Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: LP/00293/2020 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On the 15th June 2021	**On the 28th June 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MAT

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant:	Mr R Bednarek of counsel, instructed by Broudie Jackson Canter
For the Respondent:	Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held

because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is an Iraqi national of Kurdish ethnicity and with date of birth given as 27.6.91, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 3.12.19 (Judge Handler), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 5.7.19, to refuse his claim for international protection.

2. Permission to appeal was granted on all grounds by the First-tier Tribunal on 20.12.19, the judge considering in particular that "It is arguable, given the matters raised in Ground 2 that the judge has failed adequately to allow for cultural pressures leading to late disclosure and which may, arguably have wrongly affected the judge's approach generally to credibility."

3. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal.

4. I first bear in mind the counsel of Lewison LJ in *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5, who at [114] explained the caution to be exercised by appellate courts in interfering with evaluative decisions of first instance judges, including that 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."

5. In MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC) the Upper Tribunal held that, "A judge considering an application for permission to appeal to the Upper Tribunal must avoid granting permission on what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal judge's assessment of the evidence." Having carefully considered the submissions of Mr Bednarek, I find that much of the grounds and submissions fall within the criticism described in VW (Sri Lanka) [2013] EWCA Civ 522 at [12], where LJ McCombe stated, "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact."

6. I also bear in mind the high threshold for demonstrating that the decision of the First-tier Tribunal was irrational or perverse so that no reasonable and properly directed judge could have reached the findings made.

7. In relation to the second ground (taken first in submissions) and the judge's reliance at [29] of the decision on the appellant's failure to mention any risk from his family in his screening interview, I am satisfied that, contrary to the assertions in the grounds, in assessing the credibility of the claim the judge did take account of the cultural sensitivity of disclosing having been a victim of male sexual assault. That is specifically and clearly set out within [29] but as the judge pointed out, the appellant need not have given the alleged details in the screening interview. Having considered the explanation for failure to disclose, also set out within the decision, it was open to the judge to reach the conclusion that this explanation was unsatisfactory and, therefore, undermining of the appellant's credibility. Nothing in the decision was inconsistent with the guidance in YL (China) [2004] UKAIT 00145 (IAC) and no error of law is disclosed. There was a discrepancy and the appellant could reasonably have been expected to mention the alleged threat from his family within the screening interview.

8. The essence of the first ground is that the judge erred in holding against the appellant his inability to explain various actions of third parties, notably GA, for which actions the appellant cannot reasonably or rationally be expected to account. However, it has to be recalled that it was incumbent on the appellant to prove his factual claim to the lower standard of proof. He cannot simply present an otherwise implausible and incredible account and hide behind the mantra that he cannot read the mind and motivation of a third party. In essence, this ground misrepresents the judge's process of assessing the credibility of the appellant's claim. The judge was not asking or expecting the appellant to read the mind or account for the actions of third parties but in considering whether the appellant had demonstrated to the lower standard of proof that the claimed events involving GA did happen at all, the judge was entitled to consider, for example, why GA would steal the appellant's car and thereby open himself to criminal prosecution. It is to be noted that in post-interview and post-decision further submissions some suggestions for such actions were proffered on the appellant's behalf. Mr Bednarek also acknowledged that in interview the respondent was entitled to ask the appellant why GA would do what the appellant claimed he had done. The reality of what the judge was engaged in was a reasoned consideration of the credibility of the account. Similar complaint about [28] and [33] of the decision, in relation to the sending of the video and why the appellant did not claim asylum in France or Italy, beg the same question and have the same answer. These were legitimate considerations in assessing the credibility of the appellant's account and not a demand of the appellant to enquire into the mind of others. One of the difficulties of Mr Bednarek's submissions is the presumption that these third parties existed and did the actions alleged by the appellant, whereas the judge was considering whether these actions happened at all and in doing so was entitled to ask questions such as, 'why would he?' The absence of explanation from the appellant was but one part of that exercise

and was not an irrational approach. In the premises, no error of law is disclosed.

9. Grounds 3 and 4 are in essence extensions of the first ground. The third ground alleged irrational reasoning in the judge's credibility assessment at [26] and [27] of the decision, involving consideration of the logic of carrying out alleged kidnapping and video recording of the alleged sexual assault of the appellant in order to threaten him not to release CCTV footage of the car theft by GA when the video was, on the appellant's account, sent straight to his brother, thereby allegedly causing problems for the appellant with his family. This ground as drafted offers what can be no more than speculation as to GA's motivation in allegedly sending the video. The judge was not obliged to agree with that or any other speculative suggestion and entitled to point out the apparent illogicality of the account given by the appellant, seeking a plausible or credible explanation. It cannot properly be said that the reasoning of the judge in this aspect of the credibility assessment reaches the high threshold for irrationality. No error of law is disclosed.

10. As stated above, in essence, the fourth ground advances the same point as the first ground. It is clear however that at [28] the judge has considered the evidence in the round and taken account of Mr Bednarek's submissions at the First-tier Tribunal appeal hearing. At [11] the judge carefully set out all the material under consideration and at [13] explained that she had had regard to the totality of the evidence, taking it in the round, before making any of her findings of fact. It was not necessary for the judge to set out or summarise the evidence but rather to justify with adequate reasoning the findings made so that the appellant could understand why they were made against him. Nothing in the ground or [28] of the decision itself demonstrates irrationality or other error of law. In essence, the ground is a mere disagreement with the decision.

11. The fifth ground asserts that the "core factor running throughout (the decision of the First-tier Tribunal) is that of the plausibility of A's account." This is followed by a treatise on the requirements for assessing credibility and the warning to decision-makers that something may be implausible, or inherently unlikely, but that alone does not mean that it is untrue. It is vaguely asserted within the drafted ground that when GA's actions are considered set within the context of tribal identity, political association and the country background information, the judge's findings amount to errors of law. With respect, this ground is little more than a disagreement with the judge's findings and an attempt to reargue the appeal, disguised as an alleged error of law.

12. The final ground asserts that the judge failed to follow country guidance in relation to the appellant's ability to obtain a replacement CSID, with reference to the considerations set out in AAH, the extant country guidance at the date of promulgation of the impugned First-tier Tribunal decision. However, the primary findings, in respect of which I find no error of law, led inevitably to the conclusion that the appellant's factual claim was rejected in its entirety, so that

he faces no risk on return to the IKR. In essence, the appellant and his account were found not credible. At [36] the judge found that his family will be able to send his CSID card to him, which will enable his return to Baghdad and onward journey to the IKR. Given those findings and my decision in respect of the alleged errors of law, the other findings challenged in the sixth ground, obtaining a replacement CSID and internal relocation within the IKR, were in the alternative and need not be addressed further.

13. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

I make no order for costs.

Signed: *DMW Pickup*
Upper Tribunal Judge Pickup

Date: 15 June 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

"*Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.*"

Signed: *DMW Pickup*
Upper Tribunal Judge Pickup

Date: 15 June 2021