IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-001974

First-tier Tribunal No:
PA/54331/2023
LP/00993/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 9th October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SK (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Bhachu, Counsel instructed by Primus Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

Heard at Field House on 9 September 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 has been granted permission to appeal against the decision of First-tier Tribunal Judge Juss promulgated on 7 March 2024 ("the Decision"). By the Decision, Judge Juss dismissed the appellant's appeal against the decision of the respondent made on 3 July 2023 to refuse the appellant's further submissions.

Relevant Background

2. The appellant is a national of Iraq, whose date of birth is 5 January 1987. On 18 January 2005 he was served with an IS151A notice as a clandestine illegal entrant to the UK. He is recorded as having claimed asylum on the same day. The appellant's claim was refused on 28 January 2005, and his appeal against the refusal was dismissed on 10 June 2005.

3. As set out in the determination of Immigration Judge Bolger, the appellant's claim was that he had been born and brought up in Chamchamal in Iraqi Kurdistan. His father died in 1996 and he lived at home with his two elder brothers who farmed the family land, and with his sister (also older than him). He was in school until 2003 and was unemployed.

4. In 2003 the appellant borrowed 600 USD from a friend called Dier to meet the costs of an operation which his mother needed. He was required to pay the money back in six months, but was unable to do so. As a result, Dier asked for some of the family land as payment, but the appellant refused. There was a fight as a result, and Dier and his relatives threatened the appellant with death if he did not return the money. The appellant's brothers were not aware that a fight had taken place.

5. The appellant fled to the village of Akhjalar where he hid in a cousin's house for about one year and 10 months. From there he went to Hawler in October 2004, and after staying there for 75 days left for Turkey on 15 December 2004, travelling by car and by bus. Because he had no money, he begged the driver to take him without payment.

6. The Judge rejected the credibility of the appellant's claim to fear persecution and a breach of his human rights if returned to Iraq on account of a quarrel between him and Dier and his family. The Judge found that the tenor of what the appellant had said in his various interviews, and indeed what he had said at the hearing, was to the effect that he wished to settle in the UK for economic reasons.

7. The appellant's appeal rights were exhausted on 12 December 2005. Thereafter, the appellant made various attempts to regularise his stay in the UK through the presentation of further submissions, but these were unsuccessful. His penultimate attempt took place on 28 February 2020 when he lodged further submissions which were refused on 27 July 2021.

8. On 26 October 2022 Freedom Solicitors presented further submissions on the appellant's behalf. They said he was an Iraqi Kurdish national from Chamchamal, which was in the IKR region of Iraq. He had continued to fear persecution and so he had remained in the UK. He now wished to present further submissions on the basis of his political opinion and activities in the UK. The appellant was also undocumented and could not re-document. For that reason, he was at risk of persecution and/or treatment contrary to Article 3 ECHR if he was returned to Baghdad.

9. In a witness statement signed on 26 October 2022, the appellant repeated his original claim, and said that as he was not represented when he first claimed asylum, he was unable to show the Home Office how his life was put at risk.

10. He said that in 2015 he created a Facebook account, and on 19 September 2021 he received a message on Facebook Messenger from a childhood friend. They used to play on the streets together in Chamchamal. This friend informed him that his mother had recently passed away.

11. He went to the corner shop to buy alcohol as he was grieving the loss of his mother, and he needed something to help numb the pain. He felt like a terrible son because he had abandoned his family and his mother during difficult times. His mother was already ill when he left Iraq.

12. When he fled from Iraq, he did not have any contact with his friends or family, because he did not want to put them at risk. Even when he had made his Facebook account in 2015, he had not used the platform to get into contact with anyone in Iraq for the same reason.

13. He headed to a local park to drink the liquor, where he was joined by a friend of his called Raza, to whom he unburdened himself. Raza told him that his mother's death was not his fault, but that the financial instability his family had experienced was due to both the Iraqi and Kurdish Governments who had prioritised themselves over the Kurdish people. After this conversation he felt that he his eyes had opened. Everything that Raza said was correct. The Kurdish people had been suffering in Iraq for many years. He started wanting to support the movement to help bring down the Iraqi Government and the corrupt Kurdish leaders who had ignored many poor Kurdish families, such as his, letting them fall to their deaths.

14. He began posting political content on his Facebook account on 27 September 2021. Since then, he had been posting and sharing political information against the Iraqi Government, Shia Militias and Kurdish parties.

15. In the Home Office decision letter (HODL), the respondent accepted that the appellant had engaged in both real-world and online *sur place* activities in the UK. But it was considered that these were low-level

activities and were not sufficient to bring him to the attention of the authorities in Iraq. He had failed to prove, even to the lower standard, that his social media activity was or had been monitored by the Iraqi authorities, or that they were capable of doing so. Those who had previously come to the attention of the authorities in Iraq would be at real risk on return. But those who were regarded as low-level activists did not face a real risk of serious harm on return. Accordingly, having regard to section 32(3) of NABA 2022, it was rejected that he had a fear of persecution in his country of nationality as a result of his political opinion.

16. The appellant's case on appeal was set out in an appeal skeleton argument (ASA) uploaded to the CCD file on 23 October 2023.

17. Chamchamal was in a disputed region between Kirkuk and Sulaymaniyah. (The ASA did not spell out the implications of this new claim, but it is apparent from the appellant's appeal statement that he was now saying for the first time that Chamchamal was not within Sulaymaniyah governate in the IKR, but was within the jurisdiction of Kirkuk, with the consequence that he would need to go to Kirkuk in Federal Iraq to get a replacement ID card.)

18. The respondent accepted that the appellant had been politically active in the UK. Accordingly, it was submitted that the first issue was whether the appellant was likely to suffer persecution as a political activist; and the second issue was whether the appellant fell into any of the enhanced risk categories identified in *SMO*. Whether the appellant's political beliefs would result in persecution was a matter to be determined under s.32(4) of NABA applying the lower standard of proof.

19. The respondent rejected the risk posed to the appellant by his activities, as he was considered to be a low-level activist. This was a false distinction, as no such distinction was drawn by the persecuting authority. The background evidence established that political activists and opponents were persecuted at all levels, and the persecution was systematic in nature. The material relied upon to support this submission included the CPIN on *Iraq: Opposition to the Government in the KRI*, version 3.0, dated July 2023.

20. In the Respondent's Review dated 25 January 2024, the respondent clarified that it was not accepted that the appellant held genuine political beliefs. The appellant's new claim to fear the Iraqi and Kurdish authorities due to his *sur place* activity was an opportunistic attempt to form a barrier to his removal from the UK. The respondent did not accept that the appellant held genuine political views. In the appellant's own words, he came to the UK to be accommodated by the state and to rely on benefits.

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

21. The appellant's appeal came before First-tier Tribunal Judge Juss sitting at Birmingham on 7 March 2024. Both parties were legally represented, with Ms Bhachu of Counsel appearing on behalf of the appellant.

22. In the Decision, the Judge gave an account of the hearing, including the appellant's answers in cross-examination, at paras [10] to [16].

23. The Judge's discussion and findings began at para [17]. At para [21] he found that the appellant was not at risk due to his political activities, and he also found that his views were not genuine:

> "As noted above, there are significantly more posts in 2021, when it is said that he learns of his mother's death (p1007). However, this does not make sense at all. The death of his mother leading to a sharp increase in his posts can be attributed only to the fact that he was anguished at that time (assuming that the death had indeed occurred which I do not accept given that his evidence has referred to this only at the very end) and not to the fact that he had become suddenly political in 2021. This is not to say that I accept that he is generally political. This is because his political activity appears to have started when *Raza* spoke to him allegedly because his mother had passed away and he was taking to the bottle. However, why the mother's death would cause him to become political is not explained. In fact, prior to 2005 he had no political involvement at all. I do not agree therefore that the distinction between 'low-level' and 'high-level' is a false distinction."

24. At para [25] the Judge addressed the matter of the appellant's documentation. He had earlier said he had the CSID with him. But in the light of what he said in his appeal statement, the Judge found that his CSID had remained in Iraq and the appellant knew where it was. He did not accept the appellant's account of losing his CSID when he first went to Erbil. He did not accept that the appellant would not have realised how he had lost it, given the particular importance of such documentation in his country. Nevertheless, if he did lose it, he was in contact with his family in Iraq, and they could help him replace it.

The Grounds of Appeal to the Upper Tribunal

25. The grounds of appeal to the Upper Tribunal were settled by Freedom Solicitors. Ground 1 was that the Judge had erred in law in his refusal to permit the appellant to raise as a preliminary matter the issue of whether the respondent was permitted to raise the genuineness of the appellant's political activities in the Review Response, whereas their genuineness had been accepted in the letter refusing the claim.

26. Ground 2 was that the Judge's findings on the appellant's political opinion and activities were at times incoherent; at times lacking in sound reasoning; and the findings had been made without considering the evidence.

27. Ground 3 was that the Judge had erred in his summary of the appellant's evidence relating to his CSID. The appellant had not stated that he had his CSID in the UK. He clearly stated in his appeal statement (at para 17) that from when he first arrived in the UK in 2005, he had said that his CSID was in Iraq. The Judge later found that the appellant had left his CSID with his family in Iraq. There was no evidence before the Judge to support this finding, and it was not a submission made by the respondent. The respondent's case was his family could help him to replace the CSID, not that they could provide him with his original CSID.

The Reasons for the Grant of Permission to Appeal

28. On 3 May 2024 First-tier Tribunal Judge Hollings-Tenant refused permission to appeal on Ground 1, but granted permission to appeal on Grounds 2 and 3.

29. As to Ground 2, he found that there was some merit in the assertion that the Judge had erred by failing to give adequate reasons for finding that the appellant did not hold genuine political opinions. The Judge's reference to the appellant having referred to the death of his mother "*only at the very end*", and the lack of explanation as to why this caused him to become politically active, did give the impression that there was a failure to consider the evidence in his fresh claim alluding to such matters. Further, whilst the Judge referred to the inspection report relied upon at para [19], there was no indication that he engaged with the contents therein, or any indication as to the weight he placed on the report, or on the other Country Information relied upon in support of the appellant's claim [that even low-level political activists were at risk].

30. There was also merit in Ground 3, which asserted that the Judge had erred in summarising the appellant's evidence with regard to his identity documents, and had made findings in respect of such that were not supported by the evidence. It was unclear which document was being referred to when the Judge said that the appellant had earlier said he had it (his CSID) with him. It was at least arguable that this infected the Judge's findings on the issue, and that the Judge went on to make findings that were not reasonably open to him on the evidence presented.

The Hearing in the Upper Tribunal

31. The hearing before me took place at Field House, although the representatives both participated in the hearing remotely on the Cloud Video Platform. The appellant attended in person, as an observer.

32. Ms Bhachu developed the grounds of appeal at some length, directing my attention to many of the key documents relied upon, including the inspection report. Mr McVeety made brief submissions opposing the appeal, and after hearing from Ms Bhachu in reply, I reserved my decision.

Discussion and Conclusions

33. In evaluating the appellant's error of law challenge, I have had regard to the guidance given by the Court of Appeal in *T Fact-finding Second Appeal* [2023] EWCA Civ 475 as to the proper approach which I should adopt to the impugned finding of fact made by Judge Juss:

> 56. The most-frequently cited exposition of the proper approach of an appellate court to a decision of fact by a court of first instance is in the judgment of Lewison LJ in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5:
>
> > "114. Appellate courts have been repeatedly warned, by recent cases at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The best known of these cases are: *Biogen Inc v Medeva plc* [1977] RPC1; *Piglowska v Piglowski* [1999] 1 WLR 1360; *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23, [2007] 1 WLR 1325; *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33 [2013] 1 WLR 1911 and most recently and comprehensively *McGraddie v McGraddie* [2013] UKSC 58 [2013] 1 WLR 2477. These are all decisions either of the House of Lords or of the Supreme Court. The reasons for this approach are many.
> >
> > (i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed.
> > (ii) The trial is not a dress rehearsal. It is the first and last night of the show.
> > (iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case.
> > (iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
> > (v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to the evidence (the transcripts of the evidence),
> > (vi) Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.
> >
> > 115. It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has

acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see *Customs and Excise Commissioners v A* [2022] EWCA Civ 1039 [2003] Fam 55; *Bekoe v Broomes* [2005] UKPC 39; *Argos Ltd v Office of Fair Trading* [2006] EWCA Civ 1318; [2006] UKCLR 1135."

57. More recently, Lewison LJ summarised the principles again in *Volpi and another v Volpi* [2022] EWCA Civ 464 at paragraph 2:

i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

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.

iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

vi) Reasons for the judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

Ground 2

34. The first error of law challenge advanced under Ground 2 is that the Judge's reasoning as to why the appellant is not genuine in his political beliefs is flawed because it overlooks material evidence, and it is not coherent.

35. The second error of law challenged under Ground 2 is that the Judge has not engaged adequately, or at all, with the background evidence relied upon by the appellant as establishing that the distinction between 'low level' and 'high level' activists is not a valid one, contrary to what is said in section 2.4.8 of the 2021 CPIN, with the consequence that the Judge did not give adequate reasons for finding that the appellant would not be at risk on return to Iraq/KRG as a result of his real-world and online *sur place* activities.

36. The first challenge centres upon the Judge's line of reasoning in para [21]. I consider that the Judge reasonably identified two inconsistencies which had emerged in the appellant's account of the genesis of his political activism.

37. The first inconsistency was that, whereas the clear message of the witness statement of October 2022 was that he only became politically active after he learned of his mother's death and had had his eyes opened by Raza, Mr Bhachu's observation in her closing submissions (that there were significantly more posts in 2021 when he had learned of his mother's death) contradicted this core claim, as it meant that he was already engaging in political activity before he learned of his mother's death. In that context, the Judge reasonably held that the appellant's claim did not make sense.

38. The second inconsistency was that, as rehearsed earlier in para [12] of the Decision, under cross-examination the appellant gave a contradictory account of the genesis of his political activism. Whereas the thrust of his witness statement of October 2022 was that he had not been in touch with anyone in the IKR, and had no news of his mother for a long time, and then he had got a message that his mother had died, in his oral evidence he said the friend told him that his mother was very sick – not that she had died. It was later on that he heard she had died. Ms Edwards, the HOPO, asked him why he had said earlier that his mother had just been ill. He replied that Raza tried to tell him it was not his fault that she was sick (my emphasis). In the light of this stark inconsistency, it was open to the Judge to find that the appellant was not credible in his claim that his mother had died. Since the alleged death of his mother had allegedly caused him to become a genuine political opponent of the governments of both Federal Iraq and the authorities of the IKR, it was open to the Judge to find that, since the appellant was not credible in his claim that his mother had died, he was also not credible in his claim to have become a genuine political opponent as a consequence of this.

39. At the end of para [21] the Judge says that why the appellant's mother's death would cause the appellant to become political is not explained. I

accept that the appellant gives a detailed explanation in his witness statement of October 2022, and that he partially repeated this explanation in cross-examination as set out above. However, as is highlighted in the Decision at para [12], there was no witness statement from Raza corroborating the appellant's account of what Raza allegedly said to him. In addition, it is apparent from para [15] of the Decision that Ms Edwards submitted that it did not make sense that the appellant would become political as a result of what Raza said to him. So, it is tolerably clear that the Judge was not saying that no explanation at all had been forthcoming from the appellant, but that why his mother's death would cause him to become political had not been credibly explained and/or explained in a way that made sense.

40. The final sentence of para [21] is a logical non-sequitur as it has nothing to do with the question of whether the appellant's professed political views are genuine. The explanation for its presence in para [21] is that the Judge is picking up on what he said at the outset of the paragraph, which is that he found that the appellant was not at risk. I consider that it was open to the Judge to adhere to the position taken by the respondent which was based upon para 2.4.8 of the 2021 CPIN which the Judge went on to set out in para [22]. With the exception of the Inspection Report on Home Office COI for Iraq and Burma dated January 2023, which he dismissed as irrelevant at para [19], I accept that the Judge did not otherwise engage with or comment on the material that was relied upon by the appellant as establishing that the message of the CPIN of 2021 was wrong or outdated. But I am not persuaded that the Judge thereby erred in law. As was highlighted in the discussion at the hearing before me, the Inspection Report on Home Office COI for Iraq and Burma dated January 2023, which was uploaded to the CCD file on 5 March 2024 for the declared purpose of assisting the Tribunal in assessing the objective risk to the appellant on return, does not cast any doubt on the reliability of para 2.4.8 of the CPIN of June 2021, contrary to Ms Bhachu's submission in the grounds of appeal that the Inspection Report is *"a direct critique of the 2021 CPIN, challenging some of the conclusions drawn from it by the Respondent"*. In short, the Judge was entirely justified in ignoring it.

41. Although the CPIN of 2023 was cited in the ASA as supporting the case that the CPIN of 2021 was out of date, Ms Bhachu rightly does not rely on it for this purpose in the grounds of appeal, as it states at 3.1.2 that a person will not 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.

42. In conclusion, the Judge gave adequate reasons in para [21] for finding that the appellant was not a genuine political activist, and the Judge gave adequate reasons at paras [23] to [25] for finding that the appellant's real-world and online activities in the UK only amounted to low-level political activism and so there were not substantial grounds for believing that he had acquired a social profile such that there was a real risk of persecution in the IKR (or Federal Iraq) on return.

Ground 3

43. On the practical question of the appellant's returnability, the respondent's case in the HODL was that a failed asylum seeker could now be returned to any airport in Federal Iraq and the KRI. On the issue of documentation, it was noted that in his screening interview the appellant said that his CSID was in Iraq, whereas he had previously claimed that he had handed over all his documents to the agent. It was not accepted that he did not have his identity documents with him in the UK. Alternatively, he had failed to demonstrate that he could not obtain the required documentation to return to Iraq with the assistance of his family.

44. The Judge found at [27] that the appellant was in contact with his family; that he had left his CSID with his family; and that his family could meet him at the return airport with his CSID. Alternatively, they could help him on return to secure a replacement. The Judge rejected the appellant's claim that he had lost his CSID in Erbil *"otherwise he would have known how he lost it".*

45. Earlier at [25] the Judge said he did not accept the appellant's evidence that he had his CSID with him when he went to Erbil, but lost it while living rough. The Judge said:

> "I do not accept that the appellant would have lost it and not realised how he lost it given the particularly important (sic) of such documentation in his country."

46. The first error of law challenge is to the Judge's finding at [25] that the appellant's initial position was that he had his CSID with him. The challenge is advanced on the premise that the Judge was referring to the appellant claiming to have had his CSID with him when he arrived in the UK. It is common ground that this has never been the appellant's position. I infer that the Judge was referring to the appellant's evidence cited earlier in para 25 that he had his CSID with him when he first went to Erbil (as opposed to his alternative version of events which is that he left his CSID with his family).

47. The second error of law challenge is to the reason given by the Judge for disbelieving the claim that the appellant lost his CSID while living rough in Erbil. I accept that the reasoning is flawed in so far as it is based on the premise that the appellant did not know how precisely he lost his CSID. His evidence was that he was not sure <u>when</u> he lost it, rather than not being sure <u>how</u> he lost it.

48. I am not however persuaded that the Judge's error was material. Firstly, it was open to the Judge to find the appellant's account not credible for that part of his reasoning which is sustainable, namely that the CSID was an important document, and so it was not credible that the appellant would not have ensured that he did not lose it while he was still in the IKR.

Secondly, although not relied on by the Judge, it was a matter of record that the appellant had given inconsistent evidence about his CSID. He had given three versions of events – leaving it with his family, handing it over to the agent who brought him to the UK, and losing it in Erbil – only one which of could be true; and it was open to the Judge to find that the true version of events was that the appellant had left his CSID with his family. It therefore followed that the appellant was not telling the truth about taking his CSID with him to Erbil, and losing it there.

Summary

49. Echoing the wording in *Volpi v Volpi*, I accept that the impugned reasons could have been better expressed, but I consider that they are adequate and that the Judge's conclusions on the disputed issues are not shown to be rationally insupportable.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stans. 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
30 September 2024