IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000722

First-tier Tribunal Nos: PA/52124/2022
IA/05602/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr M R
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms A Bhachu (Counsel)
For the Respondent: Ms R Arif (Senior Home Office Presenting Officer

Heard at Field House on 4 September 2023

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 an appeal against the determination of First-tier Tribunal Judge Row, promulgated on 19th February 2023, following a hearing at Nottingham on 15th February 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted,

permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, who was born on 18th June 1996. He appeals against the refusal of his asylum claim in a decision dated 31st May 2022 alleging that he cannot be returned to Iraq because he is at risk of an honour killing and also because of his alleged political opinions. Furthermore, he does not possess a CSID. None of these matters were accepted by the Respondent.

The Appellant's Claim

3. The Appellant is an Iraqi Kurd. He is from one of the contested governates. He met a girl called Sara from an Arab family. She had three brothers in the militia, the Hasad-Al-Shabi or PMF, and both of them attended the local school. Between 2018 and 2019 they had a sexual relationship. Sara became pregnant. Her family found out. Her brothers attacked the Appellant's home and threatened to kill him. He decided to leave the area and travel by lorry, eventually coming to the United Kingdom. He fears that if he returns to Iraq Sara's brothers will kill him. Since they are involved with the PMF they will be able to easily find him. Second, the Appellant claims to have posted Facebook items critical of the government in Iraq, the IKR and the PMF. Since it was in a false name that account was closed down and he believes it was by the Iraqi authorities. He therefore opened a second Facebook account around a year later in 2017 or 2018 and this was in his own name. It still remains open. He also has opened a third Facebook account in October 2019 in the United Kingdom. He claims to receive online threats on his Facebook account because of his political opinions. He also claims to have attended demonstrations in the United Kingdom. He further claims that he has lost his CSID document in 2014 when ISIS took over and has never had a replacement even though he was living in Iraq until 2019. He claims now to be unable to obtain one.

The Judge's Findings

4. The judge rejected the Appellant's claim in its entirety. First, he did not regard it as plausible that knowing that Sara's three brothers were in the militia who would take a very serious view of his having a sexual affair with their sister, "that he and Sara would conduct a sexual relationship in her family home over a period of months on the chance that no-one would discover them" (paragraph 38). Second, although the decision maker did not regard the Appellant's failure to claim asylum in any of the countries through which he visited before arriving in the United Kingdom to be something that damaged his credibility under Section 8 of the 2004 Act (see paragraph 39), the judge was of the view that "this does go to the issue of plausibility". This is because "If fleeing danger in Iraq the United Kingdom is a long way to flee", and that "the appellant could have gone somewhere closer to home …" (paragraph 40).

5. Given the above, the judge rejected on the lower standard, the Appellant's claim to be at risk of an honour killing. So much so, "that he has fabricated a claim to be at risk of honour killing in order to support an asylum claim" (paragraph 44). With respect to the threat of political persecution, based upon his Facebook entries and attendance at demonstrations, the judge stated that, "he has produced no evidence of this" (paragraph 46) with respect to his claimed two Facebook accounts in Iraq. Indeed, with respect to his latest account, "the

earliest online posting that he has been able to produce dates from 25 October 2019", and that "after that there appears to be no further entry until 11 August 2020" (paragraph 48).

6. With respect to the claimed threats against him, the judge was clear that, "he has produced no evidence of this" and that "his explanation was that he did not think it relevant" (paragraph 50). Indeed, "the appellant raised no issue in the screening interview, or in his first statement of 21 August 2019, about having any political opinions and of being at risk …" (paragraph 51). As for the Appellant's attendance at demonstrations, the judge was of the view that this "indicates little", because although "there are photographs of him at some sort of demonstration", nevertheless, "tt is for him to establish that he would come to the adverse attention of the authorities because of this" (paragraph 52). He had not been able to do so. The judge concluded that the Appellant would not be at risk as claimed (paragraph 53).

7. Finally, there was the issue of the Appellant not having a CSID. The Appellant had not approached the Iraqi authorities in the United Kingdom for assistance and he maintained he was no longer in contact with his family (paragraph 55). He claimed that he had lost his CSID when he fled his home village in 2014. Yet the country guidance case of **SMO [2022] UKUT 00110** was to the effect that without this document the Appellant would not be able to go to school, work or obtain access to any services in Iraq. The judge was clear that "his account is inconsistent with the fact that between 2014 and 2019 he was able to live, work, attend school, and travel freely within Iraq" (paragraph 56). In the end, the judge found the Appellant "to be an unreliable witness as to fact in every other aspect of his claim" (paragraph 57). The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge erred in dismissing the Appellant's credibility on the basis that he could not have conducted an affair with his partner in her family home over a period of months on the chance that no-one would discover them because the judge had earlier also stated that the Appellant and his partner had sex only twice (see paragraphs 28 to 29). Furthermore, the judge had gone behind the concession of the Respondent that the Appellant's failure to claim asylum *en route* to the UK would not have affected his general credibility. As for the Appellant's political activities, the judge had failed to analyse these in detail and failed to follow the correct guidance on political activity provided in **XX (PJAK) – sur place activities – Facebook) CG [2022] UKUT 00023**. The Appellant was engaged in genuine political activities.

9. Permission to appeal was granted by the First-tier Tribunal on 17th March 2023 on the basis that it was arguable that the judge materially erred in law in stating that the Appellant's credibility was damaged given that the Respondent had conceded that the Appellant's failure to claim asylum in any of the safe countries he passed through would not have fallen under Section 8 of the 2004 Act, so as to damage his credibility.

Submissions

10. At the hearing before me on 4th September 2023 Ms Bhachu referred to the three grounds set out in her skeleton argument and stated that the judge had earlier found in favour of the Appellant in a number of respects, but then decided

the appeal against him, thereby giving the impression of having made contradictory findings. Afterall, the judge had stated (at paragraphs 20 to 29) that even if the Appellant met Sara every other week this did not necessarily mean that he had sex with her every time. And yet, the judge had then later gone on to say (at paragraph 38) that it was implausible that he would have met her knowing that Sara had three brothers in the militia. The judge had also wrongly gone behind the concession by the Respondent that Section 8 of the 2004 Act did not apply for the Appellant having failed to claim asylum in any of the safe countries through which he travelled. As for the Appellant's political activities, the judge had, on the basis of having disbelieved the Appellant with respect to his affair with Sara, then leapfrogged into disbelieving the Appellant with respect to his Facebook activities and the demonstrations that he was involved in without giving a proper foundation for this conclusion. The Appellant's *sur place* activities were genuine and the judge should have assessed their impact on him if he were to return back to Iraq.

11. For her part, Ms Arif relied upon the Respondent's Rule 24 response and stated that there was no contradiction in the judge's decision. First, when the judge refers to a sexual relationship conducted over a period of months (at paragraphs 28 to 29) it is likely he made a typographical error, but that in any event, the conclusions remain the same in either case, because the background evidence regarding family honour and unsupervised contact of a female and non-family member male, whether or not that is sexual, is forbidding. Second, the judge did have regard to the Appellant's political activities and made clear findings alongside the background evidence (see paragraphs 45 to 54). Whilst it is true that he did not have regard to the decision in **PJAK [2022] UKUT 00023**, it was clear that he took into account whether or not the Appellant would be at risk from the authorities, including his lack of visibility. As for the Appellant's CSID, it was clear that the judge did not accept that the CSID was destroyed and came to the conclusion that this was a document in the possession of his family. The judge was entitled to come to these conclusions.

12. In reply, Ms Bhachu submitted that the judge's conclusions with respect to Section 8 cannot be right because he had noted that the Secretary of State had made a concession in that the Appellant had all along been under the control of his agent when he was travelling (see paragraph 41 of the refusal letter). It was not good enough to say that there had been a typographical error because the findings of the judge were clear and were ultimately contradictory. With respect to the analysis of the Appellant's political activity the judge had plainly leapfrogged from a finding on the Appellant's relationship with Sara to his political activities and found those to be equally unreliable. She asked me to allow the appeal.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve he making of an error of law. My reasons are as follows. First, it is not the case that the judge does not provide clear and cogent reasons for disbelieving the Appellant with respect to his political activities having any adverse impact upon him in Iraq. He gives clear and detailed reasons (see paragraphs 45 to 52). In particular, he gives detailed consideration to each one of the Appellant's Facebook accounts. He makes it clear that the Appellant provided no evidence of threats posted on his Facebook account. The Appellant raised no such issue in his screening interview. There was nothing in his first statement of 21st August

2019. His postings are of limited value (see paragraph 48). As for attendance at demonstrations there was no evidence that this would come to the adverse attention of the authorities (paragraph 52).

14. Second, in relation to the CSID, the judge did refer to the country guidance case of **SMO [2022] UKUT 0010** and then observed that the Appellant's account was inconsistent with the fact that between 2014 and 2019 he was able to actually life, work, attend school and travel freely within Iraq (paragraph 56). This led the judge to the conclusion that the CSID was not lost and would be available to him upon return.

15. Finally, there is the issue of the Appellant's affair. The judge had noted that in his asylum interview the Appellant had said that he had sexual encounters with Sara "every other week" and that in his witness statement he said "it was on two occasions" (paragraph 28). It is not, however, for this reason that the judge finds that the Appellant is lacking in credibility with respect to this aspect of the claim. The lack of credibility arises from the judge's reasoning (at paragraph 38) that it was simply implausible that the Appellant was meeting Sara "in her family home over a period of months on the chance that no-one would discover them", given the social constraints on unsupervised contact between male and female members of the community. In his overall assessment of the claim, the judge was entitled to find this account to be lacking in credibility.

16. There remains the question of the concession by the Secretary of State that the Appellant did not fall under Section 8 of the 2004 Act so as to have his credibility damaged because he had been under the control of an agent whilst travelling to the UK. The judge plainly recognises that the decision maker did not consider the Appellant's failure to claim asylum in this way in other countries to have been the basis of the refusal decision (paragraph 39). What he has then done, however, is to go on to say that, "leaving aside the question of section 8, this does go to the issue of plausibility", because if fleeing danger in Iraq the United Kingdom is a long way to flee" and that "the appellant could have gone somewhere closer to home until he found out whether the issue could have been resolved" (paragraph 40). The judge goes on to explain that, "it was not necessary for him to pay a large sum of money to travel right across Europe in order to claim asylum in the United Kingdom" (paragraph 41).

17. What the judge is here addressing, however, is not so much the failure of the Appellant to have claimed asylum in any of the other countries en route, so to have his credibility adversely impacted by that fact. What he is addressing is the scenario of the Appellant having embarked upon such a journey in the first place, if it was the case that he was at risk of ill-treatment and persecution as claimed, because "safety could have been found far closer to home, and at far less expense and physical danger, than would be involved in the overland and overseas journey to the United Kingdom" (paragraph 41). Any alleged error in this respect, therefore, is not a material one.

18. Taking a holistic approach to the evidence, which the judge has done clearly and comprehensively in this determination, he was entitled to decide this issue in the manner that he did, especially given that he had already accepted (at paragraph 39) that the decision maker did not consider Section 8 to apply to the Appellant. The judge also does not apply Section 8 to the Appellant in order to find him to be lacking in credibility. Instead, given the Appellant's allegations of being at risk of an honour killing and of political persecution, the judge is addressing quite specifically (at paragraphs 40 to 41) why the Appellant's journey is one which is

indicative of “the action of an economic migrant not an asylum seeker” (paragraph 41). That conclusion was open to him.

Notice of Decision

19. There is no material error of law in the judge’s decision. The determination shall stand.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber **18th October 2023**