Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2024-000747**

First -Tier Number: PA/57383/2023

THE IMMIGRATION ACTS

Decision and Reasons Promulgated

On 11th of September 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr AM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Heard at FIELD HOUSE
on 30 August 2024

Representation:
For the Appellant: Mr T Hussein, Counsel
(instructed by Barnes Harrild & Dyer)
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Grimes on 28 February 2024 against the decision of First-tier Tribunal Judge McMahon who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on 7 February 2024.

2. The Appellant is a national of Iraq of Kurdish ethnicity, born on 25 December 2006. He claimed in summary that he was at risk on return from a non-state agent. After reviewing the evidence the Appellant presented and the account he provided, including his immigration history, Judge McMahon made the following findings:

> "31. In this case, the height of the Appellant's case is that he has been held responsible for causing a miscarriage by an individual who is the wife of a senior member of group specialising in security or military work. Any motivation appears to be entirely personal rather than deriving from any [Refugee] Convention reason. The "real reason" for the Appellant being targeted was because Qadir Hussein Ali [(Ali)] held the Appellant responsible for his wife's miscarriage.
> 32. Given these findings, the Appellant has not discharged the burden of proof of demonstrating that he has a well-founded fear of persecution for a Refugee Convention reason, and I accordingly conclude that his removal would not cause the United Kingdom to be in breach of its obligations under the Refugee Convention.
> 33. I have considered this aspect of the appeal [humanitarian protection] separately from the asylum appeal…
> 34. I have found that there was an incident in which the Appellant was blamed for a woman's miscarriage. I have also found that the Appellant's home was raided in the immediate aftermath of this incident. I have also found that there was no suggestion that anyone came to any harm in either of those raids, or subsequently.
> 35. I have been unable to make any findings about the role or status of the Black Force beyond finding that they are some form of military or security group. The Appellant has

not demonstrated that the Black Force has any links to the PUK or forms part of the apparatus of the state, whether officially or unofficially, nor indeed that they still even exist. But in any event, as I have already noted, this is, at its height, a personal grudge held by Ali as opposed to some fundamental or ideological resistance to the Appellant. This, coupled with the passage of time, leads me to reject the suggestion that Ali or the Black Force has the clout, resource or association behind them that would undermine the actors of protection in Iraq, as vulnerable as they may be. The suggestion that Ali or his associates will be 'waiting' for the Appellant on his return – 4 years after his departure - is, in my view, fanciful and without any foundation.

36. As for the Appellant's identity documents, I have accepted his account that his identity card was left in Iraq. I accept that it is not possible for the Appellant to obtain a replacement CSID or INID card in the UK for the reasons set out above. However, I have found in light of the updated CPIN that there is a viable mechanism for the Appellant to retrieve his identity documents or obtain them on his return.

37. Given these conclusions, I find that substantial grounds have not been shown for believing that the Appellant would face a real risk of suffering serious harm if returned to Iraq."

3. When granting permission to appeal, First-tier Tribunal Judge Grimes noted that it was contended in the grounds that the Judge erred in his assessment of the risk to the Appellant on return to Iraq in light of his findings as to events there before the Appellant left. It was arguable that the Judge failed to give adequate reasons for finding that the Appellant was not at risk on return in light of his findings that the Appellant's account was largely credible. It is further arguable that, as the Judge was not satisfied that the 'Black Force' is a part of the apparatus of the state [35], he erred in failing to consider whether there is sufficiency of protection for the appellant in Iraq.

Submissions

4. Mr Hussein for the Appellant relied on the grounds of appeal. In summary, counsel submitted that the Judge had erred in his assessment of the risk faced by the Appellant

on return. The Judge had reaching inconsistent findings, because [35] was inconsistent with [29] of his decision, The Judge had failed to consider whether a sufficiency of protection was available against non-state agents. The Judge had accepted that Ali held a leadership role in the Black Force and it was a mistaken approach to find that merely based on the passage of time Ali and the Black Force no longer posed a threat to the Appellant. The decision should be set aside and remitted to the First-tier Tribunal for rehearing before another judge.

5. Mr Parvar for the Respondent submitted that there was no error of law, merely disagreement with a decision properly open to the Judge. The Judge had placed the Appellant's story within the context of the country background evidence and the timeline of his claim. By the date of the hearing the Appellant had been absent from Iraq for over four years. The Judge found that that the Appellant was in contact with his family (despite the Appellant's claim to the contrary) and that there was no report of threats to the Appellant or of harm to his family, which was of significance when considering risk. The Judge's findings were not inconsistent and were open to him on the evidence presented. The appeal should be dismissed.

6. Mr Hussein in reply referred again to the dangers the Appellant would face on return. This was like an "honour killing" situation and memories were long. The Judge's findings were not clear.

No material error of law finding

7. The Tribunal reserved its decision, which now follows. The Tribunal is far from persuaded by the submissions as to material error of law made on behalf of the Appellant. In the Tribunal's view, the errors asserted to exist in the decision are based on a failure to read the decision and reasons with proper attention.

8. The Judge gave the Appellant full credit for the elements of his claim which were accepted by the Home Office, which was the Judge's starting point. But Home Office had not accepted that the Appellant faced any real risk on return and so the Appellant's evidence required critical analysis with anxious scrutiny. As Mr Parvar submitted, the Judge

examined the Appellant's claims against the country background evidence produced (not in itself contested between the parties) and against the timeline of the claim. Although Mr Hussein submitted that the fact that the Appellant was not harmed in few days between the incident giving rise to the claim and his departure from Iraq was not a rational basis for assessing that the Appellant faced no future risk, that was not the basis of the Judge's finding. The Judge found that two raids had taken place soon after the incident on which the claim had been predicated, but no harm was done to the Appellant or any member of his family. Nor was any harm done or threat made subsequently to him or to them, in the following years. A crucial element of that finding was the Judge's rejection of the Appellant's claim that he had lost all contact with his family.

9. The Judge's finding that the Appellant's claim fell outside the Refugee Convention was not challenged by the Appellant. It remained necessary for the Judge to consider humanitarian protection, which he proceeded to examine. [29] embraces sufficient consideration of the humanitarian protection claim, and is unimpeachable. It is supplemented by [35], extracted above.

10. The judge conducted a full and careful review of the Appellant's case, in a logical, structured manner. Perhaps even more importantly, on a fair and full reading of the decision, it is clear that the Judge was constantly testing his conclusions, giving anxious scrutiny to the evidence. As the Judge found that the Appellant was in contact with his family, it followed that he was not at real risk on return for lack of documents which his family could help him replace. That finding was supported by the latest country background information. Thus the second element of the Appellant's claim also failed.

11. In the Tribunal's view, the submissions advanced on the Appellant's behalf amount to no more than disagreement with the experienced Judge's conclusions. The Tribunal finds that there was no material error of law in the decision challenged. The onwards appeal is dismissed.

DECISION

The appeal is dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged, including the anonymity direction.

Signed R J Manuell **Dated** 2 September 2024
Deputy Upper Tribunal Judge Manuell