IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-000100
First-tier Tribunal No: PA/54274/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

HMO (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr F Ahmad, Legal Representative, Hanson Law
For the Respondent: Ms S Simbi, Senior Home Office Presenting Officer

Heard at Field House via Teams on 27 March 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 Groom promulgated on 17 November 2023 ("the Decision"). By the

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Decision, Judge Groom dismissed the appellant's appeal against the decision of the respondent made on 5 October 2022 to refuse his protection claim, as it was not accepted that he was at risk in Iraq due to an honour crime, and it was also not accepted that he was at risk in Iraq as a result of his *sur place* activities in the UK.

Relevant Background

2. The appellant is a national of Iraq, whose date of birth is 1 October 1995. He claimed to have left Iraq in around August 2015 by air plane, and having travelled through unknown countries by lorry, he entered the UK on 30 October 2015 concealed in the rear of a heavy goods vehicle. On the same day, he is recorded as having claimed asylum.

3. The appellant subsequently absconded, and so his asylum claim was deemed to be withdrawn on 14 September 2017. On 11 May 2022 the appellant made further submissions and he attended an asylum interview on 12 August 2022.

4. As summarised in the subsequent refusal decision, the basis of the appellant's claim was that he had a genuine and well-founded fear of persecution in Iraq from members of the Jaf, who disapproved of his relationship with a woman from their tribe, and they threatened to kill him. He also claimed that he would receive ill-treatment from the Iraqi and Kurdish regional authorities on account of his political activity in the UK.

5. The appellant's account was that, when living in Kirkuk, he had embarked on a relationship with a woman named Ashna, who belonged to the Jaf tribe. Members of the tribe disapproved of this relationship and would not accept his proposal to marry her, and they arranged for her to marry someone else. However, as Ashna was not a virgin any more, they both had no choice but to run away from Kirkuk because they believed that her family would kill both of them. Members of Ashna's tribe eventually located them in Prde, and he managed to escape to Erbil before departing from Erbil by air.

6. The respondent did not accept that the appellant had been forced to flee Iraq as a result of his claimed relationship with Ashna, who he said he had met in February 2013 and with whom he said he had been in a relationship until he departed Iraq in August 2015. Despite the claimed length and intensity of the relationship, he had not provided any more information about Ashna other than her given name. The subjective evidence indicated that the Jaf was the largest Kurdish tribe, who lived predominantly in the border lands between Iran and Iraq, and that they numbered approximately 4 million people. He had not provided any information or evidence about Ashna's family, such as whether they were a prominent family in the Jaf; or what kind of power and influence they wielded within the tribe's hierarchy, such as whether they had sufficient clout to rally large numbers of tribe members to target one individual anywhere in Iraq. He stated that whilst he was in Prde with Ashna, she

was spotted by a distant relative who notified the family of their location. However, he did not explain how he knew that Ashna was spotted by a person who was a distant relative; or how he knew that they subsequently alerted family members. He stated that his friend who worked at a checkpoint 10-12 minutes' away from where he was residing in Prde alerted him that Ashna's family members were on their way to his location. However, he did not explain exactly how the friend was able to know that the people he had seen at the checkpoint were Ashna's family members.

7. Furthermore, as he had stated that he was able to travel to the airport when departing Iraq because to the outside world his name was Zrian, whereas his name on his CSID was Harem, it was unlikely that his alleged persecutors would be aware of his return to the country. Additionally, it would be more than 7 years since he left Iraq, and there was no evidence that they would have the means or motivation to pursue him within Iraq.

8. As to the second strand of his claim, the appellant said that he had attended demonstrations against the Iraqi and Kurdish authorities in the UK and had shared posts on his Facebook profile that were critical of the Iraqi and Kurdish authorities. He had not specified how many demonstrations he had attended, and he had also stated that he would cover his face or put a mask on when he attended the demonstrations. On his own admission, he had not claimed to be a leader, a mobiliser or organiser at the demonstrations. He had not provided any evidence to indicate that he was affiliated to any Kurdish political parties or opposition groups, such as letters confirming his membership/affiliation, or any positions held. Additionally, he had not provided any evidence to indicate that he was a journalist or Human Rights Activist who criticised the Federal Iraqi or Kurdish Regional Governments. It was therefore considered that his involvement in political activity in the UK was of a low -level nature.

9. As to a fear of persecution or serious harm by the KRG because of a person's actual or perceived political opinion or activities, consideration had been given to the CPIN on *"Iraq: Opposition to the Government and the Kurdistan Region of Iraq (KRI)"* dated June 2021, which stated at 2.4.8 that the evidence was not such that a person would be at real risk of serious harm or persecution simply by being an opponent of the KRG, or having played a low-level part in protests against the KRG.

10. The evidence he provided indicated that his political activity had been mostly confined to sharing content on Facebook. Consideration had thus been given to the Country Guidance case of *XX (PJAK - Sur place activities - Facebook) Iran CG* [2022] UKUT 23 (IAC). Although the above Country Guidance case related specifically to an Iranian national, the guidance it contained was also applicable to citizens of other countries. It was acknowledged that the content that he had shared could be considered critical of the Iraqi Government. But there was no evidence that the Iraqi or Kurdish authorities had the capability or the motivation to systematically monitor and target individuals who had merely shared such content on social media. Additionally, given the extent of his real-world

political activities, it could not be seen to be anything above low-level, and so it was not considered that he possessed a political profile that would potentially lead to any targeted online surveillance from the authorities in Iraq.

The Hearing Before, and the Decision of, the First-Tier Tribunal

11. The appellant's appeal came before Judge Groom sitting at Nottingham Justice Centre on 14 November 2023. The appellant was represented by Mr Ahmad, and there was no appearance by a representative for the respondent.

12. The Judge's findings of fact began at para [45] of the Decision. At paras [49] and [50], the Judge considered the photographic evidence which the appellant had provided in support of his claim that he was at risk on return due to an honour crime. At [51], the Judge held that there was no other evidence placed before her - with the exception of oral and written evidence of the appellant – that the people who featured in the photographs were in fact Ashna and Mohammed (the cousin who the appellant said had been attacked and injured by Ashna's relatives). At [52], the Judge found that the existence of such copied photographs did not support the appellant's claim that he was in a relationship with Ashna, and that members of the Jaf tribe had disapproved of the relationship and made threats to him, or that his cousin Mohammed was attacked. At para [53], Judge observed that if the appellant was in a relationship with Ashna as he claimed, and that they both managed to escape initially, it seemed implausible that the two of them were unable to go to Erbil, as the appellant claims he did, and then leave Iraq together. At para [54] the Judge said that if the appellant was in a relationship with Ashna as he claimed, he had made no reference to making any efforts to attempt to try and locate her since his departure. At para [55], the Judge said that the appellant had not demonstrated how the Jaf tribe was connected to Ashna, or her relatives, or how they fitted into the Jaf tribe, or what influence (if any) they had within Iraq. The Judge concluded that she was unable to find, on the evidence before her, that the appellant was at risk from the Jaf tribe or members of Ashna's family.

13. The Judge turned to consider whether the appellant had a well-founded fear of persecution on return to Iraq due to his *sur place* activities. At para [59], she noted that in his oral evidence the appellant stated that he had never in fact attended any demonstrations. He claimed that the reason for this was comments that had been made in response to a video he posted on Facebook. Mr Ahmad had shown her the video that the appellant was referring to, on the appellant's mobile telephone. This video was posted 7 years ago. There were 9,600 views and 98 'Likes'. Mr Ahmad referred the Judge specifically to two comments left in response to the video, which were not in English. The comments were made five years ago and three years ago. The comment from five years ago was translated by the Court Interpreter as: *"I am from Kirkuk, let's come and meet/see each other, if you are a man."*

14. The Judge held at [62] that there was no evidence that the person posting this comment (who the appellant said was unknown to him) had made any further comments or specific threats towards the appellant. In addition, she observed at para [63] that there was a discrepancy with the appellant's earlier claims that he had attended demonstrations in the UK, and his oral evidence that he had never attended demonstrations because he was fearful as to who he might meet.

15. At para [65], the Judge said that while the appellant had provided some evidence of his Facebook activity, it was notable that the appellant had not provided his full downloaded Facebook profile in support of his appeal.

16. At para [68], the Judge found that the appellant was not a person of significant interest to the authorities, given that he had not been targeted or communicated with, and in addition he had not provided his full, downloaded Facebook profile. She therefore attached little weight to the Facebook evidence which the appellant had adduced.

17. On the issue of risk on return where a Facebook account was involved, she concluded that there was nothing to indicate that the appellant would need to openly express any political opinions or beliefs on return to Iraq.

18. At paras [71] to [76], the Judge addressed the question of whether the appellant had made out his case that he was undocumented. At para [74], she said that she did not accept that the appellant was not in possession of a CSID card.

19. The Judge went on to dismiss the appeal on all grounds raised.

The Grounds of Appeal to the Upper Tribunal

20. Ground 1 was that the Judge had erred in considering the appellant's evidence on the issue of the honour crime. Ground 2 was that the Judge had erred in considering the appellant's *sur place* activities. Ground 3 was that the Judge had made a mistake of fact in relation to the appellant's documentation. The RFRL at paragraph 78 confirmed that the appellant told the Home Office that he had passed his documents to them via his solicitors. The Judge had also erred in law in her alternative finding at para [76] that the appellant could return via a 1957 registration document. In SMO (2), at para [127], the respondent had accepted that the 1957 document could not be used for travel whether by land or air, and at para [137] of SMO (2) the Upper Tribunal found that ultimately the utility of the 1957 registration document was comparatively limited. It was not a solution in itself for the difficulties an individual would encounter on return to Iraq.

The Reasons for the Eventual Grant of Permission to Appeal

21. On 3 January 2024 First -tier Tribunal Judge Sills granted the appellant permission to appeal on all three grounds, although he gave reasons for holding that in his view Grounds 1 and 3 were without merit.

The Hearing in the Upper Tribunal

22. The hearing before me took place at Field House. However, both representatives attended remotely via Teams. Mr Ahmad developed all three grounds of appeal. On behalf of the respondent, Ms Simbi submitted that none of the grounds was made out. After hearing from Mr Ahmad briefly in reply, I reserved my decision.

Discussion and Conclusions

23. As the error of law challenge is based upon an inserted inadequacy in the Judge's reasoning on the three principal controversial issues in the appeal, it is convenient to I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration...Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

Ground 1

24. In support of Ground 1, Mr Ahmad referred me to para 9 of the appellant's appeal statement, where he answered the criticism that he had not provided any details about Ashna beyond her first name. He said that the Home Office did not ask for her full name or any other details. Her full name was Ashna Mohammed. She was born in 1987.

25. Although I was not directed to the remainder of the appellant's appeal statement, I note that he went on to say that Ashna's family was armed and powerful, as they had lots of bodyguards and were a rich family. Ashna told him that there were family deals with petrol and oil. He also said that he wished to confirm that Ashna had had a child, Hevar, as a

result of them spending the night together. He said that since 2015 he had had no news of her. He had tried to find out what had happened to her, but could not.

26. I consider that Ground 1 is no more than an expression of disagreement with findings that were reasonably open to the Judge on the evidence, for the reasons which she gave.

27. The Judge's reasons for finding that the copied photographs did not advance the appellant's case were: (a) the original photographs had not been produced; (b) the copies of the photographs were undated; (c) that the appellant had made no reference in interview that he had photographic evidence of this nature; and (d) that there was no external evidence that the people who featured in the photographs were in fact Ashna and his cousin Mohammed.

28. I consider that the additional detail given in the appellant's appeal statement does not in any way undermine the sustainability of the Judge's findings on this issue, contrary to what Mr Ahmad implied by referring me to the appeal statement. The photographs do not bear out any of the additional detail given in the appeal statement.

29. Mr Ahmad also takes issue with the finding at para [55] that the Judge was unable to conclude on the evidence placed before her that the appellant was at risk from the Jaf tribe, or members of Ashna's family.

30. In the grounds of appeal, it is said that the Judge made an inconclusive finding as to the corroborative evidence about the Jaf tribe and how they fitted in with Ashna. It is further said that it is judicial knowledge that the Jaf tribe is influential throughout Iraq.

31. However, in oral argument, Mr Ahmad submitted that the Judge had failed to address submissions that were made in the ASA about Dr Fatah's evidence on the topic of the Jaf tribe.

32. The ASA that has been included in the composite bundle compiled by the appellant's representatives relates to a different case. I have checked the CCD file, and the ASA that was uploaded on 13 November 2023 contains no reference to evidence from Dr Fatah on the topic of the Jaf tribe.

33. In any event, aside from the appellant's assertion that Ashna was a member of the Jaf tribe, there was no specific evidence that this was in fact the case. Accordingly, it was clearly open to the Judge to find that the appellant had not demonstrate how the Jaf tribe was connected to Ashna or her relatives, or what influence (if any) her family had within Iraq.

Ground 2

34. Ground 2 breaks down into three separate complaints. The first complaint arises in relation to para [62], where the Judge held that there was no evidence that the person who had posted the comment five years ago had

made any further comments or specific threats towards the appellant. Mr Ahmad submits that the Judge's approach is flawed because the fact that there had been a threat in the past was enough to engender a risk of future harm, applying paragraph 339K of the Immigration Rules.

35. It was also observed by the Judge who granted permission that there is an arguable inconsistency between what the Judge said at para [62] and what the Judge said at para [67], which is that she did not accept that appellant had been contacted or targeted in any way with regard to his Facebook activity

36. I do not consider that the Judge misdirected herself in giving weight to the fact that there had been no follow-up by the person who had posted the comment five years ago. The absence of a follow-up was relevant to the appellant's explanation for never going to any demonstrations, despite having initially claimed that he had done so. It is tolerably clear that the Judge set out the comment made five years ago because it showed that the person posting it had invited the appellant to come and meet him if he had the courage to do so, and (on the appellant's evidence) the appellant had not responded to this invitation. Nonetheless, despite the appellant's lack of response, there had been no further comments, which the Judge was entitled to consider was indicative of the fact that the appellant did not continue to be of potential adverse interest to the person who had made the comment, even though the appellant had continued to be politically active on Facebook.

37. As to the arguable inconsistency with what the Judge went on to say at para [67], it was implicit in the fact that Mr Ahmad specifically drew the Judge's attention to two comments with regard to the appellant's Facebook activity that had been made respectively five and three years ago, that there had been no more recent comments which were relied upon as showing that the appellant had been threatened, let alone targeted.

38. The second complaint is that the Judge made no finding in respect of the video clip which had 9,600 views and 98 'Likes'.

39. While it is true that the Judge made no finding in respect of the content of the video clip on the appellant's mobile telephone that was posted seven years ago, it is not demonstrated that the Judge was asked to make a finding on its content. There is no reference to the video in the ASA, and it appears to have been introduced at the hearing solely for the purpose of drawing attention to the two comments relied upon by the appellant as explaining why he had not attended any demonstrations out of fear.

40. The third complaint relates to para [68], where the Judge found that the appellant was not a person of significant interest to the authorities, *"given that he has not been targeted or communicated with, and in addition he has not provided his full downloaded Facebook profile."*

41. Mr Ahmad submits that the Judge erred in law in requiring direct evidence of monitoring or surveillance, contrary to the case law of *WAS (Pakistan) -v- SSHD* [2023] EWCA Civ 894.

42. If the Judge had concluded that little weight should be attached to the Facebook evidence on the sole ground that he had not been targeted or contacted, this would have disclosed an error of law. But the Judge also based her finding on the fact that the appellant had not provided his full downloaded Facebook profile, and so no error of law is made out.

Ground 3

43. As to Ground 3, it was open to the Judge to find that the appellant was in possession of a CSID for the reasons which she gave. Accordingly, while she was wrong to find in the alternative that the appellant could use a 1957 registration document, her error was not material.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
12 April 2024