IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001144

First-tier Tribunal No: PA/52776/2022
IA/07105/2022

THE IMMIGRATION ACTS

Decision and Reasons issued:
On 26 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

BI
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. M. Mohzam, Counsel instructed by CB Solicitors
For the Respondent: Ms. A. Everett, Senior Home Office Presenting Officer

Heard at Field House on 11 June 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 an appeal by the appellant against a decision of a First-tier Tribunal Judge Juss (the "Judge"), dated 17 February 2024, in which he dismissed the appellant's appeal against the respondent's decision to refuse his protection

claim. The appellant is a national of Iraq who claimed asylum on the basis of his imputed political opinion.

Anonymity

2. I have continued the anonymity direction made in the First-tier Tribunal given the nature of the appellant's claim.

3. Limited permission to appeal was granted by First-tier Tribunal Judge Curtis in a decision dated 15 March 2024 as follows:

> "2. Ground 1 argues that the Judge failed to consider article 15(c) in line with SMO (No. 2). However, the Appellant's skeleton argument makes no mention that the appeal is brought on the basis that his return would breach article 15(c) and that he is therefore entitled to humanitarian protection and there is no suggestion that such an argument was raised by Mr Madanhi at the hearing (see [12], in which his submissions are summarised). It cannot, in those circumstances, be an error of law for a judge to have failed to consider an issue that was not raised by a party (Lata, applied). Ground 1 is not arguable.
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> 3. Ground 2 argues that the Judge failed to give adequate reasons for rejecting the core of the claim and/or arrived at a conclusion he was not entitled to reach on the evidence. In [2] the Judge notes that the Appellant entered the UK on 3 October 2019 and had claimed to have left Iraq on 15 September 2019 [3]. In his witness statement he described how his problems began on 12 September 2019 (para. 9). The Judge finds in [15] that the Appellant has not heard anything from the PMF/PUK since the poisoning incident and that over two years have passed since the claimed poisoning and the Appellant was still safe from coming to any harm.
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> 4. The grounds suggest that the Respondent's similar point in the decision letter was perverse (and this is an application for permission to appeal against the Judge's decision, not the Respondent's) but I am satisfied I am entitled to presume that a similar point is made (about perversity) in relation to the Judge's decision, given the same paragraph in the grounds then challenges the Judge for adopting the same questionable reasoning as the Respondent.
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> 5. There is arguable merit in this contention. At the time of the hearing on 21 December 2023, it had actually been more than 3 years since the alleged poisoning but, of course, the Appellant had been in the UK since 3 October 2019, that is, for almost the entirety of that period. It is therefore difficult to understand how it was that the Judge expected the PMF to have contacted the Appellant, who has been in the UK since October 2019, and how it was relevant that he had not come to harm in that period (unless the Judge felt that the PMF had reach in the UK) (see [15]).
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> 6. That was part of the reasoning of one of three principal credibility points taken against the Appellant in relation to the core of his claim (see [15-17]). The grounds, though, also challenge [16] but it is not correct to say that there was no evidential basis for finding that it was well known that the delivery driver was a suspect because the Judge had explained that this finding was based "on the Appellant's own oral evidence at the hearing" [15]. The Judge said there was no evidence that the driver had come to harm which appears to be accurate because, even on the Appellant's interview answers (reproduced in the grounds) all he knew was that the driver had disappeared, which, plainly, could have come about in a number of ways (one of which is voluntary flight by him). In relation to the challenge to [17], the grounds suggest that whilst it might have been the case that those at the restaurant knew the driver was the culprit, the persecutors did not know this, or believed otherwise. The Judge does not deal with that scenario.

> 7. In light of the fact that the Judge takes only three adverse credibility points against the Appellant, I consider that it is at least arguable that the point taken by the Judge about the lack of harm/contact since the incident is perverse for the reasons I have outlined and I am satisfied that it is arguable that that had a material bearing on the credibility assessment given the low number of adverse credibility points taken against him. Ground 2 is arguable on that basis.
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> 8. Ground 3 contends that the Judge's unsafe credibility findings infect the finding about documentation. That is at least arguable, because in [18] the Judge does reject the Appellant's claim that he is not in contact with his family which is an important feature of the documentation issue. It is arguable that the arguably flawed credibility assessment about the core of the claim has infected the Judge's finding about contact with family. Ground 3 is arguable."

4. In a Rule 24 response dated 27 March 2024 the respondent opposed the appeal.

The hearing

5. The hearing was held remotely. I heard submissions from both representatives. I reserved my decision.

6. As confirmed at the outset, the grant of permission to appeal was limited to Grounds 2 and 3.

Error of law

7. Ground 2 asserts that the Judge failed to give adequate reasons in rejecting the core of the appellant's claim, arriving at conclusions which he was not entitled to reach on the evidence. The Judge adopted the respondent's reasoning and found that the appellant was still safe from harm two years after the poisoning incident. However, the appellant had been in the United Kingdom during this time. It was submitted that it was arguably perverse for the Judge to rely on a period of time spent in the United Kingdom where no harm arises "to reject a historical account of persecution from the country from which the asylum seeker fears".

8. Further, it was submitted that the Judge had rejected the appellant's evidence that his house was visited by his persecutors as he had found that it was well known that the delivery driver was responsible for the poisoning. It was submitted that such reasoning was inadequate given that the evidence was that the delivery driver was a suspect along with others. There was no evidential basis for the conclusion that it was the delivery driver who was responsible. It was submitted that the findings at [15] to [17] were unsafe.

9. It was submitted in the Rule 24 response that the appellant had said in oral evidence that it was "common knowledge that the driver was responsible for the poisoning; and the Judge concluded that the appellant would therefore not be at risk". Ms. Everett submitted that the appellant knew very little about the incident. He had guessed at the affiliation of the perpetrators. His knowledge was all second hand. With reference to [17] of the decision, if the appellant was aware who the culprit was, the Judge was entitled to find that the appellant was not at risk on return. It was not clear that the Judge had misunderstood the evidence.

10. Mr. Mohzam submitted that the appellant was one of the people who had been accused. He had clearly stated that the PMF were the perpetrators. He knew that because of what the restaurant owner had said. Those who were looking for

him were not clear about who the culprit was. The Judge needed to make a proper reasoned finding as to whether or not the appellant was at risk.

11. The Judge states at [15] to [17]:

> "15. First, this is a case where on the Appellant's own oral evidence at the Hearing it was well known that the poisoning of the customers at the Restaurant was actually done by the Delivery Driver, which is why the Appellant himself has to-date not received any direct telephone call or threat from the Hashad-Al-Shaabi. The Appellant does not even know the details of the persons allegedly poisoned. The Appellant has also not heard anything from the PMF or PUK in relation to himself (AIR 143). Indeed, over 2 years have passed since the claimed poisoning incident and the Appellant is still safe from coming to any harm. Indeed, he has never had any face-to-face encounters with members of the PMF or PUK (AIR 144) and so there is no reason for him to be identified in any way by them
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> 16. Second, I reject the contention that they had gone direct to his family home and inquired about him and when they did not find him they beat up his younger brother, quite simply because the modus operandi was that the chefs would cook the food and the Delivery Driver would deliver, and in this case it was well known that it was the Delivery Driver who had done the poisoning. Yet, there is no evidence that the Delivery Driver himself has come to any harm.
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> 17. Third, the Appellant had been a chef for 5-years and three years at the Restaurant and yet never before had such an incident occurred, when the Hashad-Al-Shaabi customers were regulars at his restaurant and eating there as many as six times a week, and there is no reason why they would now suspect him. He himself had never contacted the owner of the Restaurant. In fact, even though the Appellant contends that the Driver had a grudge against the Hashad-Al-Shaabi, because his brother had been killed by them and he had only started working for the restaurant a month before the incident and had wanted revenge on the Hashad-Al-Shaabi, he is not known to have been killed by them. When one looks at the Appellant's Witness Statement ('WS') of 24th August 2023 (at pp.1-6) what it explains with respect to the food, is that the Appellant was "not sure what happened with the delivery but I was later accused of poisoning members of the Hashad-Al-Shaabi" and that indeed "all of the staff of the Restaurant were accused' (at §10). This may have been the position at the beginning but now that it is known that the culprit is the Delivery Driver, the Appellant cannot in all reason be at risk."

12. The appellant has been in the United Kingdom since 3 October 2019. His account is that the incident took place on 12 September 2019. I find that he has been in the United Kingdom for all but three weeks of the period since the incident took place. The fact that he has not come to any harm in the two years since this, given that he has been in the United Kingdom for the vast majority of this time, is not a relevant consideration for the purposes of assessing the risk to the appellant. However, I find that this is not material.

13. The Judge sets out at [15] that the appellant's oral evidence was that "it was well known that the poisoning of the customers at the Restaurant was actually done by the Delivery Driver". There has been no challenge to this statement. The grounds assert that it is not clear why the Judge found at [16] that "it was well known that it was the delivery driver who had done the poisoning". However this ignores the appellant's oral evidence set out at [15]. In the absence of any challenge to this, there was an evidential basis for the Judge's conclusion, contrary to what was said in the grounds. While the grounds assert that the appellant and others were suspects, this is contradicted by the appellant's oral evidence that it was "well known" that the delivery driver was responsible. In

this case, it is hard to see how the appellant would have been a suspect, or how he would have come to harm even if he had been in Iraq.

14. The grounds assert at [17] that "The evidence was that the A and others who worked in the restaurant knew who the culprit was, but this was not what the feared persecutors thought or believed". That is not the oral evidence set out by the Judge at [15]. I find, as submitted in the Rule 24 response, that in the absence of any challenge to that evidence this was not an issue of credibility, but one where the appellant gave oral evidence which indicated that he was not at risk because it was "well known" that the delivery driver, not the appellant, was responsible.

15. I find that Ground 2 is not made out.

Ground 3

16. This asserts that the Judge's "unsafe credibility findings" impact on his findings as to whether the appellant had lost contact with his family, and the implications for this on the appellant's ability to redocument himself. However, I have found above that the credibility findings are not unsafe. At [18] the Judge considered documentation:

> "Fourth, there is the issue of the Appellant's documents. In the Appellant's Witness Statement of 24th August 2023 it is said that his CSID is with his family (§ 3). In paragraph [392] of SMO, KSP & IM (Article 15(c); identity documents)(CG) [2019] UKUT 00400 (IAC) the Tribunal noted that Iraq is a collectivist society in which the family is all important. The appellant has a CSID in Iraq and there is no evidence to suggest that his CSID is not available to the appellant from his family, and with whom I find, the appellant can make contact, contrary to what he maintains, as there is no reason why that would not be the case. The question of obtaining a replacement does not therefore arise. There is no reason why the appellant cannot take immediate steps, with the assistance of his family to have his CSID sent to him here in the UK or why the appellant could not be met by his family or relatives, in Baghdad, with the CSID, within a reasonable time of the appellant's arrival to facilitate safe travel between Baghdad and Kirkuk. On the findings made, I reject the claim that the appellant will be at risk in making the journey from Baghdad to his home area and I find there will not be a breach of Article 3. The Appellant's Skeleton Argument is of general nature only and does not address the specific personal issues raised by the Appellant, choosing to rely on the SMO and KSP (Civil status documentation, article 15) (CG)) Iraq [2022] UKUT 110 (IAC) decision and asserting that, "The situation in Tuz Khurmatu Saladin governate remains unstable…." (§16). I reject that he is at risk simply because he is returnable."

17. I find that this assessment does not involve the making of an error of law, given that I have found that there is no error in the Judge's credibility findings.

Notice of Decision

18. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside.

19. The decision of the First-tier Tribunal stands.

Kate Chamberlain

Deputy Judge of the Upper Tribunal

Immigration and Asylum Chamber

18 June 2024