IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-004394

First-tier Tribunal No: PA/62011/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 9th of January 2025

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HH
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Gayle, of Elder Rahimi Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 20 December 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claims.

2. The appellant is a citizen of Iraq of Kurdish ethnicity born on 18 January 1986, from Sulaymaniyah in the KRI. He arrived in the UK by boat on 24 December 2020 and claimed asylum on arrival. His claim was refused on 17 November 2023 and he appealed against that decision.

3. The appellant claims to be at risk on return to Iraq from two sources, namely his former in-laws and his former business partner's family. With regard to the first, he claimed that his ex-wife's family wanted to kill him because his ex-wife had divorced him after she believed that he had been having an affair with his sister who subsequently committed suicide. He claimed that in February 2018 his wife came

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home to find him with her sister and she believed that he was having an affair with her. The appellant said that he was not having an affair but was merely supporting her sister who was having a difficult time with her ex-husband. His wife left him and went to live with her parents. His wife's sister committed suicide on 20 August 2018. The appellant and his wife were divorced in June 2019, subsequent to which she told her parents about the suspected affair and they then blamed him for his sister-in-law's death and for bringing shame on the family. He received threats from his ex-wife's family, and his ex-wife's cousin assaulted him with a pistol. The appellant, who was working for a telecommunications company, arranged to be transferred by his employer to its office in Kirkuk and he moved there in June 2019 and lived with his uncle. He continued to received threats. With regard to the second limb of his claim, the appellant claimed that his former business partner's family wanted to kill him because they believed that he had given evidence against him. The appellant claimed that after moving to Kirkuk in June 2019 he started a mobile phone business with H who, unbeknown to him, was selling unregistered Sim cards to Hashad al Shaabi, ISIS and other criminal gangs. They were both arrested as a result in November 2020 and the appellant was detained for eight days before being released when he proved his innocence. H's family suspected that he had given evidence against H and they issued threats and attacked his uncle's house when he was not there. The appellant claimed that he then fled from Iraq with the help of an agent paid for by his uncle.

4. The respondent did not accept that the appellant was at risk on either basis. The respondent considered that the fact that the appellant had managed to live in Kirkuk for over a year and had run a phone business there without interference from his ex-wife's family showed that he was not at risk of being killed by them. As for the appellant's former business partner H, the respondent noted that the appellant had managed to stay in Kirkuk from the beginning of November 2020 until 23 November 2020 without being attacked, which suggested that he was not at risk as claimed. Further, he had given inconsistent evidence, stating in his asylum interview that he was released awaiting a court date and that there were conditions to his release, but in his ACQ stated that he was released without charge. The respondent did not, therefore, accept that the appellant was at risk on return to Iraq.

5. The appellant raised a further issue in his skeleton argument for his appeal, namely *sur place* activities which included political Facebook posts. In his appeal bundle he produced evidence of attendance at demonstrations against the KRI authorities. The respondent, in her Respondent's Review, gave consent for the matter to be raised but considered that the appellant's activities were not part of a genuinely held belief and that he had failed to show that he would be at risk on that basis.

6. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Chapman on 22 July 2024. With regard to the first strand of the appellant's claim, it was accepted, at the hearing, that the appellant and his wife were divorced in June 2019 and that the appellant's wife's sister committed suicide in August 2018, but the judge did not otherwise accept the appellant's account. The judge noted inconsistencies in the appellant's evidence which undermined the credibility of his claim. The judge considered there to be an inconsistency between the appellant's account that it was wife who had asked for the divorce, and the divorce document which showed that it was the appellant who had sought the divorce on the grounds of consummation and infertility, as accepted by his wife, with no mention of his own claimed infidelity. The judge also found there to be an inconsistency in the appellant's evidence of when his wife left him, with the evidence in his ACQ being that it was immediately after the incident in February 2018 but in his interview that they separated in June 2018. The judge found it unclear why the appellant's wife would

suspect an affair on the basis of the one incident in February 2018, and why she did not explain to her family why she had left him until after the divorce. The judge found further that there was no explanation why his ex-wife's cousin did not kill him when he had the opportunity to do so, if they genuinely intended to kill him. The judge was therefore not satisfied that the appellant's ex-wife's family had an adverse interest in him, intended to do him serious harm, or had the means to find him if he returned to Iraq, and he found that the appellant had fabricated his account and did not have any genuine fear of his ex-wife's family. With regard to the second strand of the appellant's claim, the judge again found the evidence to be inconsistent, noting that the background evidence showed that ISIS were no longer in Kirkuk at the time when the appellant was claiming that Sim cards were being sold to them. The judge found that the appellant had also fabricated that part of his claim and that he was not at risk on the basis claimed. The judge did not accept that there was any risk arising from the appellant's *sur place* activities, finding the activities to be opportunistic and not reflective of any genuinely held political views, and that in any event they were not such as to bring him to the adverse attention of the Iraqi authorities. The judge accordingly dismissed the appeal on all grounds, in a decision promulgated on 25 July 2024.

7. The appellant sought permission to appeal Judge Chapman's decision on the grounds that he had erred in his analysis of the evidence. It was asserted that there was no inconsistency in the appellant's evidence of his divorce and that the judge's findings in that regard were based upon a misunderstanding of the evidence. It was asserted further that there was procedural unfairness arising from the failure to put concerns to the appellant which had not previously been raised by the respondent in relation to the appellant's account of his ex-wife's behaviour about the affair and when she told her family. It was also asserted that the appellant did not claim that his ex-wife's family were so powerful that they could find him anywhere in Iraq and that the judge had misunderstood the evidence in that regard and in regard to his ex-wife's cousin The grounds asserted that the judge also misunderstood the evidence in relation to the significance of the risk the appellant faced from Hashad al Shaabi and from ISIS.

8. Permission was granted in the First-tier Tribunal on the following basis:

> "…2. The grounds are extensive and assert that the Judge materially erred in the analysis of the appellant's evidence at [38, 39, 40, 41, 42, 43 and 51].
> 3. Contrary to what is asserted, the findings made by the Judge at [38] are consistent with the translated copy of the court order. Although the appellant's answer in AIOR Q 38 is June 2019 and the Judge refers at [39] to June 2018, this appears to be a simple typing error on the part of the Judge and this error is not material given the other adverse findings based on the vague and discrepant evidence from the appellant.
> 4. There may however be some force in the challenge on the basis of procedural fairness in relation to the adverse credibility findings at [40 and 41] on the basis that the Judge reached such findings on matters that were not raised by the respondent and/ or not put to the appellant.
> 5. While there is less merit in the challenges to [42, 43 and 51], I do not consider it appropriate to limit the grant of permission. "
> 6. Permission is granted on all grounds."

9. The respondent filed and served a rule 24 response opposing the appeal.

10. The matter then came before me for a hearing. Both parties made submissions. I have addressed the submissions in my analysis below.

Analysis

11.It was Mr Gayle's submission that there was an error made by the judge in each paragraph of his decision which related to the risk arising from the appellant's ex-wife's family, from [38] to [43].

12.With regard to [38], Mr Gayle submitted that the judge was wrong to draw an adverse conclusion from the divorce document not mentioning the appellant's infidelity, when it was never the appellant's case that that was the reason for the divorce. However, as identified in the grant of permission and as stated in the rule 24 response, the judge's findings were entirely consistent with the translation of the divorce document. The appellant's case, as stated in his interview at question 37, had always been that his wife divorced him because she believed that he had had an affair with her sister, whereas the divorce document stated that he was the claimant in the proceedings and that his grounds of divorce were marriage consummation and infertility. Clearly the statements were inconsistent. In so far as the grounds, at [7], seek to provide an explanation for that, based upon cultural and legal nuance, that was evidence which was not before the judge. As Mr Gayle agreed, the judge cannot be found to have erred in law on the basis of matters which were not before him. Mr Gayle's point was that the judge simply misunderstood the evidence. However it seems to me that the judge was perfectly entitled to find there to be an inconsistency on the face of the evidence and to have drawn the adverse conclusions that he did in that regard. As for the inconsistency in dates identified by the judge at [39], the judge clearly made a typing error in the date given by the appellant at question 38 of his interview for his separation from his wife which, if taken to mean the date of his divorce, was June 2019. There was perhaps some confusion between the terms separation and divorce but in any event, whether or not that can properly be viewed as an inconsistency in the evidence, nothing material arises from this given the other adverse findings made in regard to the appellant's account, and notably the inconsistency already mentioned at [38].

13.The grounds challenge the judge's findings at [40] and [41] as giving rise to procedural unfairness, on the basis that the judge's concerns about the appellant's ex-wife's behaviour were not put to the appellant in order to provide him with an opportunity to respond. However the burden of proof lay upon the appellant to make out his claim. The judge was not required to put each and every concern to the appellant and it was not for the judge to make the appellant's case for him. The judge had the benefit of hearing evidence from the appellant and he was clearly unimpressed by the lack of clarity in his account and the vagueness of his evidence. The judge was fully and properly entitled to consider that the lack of clarity and explanation as to why the appellant's ex-wife would suspect an affair from the one single incident in February 2018 and why she did not mention her suspicions to her parents until after the divorce, were factors which undermined the credibility of the account. There was nothing unfair in the judge's approach and I reject the suggestion that there was any procedural unfairness arising in the circumstances claimed.

14.The grounds assert further that the judge misrepresented the evidence in drawing the adverse conclusions that he did at [42] from the appellant's ability to remain in Iraq for over a year after the incident without being found by his ex-wife's family. The grounds assert that it was never the appellant's case that his ex-wife's family were capable of finding him anywhere in Iraq, but simply that he was safer in Kirkuk which was outside the KRI as they were less likely to target him in a government controlled area. However, as Mr Tan submitted, the suggestion in the grounds and in Mr Gayle's submissions that the appellant was safe in Kirkuk was inconsistent with the appellant's evidence in his interview, at questions 39 and 41, that his ex-wife's family were after him when he was in Kirkuk and had a plan to attack him. In light of the appellant's

evidence in his interview the judge was perfectly entitled to draw the adverse conclusion that he did from the appellant's ability to remain in Kirkuk for such a lengthy time. For the same reasons it seems to me that the judge was entitled to find the account of the assault by his ex-wife's cousin as a further reason to reject his claim that her family would kill him if they found him.

15.Accordingly there is no merit in the appellant's challenge to the judge's adverse findings on his account of his fear of his ex-wife's family. The judge properly considered and assessed the evidence and gave cogent reasons for finding the account to be lacking in credibility. He was perfectly entitled to make the adverse findings that he did and no error law arises from his findings in that respect.

16.The same can be said for the second strand of the appellant's claim. The judge did not find it a credible account and the grounds seek to challenge those adverse credibility findings on the basis of what is essentially an attempt to re-argue the case and a disagreement with the judge's findings. The grounds at [26] and [27] assert that the judge misunderstood the appellant's evidence in relation to the significance of the risk the appellant faced from Hashad al Shaabi and refer to the appellant's business partner and his family being Arab whilst Kurds, like the appellant, were disproportionally targeted by Hashad al Shaabi. However the appellant's claim was not presented on that basis, but rather on the grounds that his ex-business partner's family believed that he had given evidence to the authorities against him, which the judge found to be inconsistent and incoherent. The judge gave full reasons at [51] as to why he found the claim to be unclear and inconsistent, referring in particular to contradictory accounts given by the appellant about the conditions of his release from detention and about attacks on his uncle's house. The grounds provide little assistance in asserting that the judge's analysis was flawed and indeed there is no basis for such an assertion. The judge was perfectly entitled to conclude that the appellant's account was not a credible one and was one which did not demonstrate any proper basis for him being at risk on return to Iraq.

17.For all these reasons I consider that the grounds have not been made out. The judge was entitled to reject both strands of the appellant's claim as fabrication. There has been no challenge to the adverse findings on the claim arising from *sur place* activities in the UK. The judge was entitled to conclude that there was no risk to the appellant on such a basis. The decision that he reached was one which was fully and properly open to him on the evidence before him.

Notice of Decision

18.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Anonymity Order

The Anonymity Order previously made is continued.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 December 2024