Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2021-001283**
PA/52778/2020
(IA/02716/2020)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 August 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

RKR
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T. Hussain, Counsel instructed on behalf of the appellant
For the Respondent: Ms Z. Young, Senior Home Office Presenting Officer

Anonymity :
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008:
Anonymity is granted because the facts of the appeal involve a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Heard at Phoenix House Bradford IAC on 23 March 2022

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal (Judge Lodato) (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection and human rights appeal in a decision promulgated on the 15 August 2021.

2. Permission to appeal that decision was sought and on 27 October 2021 permission was granted by FtTJ Komorowski.

The background:

3. The appellant is a citizen of Iraq of Kurdish ethnicity from the IKR.

4. The basis of his claim is set out in the decision letter and summarised in the decision of the FtTJ from paragraphs 20-33. It is summarised as follows. The appellant entered into a relationship with his brother's wife Z. His relationship with Z began towards the end of 2016. Z's family work for the PUK and her father is a powerful member.

5. Z and his brother moved out of the family home in either October or November 2018. The appellant stated that he tried to bring the relationship to an end around the time when his brother and Z moved out however she refused to accept the end of the relationship and continued to maintain contact. They did not have sex after Z left the family home.

6. He wanted to end the relationship, but she started threatening to tell everyone and started telling the appellant that she wanted to kill his brother and to marry him.

7. The appellant was afraid of what Z might do and he fled from Iraq. He feared that he would have been killed by his own or Z's family and fears that he will be killed by his or Z's family on return to Iraq.

8. In his interview he said that no one in his family knew about the relationship whilst in Iraq but after one month after he had left Iraq, he received a message from Z saying that she disclosed the relationship to his family.

9. The appellant received threats to his life after he left Iraq.

10. After receiving a threat he deleted his Facebook account and created a new one in order to secretly watch what was happening in his families lives.

11. The appellant does not have a CSID. He is in touch with his girlfriend S, but his father and immediate family have nothing to do with him. He would not be able to access his documents.

12. The appellant left Iraq on 18 June 2019 with the assistance of an agent. He entered Turkey and remained for 35 days and then travelled from Turkey

by boat to Greece. He remained there for approximately over a month and was fingerprinted there. From greasy travel to Albania, Kosovo Serbia and Bosnia. He remained in Bosnia for approximately 1 month and having travelled through Croatia then arrived in France where he remained for approximately 10 nights. He arrived in the UK on 11 October 2019 and made a claim for asylum.

13. His asylum claim was refused in a decision letter dated 26 November 2020. The respondent accepted his nationality and ethnicity. but did not accept the factual basis of his claim that he had been in a relationship with his brother's wife, nor was it accepted that he had any problems arising from that relationship.

14. In the decision letter the respondent set out a number of adverse credibility findings by reference to the appellant's account of his relationship with Z and the asserted problems arising from the relationship. Consequently the respondent did not accept the factual basis of his claim that he had been in a relationship with his brother's wife, nor was it accepted that he had any problems arising from that relationship.

15. The respondent addressed the issue of return to Iraq by reference to the relevant CG decisions of the Upper Tribunal.

16. By reference to SMO and others (Article 15 (c); identity documents) Iraq CG [2019] UKUT 00400 ("SMO") the respondent noted that family registration is patrilineal, and the background information confirmed that to obtain a replacement CSID card, a person could provide a copy of the lost ID or the ID of a close relative such as their father or brother.

17. As his factual account had not been accepted, it was noted that he had claimed that his CSID and other identity documents were in his father's possession in Iraq, and he had stated his intention to have his identity documents sent to him from Iraq (SI 6.3). It was further noted that he had a positive and caring relationship with his siblings including 1 of the older brothers who is a patrilineal relation who lived in the family home and would have access to the appropriate information in order for him to obtain the necessary documentation to return to Iraq. The respondent therefore considered that he would be able to contact his family in order to access his CSID or in the absence of existing CSID, apply for one with their assistance and knowledge of the relevant book and page number. He could contact his family to request that they send his CSID so that he would be in possession of it on return to Iraq.

18. The respondent noted the background information that the ability to secure employment in the IKR was based on a number of factors. It was noted that he was briefly employed in the construction industry and then self employed as a taxi driver. He confirmed that he was financially comfortable as was his family. He is a Kurdish male and will have a CSID. He completed 11 years of formal education at the age of 17 and spoke both Kurdish Sorani and Arabic.

19. The application was therefore refused.

The decision of the FtTJ:

20. The appeal came before the FtTJ Lodato on 18 May 2021 and 12 August 2021. In a decision promulgated on 15 August 2021 the FtTJ dismissed the appeal on asylum grounds and on human rights grounds.

21. The FtTJ set out his factual findings and assessment of th evidence at paragraphs [53-64]. The FtTJ observed that the appeal turns to a "large degree on the credibility of the appellant and that "the respondent's challenge was focused upon matters of consistency and plausibility". The FtTJ also recorded that he was invited to conclude that the appellant had not established the reliability of documents he relied upon including a narrative account from his current girlfriend.

22. The FtTJ gave reasons as to why he did not place weight and reliance upon the documents relied upon by the appellant. Dealing first with the letter from S, he concluded that it "could only be said to have sketched out the appellant's difficulties in Iraq" and that "There are oblique references to "issues" and the involvement of family members, including the appellant's sister-in-law and her family. She also stated that they have been searching the area "to arrest him" and that his family had moved." Whilst the FtTJ noted that S had concluded her letter by referring to a death threat against the appellant and it was not inconsistent with the central thrust of the appellant's claim for asylum, the FtTJ found that " What was more striking was what was left out. Nothing was said of the extra marital affair which is at the centre of the appellant's case. It has never been his position that he kept this affair from his new girlfriend, and it was odd that there was no express mention of this. The explanation given for the lack of detail was that the appellant had not instructed his girlfriend what to write in the letter. At its highest, this letter does not undermine the factual case that has been advanced but neither does it confer meaningful support given the significant omissions". (at [55]).

23. At [56-57] the FtTJ undertook an assessment of the claimed threat sent to the appellant by his father. At [57] the FtTJ made the following assessment: "The real difficulty with the threatening message was not the content of the message or the media through which it was sent but provenance and reliability. It is for the appellant to establish the reliability of this ostensibly supportive material. Taken in isolation, this is a single screenshot from a named Facebook profile. I must, of course, bear in mind that it will often be difficult for an appellant to obtain supporting material and establish provenance when the source of the material is in the country they have fled. However, in this case, the appellant claimed to have set up a false Facebook profile to keep tabs on his family from the UK. It was not unreasonable to expect him to have furnished the tribunal with supporting material from this account, which he fully controlled from the UK. This material may have assisted in the assessment of whether the threat truly came from the appellant's father. This material was not provided without

any explanation beyond the asserted failure of the appellant's lawyers to correctly advise him. This caused me to entertain serious doubt about the reliability of the threatening message".

24. At [58]-[59] the FtTJ undertook his assessment of the arrest warrant. The FtTJ accepted and took account of the dangers of taking judicial notice of foreign law in the absence of expert evidence. He further set out that it had been "rightly acknowledged on the appellant's behalf that it was open to me to draw adverse inferences about any failure to produce readily available supporting evidence" The FtTJ stated: " The provenance of this court document was of obvious importance and yet communications between the appellant and the solicitor who obtained it were either no longer available, or available but not provided. I note that the app did have the foresight to retain and keep the Facebook Messenger message he claimed to have received from his father but chose not to keep messages about his interactions with a solicitor who obtained an arrest warrant from a court in Iraq. Similarly, the envelope in which the warrant was sent remained in the appellant's possession and yet was not served on his behalf. This all struck me as very odd. The content of the arrest warrant was also of concern. Neither his age nor full date of birth was recorded against the "Age" category and only a very general location was entered for his address. These details would have been known to those intent on falsely accusing him and there seemed to be no good reason why these specific details were not included. The description of his occupation as an "employee" was also vague and inconsistent with his primary occupation as a self-employed taxi driver in the years before he left Iraq. It had never been the appellant's case that he was primarily an apprentice for a tile maker, and it would be difficult to reach the conclusion that his employment referred to this secondary line of work. Overall, I was left with a considerable sense of unease about the arrest warrant. It is for the appellant to prove the reliability of supporting documents in accordance with Tanveer Ahmed principles. He has failed to establish that the arrest warrant is reliable."

25. At paragraphs [60]-62] the FtTJ set out his factual findings concerning the core of the appellant's account. In his assessment of the evidence he found as a fact that the appellant was unable to provide "even the most basic information about the affair he had with Z". The FtTJ stated : "The start and end points for the relationship and the broad duration were incoherently expressed across the appellant's various accounts. A particularly stark divergence was the time when the relationship started. Under cross-examination, the appellant was adamant that it began in the early part of 2016. This was very different to the witness statement he had adopted only moments earlier in which he put the date as being the end of 2016, much like in interview where he had referred to December 2016. On his behalf, reliance was placed on his evidence that dates were not as culturally significant in Iraq as they are in the UK. A secret extra-marital affair, it was submitted, was not the kind of relationship that lends itself to commemorating dates and anniversaries and it was to be recalled that the appellant was in drink when this all began which may have hindered his ability to recall these matters with precision. The difficulty with all of these arguments is that the appellant did not claim frailty of memory but gave specific answers in which he identified either the early or latter part of 2016. Tellingly, he claimed to be able to recall the broad timeframe, but his account shifted and evolved over the course of his interview, statement and oral evidence in which he also struggled to settle upon the overall duration for the affair. At various times, it went from 2, to 2 and a half, to 3 years. It is important not to lose sight of the

central character of the relationship in the context of the claim for asylum. This was an affair which, it is claimed, had the most devastating effect on the appellant's life in that he was forced to flee his home and country and is now said to be ostracised from his own family. I found it difficult to understand why, if the claims were truthful, that the appellant could not provide even a broadly coherent account of this central dimension of his case".

26. The FtTJ also found that the appellant was not only inconsistent about the beginning of the relationship, but he was also inconsistent about the end and set out his reasons as follows: "At best, a confused impression was created by the appellant about whether the relationship continued after Z moved out of the family home with her husband. In his pre-hearing accounts, his case appeared to be that a hard line was drawn under the relationship at the point of Z's departure in 2018. In his oral evidence this shifted so that some form of contact continued for several months until the appellant left Iraq in 2019, albeit more from her side than his. An attempt was made to clarify the position in re-examination, but the end result was that I was left even more confused by the appellant's evidence as he referred to the different stages of a relationship. His final position seemed to be that the sexual relationship ended in 2018 when Z moved out, but any residual feelings petered out from his perspective over the following months. I found the appellant's oral evidence to be meaningfully inconsistent with his earlier versions of events where the firm impression was given that the relationship, in any sense of the word, came to an end when she moved out, not the considerably more nuanced picture presented during the hearing".

27. At [62] the FtTJ addressed the account given by the appellant that Z waited until he had left the scene to make disclosures about their relationship. The FtTJ set that account against the background country material and made the following finding: "The background information could scarcely be clearer that to reveal such matters, even if narrated from a victim's standpoint, would carry great risk for her. It was also difficult to see what she had to gain from doing this after the appellant departed. There seemed little prospect of gaining revenge on the appellant for rejecting her and every chance that the revelation would backfire and cause her to be exposed to mortal danger. It struck me as odd that her family's political connections were relied upon as a reason to think she would be protected. Such political connections often provide the cover for such powerful honour-driven figures to act with impunity. This dimension of the appellant's case did not make sense."

28. At paragraph [63] he set out his overall conclusions on the evidence and that after "considering matters in the round" he was satisfied that the appellant was not a credible witness. The FtTJ stated: "His factual case was based largely on the affair he claimed to have had with his sister-in-law over a prolonged period, but in describing this over the course of his various accounts, he came across as incoherent. His evidence about the most straightforward matters was tainted by inconsistency about matters of real importance. For the reasons explained above, I do not regard the supporting material to assist his case and find that he has not established the reliability of the threatening message he claimed to receive from his father or the arrest warrant. Overall, I find that the appellant's account of the events which were said to precede his departure from Iraq is not reasonably likely to be true. It must follow that he has not demonstrated a well-founded fear that he would suffer persecution or serious harm on return".

29. The appellant sought permission to appeal on 2 grounds. On 27 October 2021 FtTJ Komorowski granted permission for the following reasons:

> "Ground one appears to have merit. Although the judge's criticism regarding the threatening messages sent through Facebook was only 1 of several criticisms, having reviewed those other criticisms and given the lower standard of proof, any error as alleged in ground one is arguably material.
>
> Although permission is granted on both grounds, it might be thought ground 2 involves no more than a reasoned disagreement with the judge's assessment of S's letter."

The submissions of the parties:

30. Mr Hussain, Counsel on behalf of the appellant relied upon the written grounds. The written grounds advance 2 grounds of challenge.

31. Dealing with ground 1, Mr Hussain submitted that the judge made a misapprehension of fact and/or misunderstood the appellant's evidence when assessing credibility on a key issue at paragraph [54]. It is submitted that the judge failed to consider or make findings on the appellant's evidence at paragraph 49 of his witness statement:

> "In response to paragraphs 136 – 138 of the reasons for refusal letter, I received the threat from my father through Facebook messenger. After this threat I cancelled my Facebook account. I did not want to leave the avenue open for more threats. My father threatened that he will cut my head off (appellant's bundle pages 9 – 10).

32. Mr Hussain submitted that the "key finding" made in that paragraph was questionable and that in the witness statement the appellant made it clear that following the threats of his father he cancelled his Facebook account. In his representations to the Home Office in a letter dated 8 September 2020, whilst correcting matters in his screening interview the appellant confirmed:

> "since the threats, I have got rid of my Facebook said that I cannot be traced, and I have to open a new Facebook. They do not know the new Facebook address. The messages had come through messenger in approximately October/November 2019. I have got evidence of this threat and I have this message. It is in the Kurdish language, and I will get is translated and provide as evidence" (see respondent's bundle D2).

33. Mr Hussain submitted that the FtTJ discounted the evidence of the threat on account of its provenance, but the judge appeared to mistakenly assume that the appellant continued to have access to the Facebook account where he received threats. The judge appeared to proceed on the mistaken belief that the threats were received by the appellant using this account, to which he continued to have access. The judge stated, "it was not unreasonable to expect him to have furnished the tribunal with supporting material from this account, which he fully controlled the UK".

However, the appellant made clear that he closed the account to which he received threats in order to avoid further threats and to avoid the possibility of being traced. The appellant therefore did not have access to the closed account. Mr Hussain submitted that this misapprehension of an important fact or "core finding" led the immigration judge to doubt a crucial part of the appellant's account and affected the judges overall credibility assessment.

34. It is further submitted that the false account set up by the appellant was to monitor activity and may not have been adduced as there was nothing of material significance, which would have assisted the tribunal or supported the appellant's account. The false account which the appellant set up and has or had access to from the UK was not connected to the threatening messages as the judge appeared to mistakenly believe.

35. As regards paragraph 56 of the decision, it is submitted that the judge accepted submissions on behalf of the appellant that the other alleged inconsistencies by the respondent relating to the threatening messages were unfounded. The factual mistake therefore is more significant in the overall assessment of credibility.

36. Mr Hussain further submitted that it is not possible to isolate this error from the remaining aspects of the assessment of credibility and credibility must be assessed "in the round".

37. Dealing with ground 2, it is submitted that the approach to credibility is flawed as the judge failed to give the appellant the benefit of the doubt regarding the information provided by the appellant's girlfriend. By reference to paragraph 55 of the FtTJ's decision, Mr Hussain submitted that the judge failed to consider this letter "in the round" and to the lower standard. The appellant's girlfriend mentioned and/or alludes to every aspect of the appellant's case. The translation of the appellant's girlfriend's letter confirmed her name and that she was asked to write a letter to support him with his asylum claim that he submitted in the UK.

38. It is submitted that the letter demonstrated that she was aware that he claimed asylum and that his life was at risk in Iraq. She alludes to the problems of his sister-in-law and her family and his own family. She supports the appellant's contention that he will be arrested by the authorities and that he would be at risk from his sister-in-law's family and his own family.

39. Thus it was submitted that the assessment of the evidence undertaken by the FtTJ did not show the benefit of the doubt, nor did it show an assessment to the lower standard "in the round".

40. In the written grounds it is further asserted that in Iraqi society it is not unusual to make indirect references to such matters as extramarital affairs particularly for young woman. Therefore the fact that the appellant's girlfriend alluded to all the key aspects of the appellant's case without

directly mentioning the extramarital affair should not be a basis to question this piece of evidence, particularly given that the appellant's girlfriend appears to be aware that his life is in danger, and he has claimed asylum.

41. It is therefore submitted that the finding that the letter is not consistent with the central thrust of the appellant's claim for asylum is unfair and/or unclear. It is not clear which aspect the claim that judge states the letter did not support. The appellant's case was that he faced threats of his sister-in-law's family in his own family and therefore the letter did support the central aspect of the case.

42. In his oral submissions Mr Hussain acknowledged the observation made in the grant of permission that ground 2 may amount to no more than a disagreement with the FtTJ's findings and that the ground 2 in isolation may not be material to the outcome of the case but that ground 2 taken along with ground 1 demonstrated a material error of law and when considered cumulatively demonstrated that the decision should be set aside as the FtTJ failed to take account of material evidence. He submitted that in the event of an error of law being established he would seek remittal to the FtT.

43. Ms Z. Young, Senior Presenting Officer on behalf of the respondent relied upon the Rule 24 response dated 17 November 2021. In that response it is submitted that the FtTJ directed himself appropriately.

44. At paragraph [25] the judge noted the evidence as to the setting up of the fictitious Facebook account. Further, at paragraph [26] the FtTJ noted the screenshot of the FB messenger exchange within which a threat was made to the appellant (dated 8/11/2019 respondent's bundle B3) whilst he was in the UK. Given the appellant had set up the fictitious account in order to monitor his family and continued to maintain it, the point made by the judge was that supportive evidence as to his father's profile on Facebook whom he had been monitoring, could have been cross-referenced to the threat received via FB messenger (see paragraph 57). There is no alleged mistake of fact as asserted.

45. In addressing the letter from S (see paragraph 55), the FtTJ found that for the reasons given, the evidence was vague and lacking in perhaps expected detail. In taking it at its highest the judge found that it did not undermine the case for the appellant nor did it "confer meaningful support" as such it had been afforded reduced weight. Given it was a document provided in response to a request it is clear that the opportunity for a more detailed account was laid open. The judge cannot be criticised for shortcomings within the evidence.

46. It is submitted on behalf of the respondent that there is no challenge to the remainder of the findings which when viewed in the round (at paragraph 63) led the judge to reject the claim. As such the decision

should be read as a whole. It is clear that the evidence of the appellant himself that troubled to the judge the most.

47. In her oral submissions she submitted that the judge did not misunderstand the evidence and that nowhere at paragraph [57] did the judge say that he was referring to the same account from which the threat was sent to. She submitted that in the body of paragraph [57] it referred to the appellant using a Facebook account he had set up in the UK and when reading that paragraph the judge was not referring to the account he deleted but the account that he was using in the UK to keep tabs on his family and that it was this material which may have assisted. Thus the judge did not misunderstand the evidence. The appellant's case was that he had used a new Facebook account to monitor his family (see paragraph [25] and question 205 in the substantive interview).

48. As regards ground 2, Ms Young submitted that as set out in the grant of permission, ground 2 was no more than no disagreement with the FtTJ's consideration of the evidence. She submitted that paragraph [55] gave detailed consideration to the letter and a reasoned conclusion was provided that even at its highest it did not undermine his account but did not support the appellant's case either. Ms Young submitted the decision of the FtTJ did not involve the making of an error of law and the appeal should be dismissed.

49. Mr Hussain in his reply submitted that at no point did the judge acknowledge that the messages received from the appellant were received during the existence of the fictitious Facebook profile. He further submitted that the finding at paragraph [57] did not stand up to scrutiny and there was no finding made that the messages received by the appellant were received from the 2nd Facebook account. The judge was considering the present Facebook account and not the deleted Facebook account.

50. As regards ground 2, Mr Hussain submitted that he acknowledged the reference made in the grant of permission and that if ground one fell away the appellant may not be able to demonstrate a material error of law but that ground 2 when added to ground 1 demonstrated the judge had made a material error of law.

51. At the conclusion of the hearing I reserved my decision which I now give.

Decision on error of law:

52. Having had the opportunity to hear the submissions of the advocates in the context of the evidence before the FtTJ and his assessment of that evidence, I am not satisfied that the FtTJ erred in law in his decision. I will set out my reasons for reaching that conclusion.

53. The FtTJ addresses the evidence of the claimed threat made to the appellant at paragraphs [56] and [57]. At [56] the FtTJ set out why he did

not place weight on any alleged inconsistency in the text message concerning the type of harm. However, at [57] the FtTJ gave reasons why he did not place weight or reliance on the text message because of what he described as its "provenance and reliability". The FtTJ properly noted that it was for the appellant to establish the reliability of the material and also took into account that the evidence had limitations as it was a "single screenshot from a named Facebook profile".

54. When considering the issue of the appellant's ability to obtain supporting material, the FtTJ reminded himself that "it will often be difficult for an appellant to obtain supporting material and establish provenance when the source of the material is in the country they have fled" (in this case, Iraq). However he contrasted that scenario with the one that was before him in that the appellant had claimed to have set up a false Facebook profile to keep tabs on his family in the UK. As this was evidence he had available to him in the UK, the judge found that "it would not be unreasonable to expect him to have furnished the tribunal with supporting material from this account which he fully controlled in the UK."

55. As Ms Young submitted, the grounds misread paragraph [57]. The judge was not referring to the appellant's own Facebook account, which he said he deleted but the subsequent Facebook account that he had set up in the UK. That was an account which was set up after the deletion of his own account (see D2; 8/9/20 where the appellant clarified his evidence by stating that "since the threats were made he had got rid of his Facebook account and had opened a new Facebook account"). This was also described in his substantive interview and that he had found out about his mother's death on Facebook (not his Facebook account) but from the one that he had opened subsequently which he had used to "watch them" and that he had "checked the accounts" of his father and brother (see question 205 of the substantive interview).

56. Therefore the FtTJ did not misunderstand the evidence as the grounds contend. The contents of paragraph [57] were not about the Facebook account that he had deleted but the account that he had opened after this and the one that he claimed to have been watching his father and brother from the UK. Consequently the FtTJ was entitled to find that it was not unreasonable for the appellant to provide the tribunal with supporting material from this account, i.e. the one that had opened in the UK after he had deleted the other account) which he fully controlled from the UK. As the FtTJ stated, this material may have assisted in the assessment of whether the threat truly came from the appellant's father. Whilst Mr Hussain submitted that the FtTJ did not acknowledge the threat message was received from the other Facebook account, as Ms Young submitted as the appellant had set up the fictious account to monitor his family (including his father who had made the threats), the point properly made by the FtTJ was that supportive evidence as to his father's profile could have been cross referenced to the threat received via the Facebook message.

57. It had been argued on behalf of the respondent that there had been an absence of supporting documentation which weighed against the appellant and in particular it had been identified that the appellant had not provided any material to support his assertion that he had been monitoring his family using a fictitious Facebook profile. As he had created this profile and had done so in the UK, it had been argued that there was no reason why he could not have provided material in support of this claim (as set out at paragraph [47] of the FtTJ's decision). The FtTJ was considering the submission at paragraph [57] and as the judge stated, there had been no explanation given by the appellant for the lack of this evidence beyond him stating that the lawyers had not advised him. This evidence is set out by the FtTJ at [25] where the judge recorded the appellant's evidence given in cross examination.

58. Furthermore the judge provided further reasoning at paragraph [59] where he recorded the appellant's counsel's acknowledgement that it would be open to the judge to draw an adverse inference about any failure to produce readily supporting evidence. This not only related to the lack of documents between the appellant and his solicitor in Iraq regarding the court documentation but would similarly apply to the Facebook evidence in the UK.

59. In summary, I am satisfied that the judge did not misunderstand the evidence as the grounds assert and that it was open to the FtTJ to find overall that the text message was not evidence upon which he could place weight or reliance.

60. Dealing with ground 2, it is submitted on behalf of the appellant that the FtTJ's assessment of the letter from his girlfriend S was flawed on the basis that the judge failed to give the "the benefit of the doubt" regarding the information provided by her (paragraph [55]). It is further submitted that the FtTJ failed to consider the letter "in the round" and to the lower standard.

61. Having considered ground 2 in the context of the decision as a whole, I am satisfied that the FtTJ did not fall into error in the way the grounds assert.

62. The FtTJ said this at paragraph [55]:

> "55. Dealing first with S's brief letter, she could only be said to have sketched out the appellant's difficulties in Iraq. There are oblique references to "issues" and the involvement of family members, including the appellant's sister-in-law and her family. She also stated that they have been searching the area "to arrest him" and that his family had moved. She concluded her letter by referring to a death threat against the appellant. This is not inconsistent with the central thrust of the appellant's claim for asylum. What was more striking was what was left out. Nothing was said of the extra marital affair which is at the centre of the appellant's case. It has never been his position that he kept this affair from his new girlfriend, and it was odd that there was no express mention of this. The explanation given for the lack of detail was that the appellant had not instructed his girlfriend

> what to write in the letter. At its highest, this letter does not undermine the factual case that has been advanced but neither does it confer meaningful support given the significant omissions".

63. The summary of the contents of the letter is consistent with the contents of the letter itself. The judge identified that the letter had referred to a death threat against the appellant and the involvement of family members and that they had been searching the area to arrest him. It is also right to observe that this was a brief letter and despite the centrality of the claimed extramarital affair the letter only made "oblique references to "issues". The FtTJ was entitled to consider that what was striking was what was left out of the letter and whilst the extramarital affair was central to the appellant's case, there was no express mention of this. The FtTJ in my judgement was entitled to find that this was an omission of some significance.

64. When reading paragraph [55] there is nothing to indicate that the FtTJ applied the wrong standard of proof or that he did not consider the letter "in the round" alongside the other material. This is plain from reading the decision as a whole. The FtTJ undertook a careful evaluation of all the evidence and gave sustainable evidence-based reasons for reaching the overall conclusion set out at paragraph [63] that the appellant was not a credible witness who had given a coherent and consistent account concerning events in Iraq.

65. Consequently his conclusion that "at its highest, the letter does not undermine the factual case that had been advanced but neither does it confer meaningful support given the significant omissions" was a finding that was reasonably open to the FtTJ to make.

66. I observe that the grounds do not seek to challenge the other adverse credibility findings made by the FtTJ which on any reading demonstrably went to the core of the appellant's account. The FtTJ gave reasons why he placed no weight on the arrest warrant (set out at paragraphs [58 – 59] of his decision) and at [66] the FtTJ set out the appellant's inability to provide what the FtTJ described as "even the most basic information about the alleged affair with Z." At [61] the judge found the appellant was not only inconsistent about the beginning of the relationship but also inconsistent about the end. At [62] the judge gave reasons why he found the appellant's account to be incoherent.

67. After undertaking a careful evaluation of all the evidence, the FtTJ set out his omnibus conclusion at paragraph [63].

> "63. Considering matters in the round, I am satisfied that the appellant is not a credible witness. His factual case was based largely on the affair he claimed to have had with his sister-in-law over a prolonged period, but in describing this over the course of his various accounts, he came across as incoherent. His evidence about the most straightforward matters was tainted by inconsistency about matters of real importance. For the reasons explained above, I do not regard the supporting material to assist his case and find that he has not established the reliability of the threatening message he claimed to receive from his father or the arrest warrant. Overall,

> I find that the appellant's account of the events which were said to precede his departure from Iraq is not reasonably likely to be true. It must follow that he has not demonstrated a well-founded fear that he would suffer persecution or serious harm on return."

68. When reading the decision as a whole, it is plain that the FtTJ applied the correct standard of proof and reached his overall decision by a careful evaluation of all the evidence taken "in the round" as he expressly stated.

69. I remind myself that the suggestion on appeal is that the FtTJ has misdirected himself in law. But it is not an error of law to make a finding of fact which the appellate tribunal might not make, or to draw an inference or reach a conclusion with which the UT disagrees. The temptation to dress up or re-package disagreement as a finding that there has been an error of law must be resisted. As Baroness Hale put it in *SSHD v AH (Sudan)* [2007] UKHL 49 [30]:-

> "Appellate courts should not rush to find such misdirection's simply because they might have reached a different conclusion on the facts or expressed themselves differently."

70. And as Floyd LJ said in *UT (Sri Lanka) v SSHD* [2019] EWCA Civ 1095 [19]:

> "… although 'error of law' is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter."

71. When applied to the circumstances of this appeal I agree with the submissions made on behalf of the respondent that the grounds and submissions on behalf of the appellant are no more than a disagreement with the decision of the FtTJ and do not demonstrate an error either in fact or in law. The FtTJ gave adequate and sustainable reasons which were evidence-based for rejecting the evidence relied upon by the appellant and for reaching his overall conclusions by considering the evidence "in the round".

72. For those reasons, I am not satisfied that it has been demonstrated that the decision of the FtTJ involved the making of an error on a point of law and that the appeal should be dismissed. The decision of the First-tier shall stand.

Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law; the decision of the FtTJ to dismiss the appeal shall stand.

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
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 his family members. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Upper Tribunal Judge Reeds
Dated : 31 March 2022