IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004824

First-tier Tribunal No:
PA/00111/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of January 2025

Before

UPPER TRIBUNAL JUDGE RUDDICK

Between

SM
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M. Moriarty, instructed by Qays Dayton Rayleigh Solicitors
For the Respondent: Ms A. Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 13 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and the members of his family are 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 or the members of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Abrebese ("the Judge"), promulgated on 30 August 2024 following a hearing held on 25 June 2024, dismissing his appeal against the respondent's decision to refuse his protection and human rights claims.

Background

2. The appellant was born in 1986. He is accepted to be a citizen of Iraqi of Kurdish ethnicity. His wife and his two children (born in 2013 and 2018) are dependants on his claim. He says that he and his wife and children left Iraq on 18 October 2021 and travelled via Turkey, unknown other countries and France to the UK. The family arrived in the UK by small boat on 11 November 2021, and the adults' screening interviews were conducted on 15 December 2021. On 8 January 2022, he submitted a Preliminary Information Questionnaire (PIQ), and this was followed on 28 February 2023 by a witness statement and on 26 June 2023 by a further on-line questionnaire. The respondent interviewed him about his asylum claim on 17 October 2023 and again on 23 November 2023.

3. The appellant claims that he and his family are at risk because he sought to expose corruption within the PUK, and also because he has actively expressed his opposition to the Kurdish authorities since arriving in the UK. He says that he joined the Peshmerga in 2004, and eventually became the driver for a Peshmerga captain and later colonel, AB. He also worked as a PUK election observer. At some point, the appellant became aware that SJ, whom he has described both as an associate of AB's within the PUK Peshmerga and as Vice President of the KRG, was siphoning off money that was intended to pay for "food and groceries" for the Peshmerga. He attempted to report this corruption, and in response AB threatened him. The appellant felt his life was in danger, and he fled Iraq with his family three days later. He had to leave behind his daughter S, who was a child of his first marriage, who normally lived with him but was on a visit to her mother at the time.

4. In terms of any Iraqi identity documents, the appellant said at his screening interview that his passport was in Iraq, but he added in his February 2023 that it had been retained there by his agent and he did not have a picture of it. He said in his PIQ that he had a digital copy of an identity card, and he would be able to obtain the original (although he did not specify how). In his questionnaire of 26 June 2023, he described that as an Iraqi National Certificate (INC), but at his substantive interview it was referred to as an INID.

5. In support of his asylum claim, he submitted identification documents issued by the Independent High Electoral Commission in 2009 and 2014, a "Loyalty certificate" that he says was issued by the PUK in recognition of

his work as an election observer, and three photographs. He also submitted a picture of the ID card of his daughter S.

6. On 11 December 2023, the respondent refused the appellant's asylum and human rights claim. The respondent accepted the appellant's nationality and ethnicity, and that he had "worked for the electoral commission in Iraq". The respondent rejected the appellant's account of having worked for the Peshmerga and having been threatened by a Peshmerga captain, on the grounds that his account was internally inconsistent and lacked detail, and that the appellant had failed to provide corroborating social media evidence that should have been readily available. The appellant's credibility was also damaged by his failure to claim asylum in France.

7. With regard to the appellant's return to Iraq, the respondent relied on a CPIN and found that the appellant could be returned to Erbil/Sulaymaniyah airport, and that he had not established either that his family did not have access to his original "CSID/INID" or that they would be unable to assist him in obtaining replacement documents.

The appellant's appeal to the First-tier Tribunal

8. The appellant appealed, and in support of his appeal he submitted:

(i) A witness statement responding to the reasons for refusal letter, describing the new evidence he was submitting, and setting out that he had attended four demonstrations outside the Iraqi embassy in London between December 2023 and February 2024, "regularly post[ed] anti-Government posts on Facebook", would be at risk in Iraq as a result of having become "westernised" while in the UK and could not reintegrate into Iraq after his absence of more than two years;
(ii) A selection of anti-regime posts from his Facebook page (with translations), which included pictures of demonstrations outside the Iraqi embassy in London;
(iii) A photograph of himself apparently being interviewed by NRT at a demonstration in London;
(iv) Photographs purporting to be of him in Iraq, either performing his Peshmerga duties or with AB;
(v) A Peshmerga ID card in his name, valid from January 2004 through December 2006;
(vi) A letter from the PUK to the appellant, congratulating him "Following the great success of the 30/04/2014";
(vii) A document dated in July 2005, listing the appellant as one of 23 volunteer soldiers employed by the Peshmerga;
(viii) A photo of a ledger book, containing the appellant's name;
(ix) A screenshot of the Facebook page of the appellant's local city;
(x) A witness statement from his solicitor containing a link to the "download your information" function of his Facebook page, which he said he could not provide within the document due to its size, and

confirming that he had accessed the Facebook page, which was "publicly available under [the appellant's] name";

(xi) a skeleton argument;

(xii) 100 pages of independent country evidence;

(xiii) Three CPINS; and

(xiv) SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC).

9. In her Respondent's Review of 25 April 2024, the respondent considered the appellant's further evidence but maintained her decision to reject the appellant's account of events in Iraq on inconsistency and plausibility grounds. The additional photographs and documents from Iraq were given little weight. As to the appellant's political activities in the UK, these appeared to have begun after his asylum interview and there was no evidence of how they would have come to the attention of the Kurdish authorities.

The Judge's decision

10. The Judge's decision is five pages long, of which 2.5 pages set out his findings and reasoning. At [8], the Judge sets out that the appellant gave evidence at the hearing, and that he then invited submissions from the representatives. At [9]-[10] the Judge summarised elements of the appellant's claim and the respondent's reasons for refusal. This was followed by two paragraphs summarising further details of the appellant's claim, a paragraph summarising both the appellant's oral evidence on obstacles to reintegration and the respondent's submissions at the hearing, and two brief paragraphs summarising the appellant's submissions at the hearing.

11. Paragraphs [16]-[21] contain the Judge's findings. I set them out in full, as the appellant's challenge is primarily on the basis that the Judge failed to give adequate reasons:

> 16. "I have considered all of the evidence and I make the following findings. I did not find the A to be a credible witness for the following reasons. The A has had ample opportunity to state his case and no blame should be attached to the R's for not asking what he calls follow up questions. The claim is extremely vague in terms of the claims that the A fears his employer because of information contained in a report that was brought to his attention. The A speculates that it was brought to the Captains attention but he is not sure and he speculates that it was brought to his attention by other individuals.
>
> 17. The A claims to be a Peshmerga soldier but he did not fight and claims to have been employed [as] a driver. The A I find did provide any evidence to support this claim. His evidence is that he did not engage in any fighting. The A was also not politically active on his own evidence. In addition to this the A has not provided evidence to show that the Captain had a role in the government and if so what this role was. This I concluded was an important part of the account provided by the A which was lacking because of his claim of fear and the fact that if he were to return to Iraq he would be put at risk.

18. The A in his statement seeks to explain gaps in his witness statement and screening interview however I do not accept that the A has a genuine fear of persecution on the basis that A wrote a report which came to the attention of his Captain. The A admits in his evidence that no harm has come to those individuals who may have assisted him in leaving the country. It is difficult to accept that the A has a genuine fear on the basis of report which he speculates came to the attention of his employer.

19. The A provided information on face book, however I accept the submissions of Mr Port that it is not clear if the information was even shared and it does not appear to be updated. I am of the view that the A provide[d] this information to bolster his asylum claim. The A in my view based on the evidence may return to the IKR he does not have a well -founded fear of persecution and would not be at risk if he were to return with his family. The A could relocate internally if he were to return.

20. The A and his family would not face very significant obstacles on return because in the case of the A he has resided in the country almost all of his life [and] he [is] familiar with the language and the culture and he would be able to re-integrate with all of his family. The removal of the A from the UK is not disproportionate and would not in my view result in unjustifiably harsh consequences. It would in my view be in the public interest for the A and his family to return to Iraq.

21. I am of the view that the A is likely to have gone through the process pf [sic] biometric system on leaving Iran [sic] as he left as recently as 2015 and this would make it easier for him to obtain an INID. The A does have relatives in Iraq and they alternatively could seek their assistance in obtaining the relevant information for an CSID. In conclusion the A and his family are not at risk and can return to Iraq."

The grounds of appeal

12. On 1 November 2024, Upper Tribunal Judge Owens granted the appellant permission to appeal on all grounds. These are:

13. Ground One: Failure to apply the correct standard of proof and failure to make adequately reasoned findings in relation to the Refugee Convention.

14. In particular, the appellant argues that

(i) the Judge's finding that the appellant had been "extremely vague" was not adequately quantified or explained, particularly in light of the appellant's detailed witness statement and corroboratory evidence;

(ii) To the extent that the Judge was referring specifically to the appellant's speculation about how AB became aware of his report about corruption, it was inevitable that the appellant would have to speculate about this, as it was not a matter that was within his knowledge, but that did not make his account "extremely vague";

(iii) The Judge had failed to explain what weight he put on the appellant's detailed witness statement or his corroboratory evidence, except to comment that "The A I find did provide any evidence to support this claim."

(iv) “[i]t is unclear what the FtTJ means in stating that 'A has not provided evidence to show that the Captain had a role in the government and if so what this role was' [17], because the appellant had consistently said that he was a senior figure in the PUK Peshmerga, “which is accepted to be an arm of the IKR security forces”. This appears to be a rationality challenge.

(v) It is unclear why the Judge found that the appellant cannot have a genuine fear of persecution if the people who helped him flee Iraq have not been harmed. The Judge appears to have fallen into the error of making presumptions about how the people the appellant fears would behave, as deprecated in M (Yugoslavia) [2003] UKIAT 00004.

(vi) The Judge failed to make clear findings about the appellant’s Facebook page and failed to take any account of his evidence of participation in public protests in the UK.

15. Ground Two. Failure to make adequately reasoned findings in relation to redocumentation and return under Articles 2 & 3, ECHR. Specifically:

(i) The appellant and his family could only be returned to Baghdad, not the IKR; and
(ii) CSID cards are no longer being issued in Iraq, such that the Judge’s finding that the appellant’s family could assist him in obtaining a new CSID was not “legally sustainable”.

16. Ground Three: Failure to consider the ‘best interests’ of relevant children.

17. Ground Four: Inadequately reasoned conclusions in relation to the Article 8 proportionality assessment. In particular, the Judge failed to take into account the best interests of the children or the considerations set out at Section 117B of the Nationality, Immigration and Asylum Act 2002.

18. There was no Rule 24 response.

Hearing

19. At the outset of the hearing before me, Ms Ahmed informed me that the respondent accepted that the decision must be set aside and that the parties agreed that it should be remitted to the First-tier Tribunal to be heard de novo, with no findings preserved.

Discussion

20. In deciding whether the Judge’s decision involved the making of a material error of law, I have reminded myself of the principles set out in a long line of cases, including Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201, at [26], Yalcin v SSHD [2024] EWCA Civ 74, at [50] and [51], Gadinala v SSHD [2024] EWCA Civ 1410, at [46]

and [47], and Volpi & Anor v Volpi [2022] EWCA Civ 464, at [2-4] and of the danger of "island-hopping", rather than looking at the evidence, and the reasoning, as a whole. See Fage UK Ltd & Anor v Chobani UK Ltd & Anor [2014] EWCA Civ 5 [114].

21. The scope of the duty to give reasons was set out MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC) and reiterated in Budhathoki, on which the respondent relies, and more recently in Joseph (permission to appeal requirements) [2022] UKUT 00218 (IAC). Citing English v Emery Reimbold & Strick Ltd. (Practice Note) [2002] EWCA Civ 605, the Upper Tribunal reiterated in Joseph at [43] that:

> "[The duty to give reasons] does not mean that every factor which weighed with the Judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the Judge's conclusion should be identified and the manner in which he resolved them explained. […] It need not involve a lengthy judgment. It does require the Judge to identify and record those matters which were critical to his decision."

22. I agree with the respondent that the Judge's reasons were insufficient. Given the respondent's position, I give my reasons only briefly.

23. The Judge asserts several times that the appellant's account was extremely vague, but does not identify with regard to what issues. Given that the appellant had submitted two witness statements, answered two questionnaires, and answered the questions put to him at his substantive interview with a reasonable degree of detail, it was incumbent on the Judge to identify what aspects of the claim were vague. To the extent that the Judge may have been referring only to one aspect of the claim – namely how the appellant's superiors found out about his attempt to report their corruption – there is nothing self-evidently vague in that account. The appellant named the webpage he initially tried to report the corruption on, provided a print out of that page, and gave the names of the administrators he suspected may have informed SJ or AB about his report. Given this level of detail, it was incumbent on the Judge to explain why he found the account nonetheless "extremely vague". A bare assertion that it is "extremely vague" is not sufficient, when what would appear to be a reasonable level of detail has been provided and there is no indication that the appellant was asked further questions that he declined to answer.

24. The Judge also says that the appellant failed to provide evidence of AB's role "in the government", but, again, he provided an explanation of AB's position in the PUK Peshmerga, which is part of the security forces, including who he served under, where he was stationed and his role in distributing provisions to the men under his command (the role that the appellant said he abused) and provided various photographs. This was not "no evidence," and if the judge meant that this was not reliable evidence, he should have said why.

25. The Judge makes no findings about the documents and photographs the appellant had submitted in order to corroborate his claimed career in the Peshmega, finding only that evidence had been provided, but not saying what he made of that evidence. He made no findings about the appellant's involvement in demonstrations in the UK. His comment that the appellant's Facebook activity "has not been updated" is hard to understand, as the appellant provided a signed statement from his solicitor confirming that he was providing a link to the appellant's Facebook activity, and that showed activity continuing at least until 2 June 2024, four days before the solicitor's statement was signed and three weeks before the hearing. There is no explanation as to why the Judge found that the appellant's Facebook activity was opportunistic, except perhaps that he admitted that he had not been involved in politics while still in Iraq (although the Judge himself does not draw a link between these two findings).

26. The Judge does not explain why the fact that the people who assisted the appellant to leave Iraq have not been harmed means that he himself cannot have a well-founded fear. In the absence of any explanation, this appears to be a bare implausibility finding about how the appellant's persecutors would be expected to behave, made without any reference to country evidence. As noted by Upper Tribunal Judge Owens in the grant of permission, this is identified as an error in Y v SSHD [2006] ECWA Civ 1223.

27. For these reasons, the Judge's decision with regard to the appellant's protection claim involved the making of multiple errors of law. This is sufficient reason to require the setting aside of the decision.

28. Ms Ahmed also helpfully conceded that the Judge's consideration of the best interests of the children was inadequate, as he did not consider the issue at all, and that for that reason alone, his Article 8 assessment was also flawed.

29. For the forgoing reasons, the Judge's decision involved the making of material errors in his assessment of the appellant's credibility and with regard to the key aspects of the appellant's claim.

30. Because the decision must be set aside for the reasons above, I do not reach the question of whether the Judge made a material error with regard to the appellant's lack of documentation and any risk arising therefrom.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of material errors of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Abrebese.

E. Ruddick

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 January 2025