IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001304
First-tier Tribunal No:
PA/00655/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Brown, instructed by Knightsbridge Solicitors (appearing remotely).
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 19 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. The Appellant appeals with permission a decision of First-tier Tribunal Judge Power ('the Judge'), promulgated on 16 February 2024, who dismissed his appeal against the refusal of his application for leave to remain in United Kingdom on protection and/or human rights grounds.

2. The Appellant is a citizen of Iraq born on 19 June 1996. The Judge sets out his immigration and procedural history. The Appellant's earlier claims were dismissed as lacking credibility and his claim not to have the necessary identification documents was rejected by the Upper Tribunal in a determination promulgated on the 5 September 2022.
3. The Judge noted that following his earlier appeal being dismissed further submissions were made on 18 January 2023, which were refused on 28 February 2023. The Appellant asserts that he is at risk on return to Iraq as a result of his sur place activities or, alternatively, that he is entitled to a grant of humanitarian protection on the basis that he does not have access to his identity documents.
4. The Judge sets out the issues in dispute at [8] and, having considered the documentary and oral evidence, the findings of fact from [13].
5. At [22] the Judge does not find that the Appellant's sur place activities are sufficient to create a real risk for him. The Judge finds the Appellant has a low level involvement in demonstrations in the UK and, so far as that involvement is publicly available on social media, the Judge was unable to conclude from the evidence that his social media activity had been publicly available for any length of time such as to have reached a wide audience, including that of the KRG authorities.
6. The Judge expressly finds the Appellant does not have a profile which will put him at risk on return to the KRG [23].
7. At [25] the Judge writes:

> 25. The Appellant's representative submits that the Appellant would wish to protest on return to KRI and that although the Respondent has challenged the Appellant's motivation for protesting today, had not done so in the Decision Letter. I find that the Appellant's account of his protest activity is not consistent or reliable, there is no recent evidence of Facebook activity or attendance at demonstrations, and the Appellant did not raise his political activity in his previous appeals. Whilst I do not accept that the Appellant is genuinely politically motivated and would wish to protest on return for those reasons, on the basis of the CPIN background information however, I do not find that taking part in demonstrations as a low-level protestor, as he has done in the UK, would put him at risk on return.

8. Having dismissed the claim on protection grounds the Judge goes on to consider the humanitarian protection claim based on lack of documentation. The Judge properly records the starting point is the finding of the Upper Tribunal that the Appellant's CSID is either with him in the UK or in his family home and accessible to him. The Judge finds there was no good reasons to depart from the previous finding, leading to it being found the Appellant could not establish substantial grounds for believing he would face a real risk of suffering harm due to absence of relevant documentation in Iraq [29].
9. The Judge finds the human rights protection grounds stand or fall with his asylum appeal, in line, and accordingly dismisses this aspect of the claim too.
10. The Appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 20 March 2024, the operative part of the grant being in the following terms:

> 2. The grounds assert that the Judge erred in that he has made unclear findings as to whether the Appellant would be at risk of persecution on return to Iraq as a low level demonstrator and in failing to properly assess the background evidence. Although phrased as two grounds, the two points appear linked and so I deal with them together.
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> 3. The grounds complain that at paragraph 23 of the decision conclusions are reached on the background evidence with no reference to what has been considered. The only reference to background evidence in the decision is a reference to the Respondent's CPIN [25]. The grounds identify both ambiguity in that report and

other evidence served from Human Rights Watch which contradicted the judge's findings. It is arguable that the judge has not had regard to relevant information and has not given adequate reasons for concluding as he did and finding that the Appellant's low level of activity would not expose him to risk on return if discovered.

4. Permission to appeal is granted on all grounds.

11. The Secretary of State opposes the appeal in a Rule 24 response dated 3 April 2024, the operative part of which is in the following terms: this

1. ...

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit *inter alia* that Judge Power of the First-tier Tribunal ('FTTJ') directed themselves appropriately.

3. References to the Respondent bundle ['RB'] and the appellant bundle ['AB'] are references to those bundles that were before the First-tier Tribunal hearing, and specific paragraphs from the decision of the FTTJ in square brackets [].

Grounds 1 & 2 – failure to assess background evidence and risk on return

4. The grounds assert that the FTTJ had failed to consider that the background evidence is mixed on whether there is risk to low level protestors in the KRG, and that there was no reasoning given to the preference of the SSHD's background evidence. It is also asserted that the evidence didn't make a distinction between low level and higher-level protesters, which the FTTJ had failed to recognise alongside a failure to consider real risk of detention and detention conditions.

5. It is not clear whether the Human Rights Watch Report 2022 referred to in the grounds at paragraph 7 was explicitly relied on by the representative in submissions. However, the substance of the ability/extent of the Iraqi authorities to monitor political activity was considered and referred to at [21] and [23], as highlighted by the appellant's reps. The FTTJ then goes on in the same paragraph at [21] to refer to the background evidence at para 3.1.2 of the July 2023 CPIN that such treatment of opponents involved in low level participation in protests is not systematic. This evidence was the basis for the FTTJ making a distinction between low level and higher political profile for the purposes of a risk assessment. This section relied on by the FTTJ from the CPIN is consistent with the contents of the HRW report 2022 relied on in the grounds that such treatment exists, but the FTTJ made findings at [21] and [23] based on the background evidence altogether.

6. The grounds assert that the focus of risk is on whether the person's actions would be perceived as 'critical of the regime'. However, the FTTJ considered all the sur place activity, linked to demonstrations and social media posts in line with *XX* and *BA,* before concluding that the appellant had not been identified by the KRG authorities [23]. The FTTJ considered this alongside whether the appellant was genuinely politically motivated, finding that he wasn't and noting that political opposition was not raised in the previous appeal in 2020 [24] – [25]. These factors combined went to the appellant's political profile and whether he would be perceived as critical of the regime, and were findings open to the FTTJ based on the evidence. It was not asserted that mere attendance at demonstrations automatically put the appellant at risk on return.

7. It is not clear whether the assertion in the grounds that conditions in detention would amount to risk were arguments put before the FTTJ. In any event, the FTTJ found that the appellant would not be at risk or identified by the KRG authorities on account of his political profile [23].

8. The grounds amount to a disagreement with the findings of FTTJ Power and do not establish any material errors of law.

Discussion and analysis

12. In assessing whether the Judge has materially erred in law I have taken into account the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWAC Civ 462 @ [2] and Ullah v Secretary of State for the Home Department [2014] EWCA Civ 201 @ [26].
13. The Appellant refers to [23] of the Judge's decision in which it is written: "*whilst it is clear that opponents of the KRG have been arrested, detained, assaulted and even killed by the KRG authorities, the evidence does not indicate that taking part in low level protests against the KRG puts a person at real risk of harm or persecution*" the Appellant argues it is unclear what background evidence was relied upon by the Judge and contends that the background evidence as to whether there would be a risk to low level protests in the KRG is mixed.
14. The Appellant's case is the background evidence did not appear to make a distinction between low level and high-level protesters, with the importance being whether the person's actions will be perceived as "critical of the regime". It is not made out the Judge made a finding contrary to this position. It has always been the case that when assessing whether an individual faces a real risk in their home country for expressing their political or religious beliefs, for example, that the issue is not necessarily the label that may be attached to them in relation to the quantity or quality of what they do, but how that will be perceived in the eyes of an alleged persecutor.
15. It is therefore not implausible that a person who may only take part in low level activities may face a real risk in Iraqi if he is perceived by the authorities had been critical of the regime, i.e. a threat. That is a fact specific judgment.
16. The Judge was not required to set out in detail all the background evidence to which reference was made. As confirmed by the Court of Appeal in Volpi v Volpi at (iii), an appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it. A reading of the determination shows the Judge considered the evidence with the required degree of anxious scrutiny.
17. It is also settled that the weight to be given to the evidence is a matter for the trial judge.
18. As noted in Ullah v Secretary of State for the Home Department @ 26 (iii), "when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 at [25]".
19. Whether on the evidence the Appellant would face a real risk was a matter of judgement. The Judge, who was immersed in the facts of the appeal and the arguments, concluded he would not. Even if the Appellant indicates that an alternative decision may have been possible that does not mean the decision actually made is outside the range of those reasonably open to the Judge on the evidence.
20. The Grounds also refer to detention conditions in the IKR. The Judge refers to individuals being detained but the core finding is that this Appellant had not established he has or will gain a profile which will put him at risk on return, and therefore there was no evidence that there is a real risk he would be detained or face conditions that would amount to a breach of Article 3 ECHR.
21. I do not find it made out the Judge's conclusions are outside the range of findings reasonably open to the Judge on the evidence. It has not been shown they are rationally objectionable in light of the facts and proper application of the law and country information.

22. Whilst the Appellant would clearly prefer a more favourable outcome to enable him to remain in the UK the Grounds do not establish legal error material to the decision to dismiss the appeal.

Notice of Decision

26. No legal error material to the decision to dismiss the appeal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 June 2024