim made by the appellant, specifically the fact that the timing would have allowed for collusion between the two and for the appellant to learn the account given by MHR"*

*5.* At [20] the Judge concludes that the appellant and MHR knew each other in Iraq, accepting their consistent evidence about one another's siblings and their activities in Iraq, including the gym they attended together. At [21] the Judge then says *"What remains then, is for me to determine whether the appellant was present with MHR at the time of the murder, or whether he has simply learned the account given to him by MHR, knowing the facts were sufficient for him to be granted Humanitarian Protection".*

*6.* At [21] - [23] the Judge considers evidence that throughout his protection claim, MHR gave a different name to the appellant's name when describing the person who was with him when the murder happened. The Judge rejects MHR's assertion that this was a mistake noting that the alterative name was repeated in MHR's asylum interview, was not corrected following that interview and was maintained throughout the appeal hearing which took place on 15 April 2021. At [23] the Judge concludes *"I find the fact a different name was given in MHR's interview and appeal hearing undermines the appellant's claim to have been with MHR at the time of the murder. As above, I find the reality is the appellant has reconnected with a friend he knew from Iraq, who has taught him the salient parts of the account he had given to the respondent."* Accordingly the Judge rejected the appellant's claim to be at risk in Iraq and dismissed his appeal.

*7.* The appellant sought permission to appeal against the Judge's decision submitting that MHR had explained the difference between the name he was recorded as giving and the appellant's name, and arguing that the Judge should have taken into consideration the possibility of an error in communication and translation. The grounds go on to additionally submit that the Judge erred by failing to consider the evidence of the appellant that having lost touch with MHR in Iraq, he did not reconnect with him until after he had claimed asylum in November 2021. Permission was granted by Upper Tribunal Judge Kebede on

the basis that it was arguable that the Judge failed to consider the appellant's explanation about when he re-established contact with MHR.

**Analysis**

*8.* The assertion in the grounds of appeal that the Judge erred in his consideration of MHR's explanation for the difference in the name is in reality no more than a disagreement with the Judge's assessment of the evidence. As Judge Kebede noted when granting permission to appeal, the Judge gives reasons for rejecting MHR's explanation for the conflict in the evidence at [15], [16], [21] and [23] of his decision. This ground of appeal provides no basis for interfering with the Judge's decision and sensibly Mr Hussain did not pursue it.

*9.* Mr Hussain did however pursue the submission that the Judge failed to consider the evidence about when the appellant and MHR re-established contact. Mr Hussain argued that the appellant's explanation that he only did so after claiming asylum was the pivotal evidence in the case and as such was evidence which the Judge was required to refer to in his decision and evidence that demanded a specific finding. Instead, he submitted the Judge does not mention the evidence at all. Mr Thompson pointed to paragraphs [17] and [18] of the decision and submitted that they made it clear that the Judge had taken account of the timings of the accounts and argued that the Judge had reached a conclusion that was reasonably open to him on the evidence.

*10.* I remind myself of the guidance given by the Court of Appeal about the approach that should be taken by an appeal court to findings of fact made by a first instance court or tribunal. In **Volpi v Volpi** [2022] EWCA Civ 464 Lord Justice Lewison summarised the well established case law at [2] of his judgment including at (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"* and at (vi) *"reasons for judgement will always be capable of having been better expressed. An appeal court should not subject a judgement to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract".*

*11.* Here, as [21] of the decision makes clear, the judge was acutely aware that the question of whether or not the appellant and MHR had colluded in their accounts was central to the appeal. It is equally apparent from [17] and [18] of the decision that the Judge was also highly aware of the significance of the timings of the relevant claims when considering that question. The Judge then refers to the accounts of the appellant and MHR, and although he does not refer directly to their evidence about when they reconnected, it would be artificial to suggest despite his clear care in considering their evidence that the Judge had ignored that part of their evidence. It is only after referring to both the timeline of the asylum claims and the evidence of the appellant and MHR that the Judge reaches the conclusion at [23] that *"the reality is the appellant has reconnected with a friend he knew from Iraq who has taught him the salient parts of the account he had to given (sic) to the respondent."*

*12.* It is clear in my judgement that within the express finding that MHR has taught the appellant the salient parts of the account after the pair had reconnected, is the implicit rejection of the explanation given about contact only being re-established after the asylum claim had been made. Whilst it may have been preferable for the Judge to have stated his rejection of that explanation explicitly,

the fact he has not done so does not indicate that, contrary to all his other references to their evidence, the Judge has ignored this specific aspect of the evidence from the appellant and MHR. Whilst the decision could have been better expressed the Judge's finding remains clear.

*13.* Overall, this is a case where there is every indication that the Judge has taken the evidence of the appellant and MHR into account before reaching his conclusion and no compelling reason to find to the contrary. It is not the case that just because he has not made explicit reference to it, the Judge should be considered to have ignored a key part of their account. I am satisfied that the judge has done an adequate job of expressing his findings on the key issue by reference to the evidence and giving due respect to an expert tribunal I conclude that there is no basis for me concluding that the judge has failed to turn his mind to all the evidence that was before him.

**Notice of Decision**

The appellant's appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore stands

**Luke Bulpitt**

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**12 November 2024**