IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal no: UI-2021-001904
First-tier Tribunal No: PA-5274-2020
(IA/02452/2020)

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 13 March 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

BSS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Dewa, Dewa Legal Services solicitors
For the Respondent: Mr Gazge, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 7 February 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Athwal written on 16 August 2021 in which she dismissed the appellant's appeal against a decision of the Secretary of State made on 26 November 2020 refusing his protection claim.

The Appellant's Case

2. The appellant is a national of Iraq. He claims asylum on the basis of having a well-founded fear of persecution in Iraq due to his political opinion, namely that he spoke out against corruption in the Iraqi authorities. Specifically, the appellant claims he was a member of the peshmerga and KDP party and he spoke out about corruption, including on the Facebook channel of [RH] in May or June 2019. He says two of his brothers were martyred as Peshmergas. He says he was warned to be quiet and decided to leave Iraq, subsequently leaving on 11 June 2019 via plane using his own passport. The appellant claims to have travelled through Turkey, Greece and France. He arrived on the UK on 2 August 2019 and claimed asylum the following day.

3. The appellant claims that on return he will be killed or imprisoned by the Barzani family, the Peshmerga and the KDP for speaking out about corruption on social media.

4. In a letter dated 26 November 2020 ("the Refusal Letter") the respondent accepted that the appellant is from Iraq and of Kurdish ethnicity. However, she rejected his claims that he was a member of the Peshmerga, or that he was threatened for speaking out against corruption in Iraq. The respondent said that elements of the appellant's account lacked sufficient detail and were internally inconsistent and speculative, which cast doubt on his credibility. Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 ("the 2004 Act") also applied to detract from his credibility as he had failed to claim asylum in either Greece or France.

5. The appellant appealed that decision. The appeal was heard by First-Tier Tribunal Judge Athwal ("the Judge") on 13 August 2021, after which her decision was written on 16 August 2021.

The First-tier Tribunal's decision

6. The Judge heard evidence from the appellant via a Kurdish Sorani interpreter, and submissions from his representative, Mr Mohzam. Mr Mohzam confirmed that the appellant's claims under paragraph 276ADE of the Immigration Rules and article 8 both stood or fell with the protection

claim. The respondent was represented by Ms Edwards, Home Office Presenting Officer.

7. The Judge's key findings, with reference to the relevant paragraph numbers, were as follows:

> [13] It was noted that the appellant was in possession of his identification documents and was in contact with his family; no issues were being raised as regards redocumentation.
>
> [43] The appellant's credibility was damaged under s.8 of the 2004 Act due to his failure to take advantage of a reasonable opportunity to claim asylum in a safe country, such that the Judge approached his evidence with caution.
>
> [44] She was satisfied the appellant was a Peshmerga based on photos he had provided.
>
> [51] She had assessed the video of the appellant allegedly giving an interview on Facebook concerning corruption. She was not satisfied that it was published on a social media forum as there was no evidence it was linked to Facebook. She did not accept the appellant's explanation as to why this was the case, being that he could no longer find RH's Facebook page and he had received the recording in the format of a video conference call.
>
> [53] She attached little weight to an audio recording saying the appellant was at risk as its provenance had not been established.
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> [54] The video transcript completely undermined the appellant's claim that he named and shamed Barzani, having noted at [52] that the appellant says, "we know President Barzani is pure".
>
> [55] The arrest warrant stated an offence pursuant to no.434 of the Iraqi Penal Code but she had not been told what this was. If the authorities had truly written a report about the appellant and told him to stop his activities, and if the Barzani family truly were searching for him, it did not explain how the appellant was able to leave Iraq using his own passport on 11 June 2019, the day the warrant was issued. For these reasons, she attached little weight to the arrest warrant.
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> [56] She did not find the appellant to be a credible witness and did not accept he had criticised the Barzani family.
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> [57] Even if he had criticized the Barzani family, she did not find he had done so on social media; he had failed to produce the material he says he published on the internet and the information provided was not from social media sources. He had produced nothing from RH's Facebook page to corroborate his account.
>
> [58] The appellant had failed to explain how the Barzani family would recognise him on return or how someone in his position would be recognised anywhere in the KRI; if he was so famous on social media, he could reasonably be expected to find some documentation to confirm that.

[59] The appellant had failed to establish to the lower standard that he was at risk of persecution from KRI authorities if returned to Iraq.

[60] The appellant's claim was dismissed on asylum, humanitarian protection and human rights (article 2, 3 and 8) grounds.

Appeal History

8. On 2 September 2021 the appellant sought permission from the First -tier Tribunal to appeal to the Upper Tribunal on two grounds, as follows:

"Ground 1: Irrationality

> Although the Judge considered the Country Guidance case this was not fully explored and his suggestion that the Appellant can be accommodated by his relatives in the KRI because "cultural norms would require that family to accommodate the Appellant" is purely speculative and needed more exploration given that circumstances have changed through COVID-19. There is also a troubling lack of committal where the Judge suggests in Paragraph 40 that, "However, a grant from the UK government of "up to £1500 may be available". In the Judge's own words there is no conviction to that promise and that money may, in fact, not be available for the Appellant. That, therefore means the Appellant may face destitution in the KRI, regardless of whether the deprivation is intended or unintended. This therefore means the Appellant meets that requirement and therefore Ainte (material deprivation, Art 3, AM) (Zimbabwe) [2021] UKUT 203 (IAC) should have been considered.

Ground 2: Failure to consider the evidence

> The Judge accepts in paragraph 44 that the Appellant was a Peshmerga. Once that was accepted the profile of the Appellant was raised in a way similar to SM(Zimbabwe) [2005] UKIAT 100.The effect of this is that his activism or opposition of the government should not have been viewed in isolation of each other. The question that should have been asked is whether a Peshmerga who comes out as opposing would expose the Appellant to serious harm. His status is important because this changes the perception of the KRI of him. This information was before the Judge and should have been considered."

9. On 25 October 2021, First-tier Tribunal Judge Bird granted permission to appeal, saying:

> "3. It is arguable that whilst the judge refers to background objective evidence, he has failed to give reasons how it applies to the appellant or his circumstances – paragraphs 36-38. The judge failed to show how this evidence engaged with the evidence that the appellant gave or to his circumstances.
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> 4. The judge had before him the fact that the appellant was Peshmerga (paragraph 44); evidence of his criticism of the authorities (paragraphs 45-54). The judge did not find this evidence credible. He has failed to give adequate reasons for the findings he made. The judge did not

> accept the arrent warrant and again no adequate reasons are given as to why.
>
> 5. The judge's decision contains arguable errors of law."

10. No Rule 24 response was filed.

The Hearing

11. The appeal came before us on 7 February 2023.

12. It serves no purpose to recite the submissions here at length as they are set out in the record of proceedings. Essentially, Mr Dewa expanded on the second ground of appeal, making the following submissions of particular note:

    (a) That the Appellant was a peshmerga of high rank, being a Major. There was documentary evidence of this which should have been given more weight; specifically the photos of the Appellant in uniform.

    (b) That if the Appellant's status as a peshmerga in the rank of a Major had been believed, then his activism may also have been believed. This was relevant as to how the Appellant would be perceived on return i.e. as a high ranking peshmerga involved in speaking out against corruption and criticising the authorities.

13. We pointed out to Mr Dewa that the Judge had accepted at [44] of her decision that the appellant was a peshmerga. It appeared his rank had not been accepted because there was conflicting evidence concerning rank highlighted in the Refusal Letter and because the Appellant's credibility had not been accepted. Mr Dewa accepted that the photos of the appellant in uniform that were relied upon, in themselves, did not confirm the Appellant's rank. He was unable to point to any other evidence before the First-tier Tribunal to establish the Appellant was a Major. He was also unable to take us to any objective evidence which said that, even had the Appellant been a Major, the perception of him would have been different than had he been of a lower rank. Mr Dewa confirmed it was not being argued that being a peshmerga would, in itself, put the appellant at risk on return. He was unable to explain why the appellant being accepted as a Major would mean that his evidence about speaking out about corruption should also have been accepted. He agreed that it is open to a judge to accept one part of an appellant's account, but to reject other parts of the account if reasons are properly given. He said he did not have conduct of the case previously, and if he had, he would have asked for an expert opinion as to the photos and ID evidence going to rank.

14. As to ground 1, Mr Dewa said this was on the basis that the appellant's family had been persecuted and so would struggle to accommodate him such that he would need other relatives to do so and at the time, it was the peak of covid. He accepted that the situation with covid had now changed and that this ground was interlinked with findings about risk.

15. Mr Gazge said he had nothing to add.

Discussion and Findings

16. Before we deal with the pleaded grounds of appeal, we note FTTJ Bird's concerns that the Judge failed to give reasons as to how background objective evidence applied to the appellant or his circumstances in [36]-[38] and also failed to give adequate reasons for the findings made, particularly concerning the arrest warrant. As regards the background evidence, it is not clear that the appellant made apparent to the Judge which particular piece(s) of evidence applied to his case or why. At [10] of her decision the Judge notes that Mr Mohzam did not explain why she should attach weight to the video recording and arrest warrants, and that his submissions primarily focused on the Refusal Letter. The Judge states at [14] to [16] the evidence with which she was provided; it does not specifically mention any background objective evidence but we have the appellant's bundle of evidence that was before her. We note it contains articles and reports about free speech, the treatment of protestors in Iraq and human rights violations in the Kurdistan region. There are also copies of Country Policy and Information notes produced by the respondent concerning Actors of Protection and Internal Relocation, Civil Documentation and Returns. At [32] the Judge refers to the country guidance caselaw she has reviewed. We are unable to find any reference in the Judge's decision to her being taken to any of the objective evidence provided in support of the appellant's case. Mr Dewa was unable to do the same before us. In these circumstances, the Judge cannot be criticised for any lack of findings in this respect. At the heart of the appeal was the appellant's credibility, and the documents relied upon that were specific to his circumstances, such as the arrest warrant and video and audio recordings. The Judge quite properly notes at [23] that the appellant need not provide corroborative evidence to prove his case and that it is possible to believe he is not telling the truth, has exaggerated, or is uncertain about some matters and still persuade the Tribunal that the centrepiece of his story stands.

17. As regards the appellant's credibility and supporting documents, we find that the Judge did give adequate reasons for her findings. At [43] she explains she is approaching the appellant's evidence with caution due to s.8 of the 2004 Act applying. At [45]-[50] she sets out the appellant's account in clear terms. At [51] she gives clear reasons why she does not accept the video recording as credible evidence of the appellant speaking out against corruption on Facebook, namely that there was nothing in the video that linked it to Facebook and she did not accept the Appellant's explanation as to why this was the case. At [52]-[53] she goes through the audio recording in terms of both provenance and content, and again explains why she does not find that to be reliable evidence either i.e. because of the format of the audio as a simple voice recording with no evidence as to provenance and because the appellant actually appears to support President Barzani rather than criticise him. She makes the observation that this content 'completely undermines' the appellant's

evidence, which is reasonable, because if he was not criticising Barzani, then the Barzani family would have had no reason to pursue him and it is not clear who in fact he is criticising, referring to 'the rest under him' and 'they'.

18. At [55] the Judge analyses the arrest warrant and explains that she attaches little weight to it due to both its unexplained content (she was not told what offence no.434. is) and the mismatch between the warrant being issued and the Barzani family and authorities allegedly searching for the appellant, and his ability to leave the country on his own passport. Without the Judge's attention being specifically drawn to any objective or further evidence supporting these documents, and against a background of having already found his credibility to be negatively affected by s.8 of the 2004 Act, it is difficult to see what more the Judge could have said in terms of reasoning.

19. Moving to the grounds of appeal, we shall discuss the second ground first as it relates to what we have just said.

Ground 2

20. We do not find this ground to be made out. The ground assumes that the appellant's activism was accepted but as can be seen from the decision, it was not. The ground does not explain why, having found the appellant was a peshmerga, the Judge should have gone on to also find he participated in activism. That was a separate question. As discussed at the hearing before us, and as noted at [23] of the decision, it is possible to accept one part of an appellant's account but not another, and this is what the Judge, entirely reasonably and rationally, did. She set out the gist of the Refusal Letter at [5] and went on to find for herself at [56] that the appellant was not credible, having considered the evidence on which he relied to be unreliable, and in the light of s.8 of the 2004 Act. We note the Judge's findings about the 2004 Act, and the arrest warrant and video and audio recordings, are not being challenged. The Judge puts the appellant's case at its highest in [57] and [58] by analysing the position even had she accepted that the appellant criticized the Barzani family. She specifically states at [58] that the appellant had not explained how someone in his position (being part of the bomb unit and as deputy officer) would be recognised anywhere in the KRI. So even if he did criticize the Barzani family and did so on social media, the Judge still did not accept the appellant would be at risk.

21. As to rank, having been though the evidence that was before the First-tier Tribunal, even with the assistance of Mr Dewa, we are unable to find any evidence that the appellant said he was at the rank of a Major. At the screening interview, he simply said he was a peshmerga.

22. In his substantive asylum interview, he says at Q28 that "I was at work at the commanding office at Erbil". At Q39 he says, "I was in the commanding offices washing dishes because I was young". At Q40 he

relates how his rank changed from private to Officer Cadet. At Q41 he says "I was in Sepahi 2 which is Erbil Commanding unit, 2003-2010 I was in the mine countermeasures and bomb disposal, and in 2010…we were moved.. we were part of providing cover for the army unit 1 part of the army 80 until I left. In 2017 …I got moved to Commanding Office Unit in Erbil". At Q42 he says the highest rank he held was "on ID Naib Zabet Officer Cadet with merit/distinction". At Q50 the question was "after the referendum, until you left, what was your role?" To which he answers, "I was still a peshmerga, same job as since 2010".

23. A letter from the Appellant's solicitors dated 10 March 2020 makes no correction to anything the appellant said in his interviews concerning his rank. His Peshmerga ID card refers to his 'degree' being "Deputy O. Excellent".

24. In paragraph 3 of his witness statement dated 9 June 2021, the appellant says, "eventually I became a private peshmerga, this is when you get different lines….Every two or three years I would get one line on my shoulder". At paragraph 5 he explains as regards the ID card that he does not know what Deputy O. Excellent is, and that "I was Naib Zabet which is a Deputy Officer".

25. It can therefore be seen that even on the appellant's own account there is no reference to him being a major, or of senior rank, at any point. The Judge was right to say that he was a deputy officer.

26. In any case, Mr Dewa was unable to point us to any evidence, either from the appellant or external sources, that his being a particular rank of peshmerga would make a difference to how he was perceived.

27. Overall, we find this ground to be in the nature of mere disagreement and discloses no error.

Ground 1

28. We do not find this ground to be made out. As above, the Judge gave adequate reasons for finding the appellant was not credible. Although perhaps not expressly articulated in the decision, that meant his account of his family members being targeted was not accepted. The Judge states at [13] that the appellant was in contact with his family. She states at [39] that if the appellant has family members living in the KRI, cultural norms would require them to accommodate the appellant. This statement appears to have been gleaned from the country guidance caselaw cited at [32]; as such it was not purely speculative. The appellant states at 1.18 of his screening interview that he has a wife and four children. It is for him to prove to the lower standard that he could not return to live with them as he did previously. The Judge rejected the core of the appellant's claim. With his account of risk not being accepted, he has given no reason why he cannot do so, and has not explained why his situation on return would be any different from that before he left in terms of living circumstances.

Our attention was not drawn to any evidence before the First-tier Tribunal Judge to establish that the appellant's family had become destitute in his absence. The Judge's reference at [40] to a grant from the UK government was looking at the situation in the absence of support from family members. The reference to Covid-19 is not explained and in any case, Mr Dewa accepted it no longer applied.

29. Overall, we find this ground to be in the nature of mere disagreement and discloses no error.

30. To conclude, we find the decision is not infected by any errors of law. The decision therefore stands.

Notice of Decision

1. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Athwal written on 16 August 2021 is maintained.

2. An anonymity direction is made due to the nature of the issues underlying the appeal.

Signed: L. Shepherd
Date: 20 February 2023

Judge of the Upper Tribunal
Immigration and Asylum Chamber