



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-005023

First-tier Tribunal No: PA/58830/2023  
LP/05660/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

21<sup>st</sup> January 2025

**Before**

**UPPER TRIBUNAL JUDGE BULPITT  
and  
DEPUTY UPPER TRIBUNAL JUDGE BUTLER**

**Between**

**S L  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms M Niama – Reading Law Chamber

For the Respondent: Ms A Ahmed – Senior Home Office Presenting Officer

**Heard at Field House on 7 January 2025**

**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 is 35 years old and an Iraqi national. He entered the United Kingdom without permission on 24 September 2021 and, having done so, claimed asylum. His claim was refused by the respondent on 13 October 2023 and the appellant appealed against that decision to the First-tier Tribunal. That appeal was heard by First-tier Tribunal Judge Sweet (the Judge) on 12 September 2024 and dismissed in a decision promulgated three days later. The appellant now appeals with permission against that decision.
2. Permission to appeal was given by another First-tier Tribunal Judge on two arguable grounds. The first was an assertion that the Judge failed to take evidence relied upon by the appellant into account when reaching his decision and the second ground was that the Judge failed to provide adequate reasons for his decision.
3. Having heard the submissions of Ms Niama and Ms Ahmed and considered the material supplied in the consolidated bundle prepared in accordance with the Tribunal's directions, we were satisfied that the Judge did err in law in the ways asserted such that his decision had to be set aside and the matter remitted to the First-tier Tribunal for a fresh hearing. Our reasons for this conclusion follow.
4. Although there has been no such direction made to date, we consider that it is appropriate to make an anonymity direction. This is because the appellant's protection claim involves an assertion that his life is at risk from people in Iraq. We note that unlike the decision under appeal, this Tribunal's decision is a document that will be available to the public and for this reason consider a direction is necessary lest anything said or done in these proceedings gives rise to such a risk.

### **The Appellant's claim and the evidence submitted in support**

5. The appellant's claim was set out in his witness statements and asylum interviews. He said that he worked as a lorry driver in Iraq and that in the course of that employment he imported petrol from Iran into Iraq on behalf of a man (AB). The appellant says his lorry was stopped and retained at the border because it was found to contain poor quality petrol. The appellant reported AB to the police the following day and in response AB threatened to burn the appellant's truck. When the appellant returned to collect his truck days later, he found that it had indeed been destroyed by fire. The appellant filed a report against AB with the police but was told that AB would not be arrested because he has a close relationship to a leader of the PUK political party (CD). AB continued to threaten the appellant and on one occasion, men sent by AB assaulted him in the centre of Sulaymaniyah, beating him unconscious resulting in the appellant being hospitalised for two days. After his discharge from hospital, men sent by AB came to the appellant's house and fired guns at his taxi. Although the appellant reported these incidents to the police and a summons was issued for AB, no action was taken to arrest him. Feeling unsafe, the appellant left Iraq with his wife and children and fled into Turkey. His wife and children have since remained in Turkey while the appellant travelled through Europe hidden in a lorry and then across the Channel to the United Kingdom in a small boat. On arrival in the United Kingdom he immediately claimed asylum.
6. In support of his claim the appellant adduced via the MyHMCTS portal what he said was evidence of his employment as a lorry driver, photographs of the lorry including photographs of the lorry after it had been burned, evidence from a

security guard at the border, evidence of the report to the police in Sulaymaniyah and the resultant court summons, photographs of the appellant's home and taxi showing damage caused by gun fire, a medical report from his time in hospital and video footage which showed a car shooting at his house as well as the resultant damage to the house and car. At the hearing the appellant gave oral evidence as did a witness, Mr Wahab who said he had visited the appellant when he was in hospital following one of the attacks by AB's men.

### **The Judge's Decision**

7. The Judge's decision is brief, consisting of fourteen short paragraphs. The first eight of those paragraphs set out the appellant's background, the respondent's conclusion that the claim was not credible and the brief details of the hearing before the Judge. Although the Judge makes reference at [7] to the appellant's witness statement, asylum interviews and oral evidence, he makes no reference in these paragraphs to the other evidence adduced by the appellant.
8. At [9], having correctly identified the burden and standard of proof to be discharged by the appellant, and repeated the appellant's claim that his lorry was stopped at the border, the Judge says that *"I consider that to be extremely unlikely that (sic) he would have reported someone when (if his claim is believed) [AB] was connected to an important member of the PUK - namely [CD], who also had his own force of gunmen - because of the possible consequences"*.
9. At [10] the Judge refers to the appellant's claim that his lorry was burned and to photographs adduced in support of that claim but says that the photographs show different tankers. The Judge then refers to the appellant's claim that shots were fired at his house and car (*"he was shot by his house and car"*) but makes no further reference to this claim, or the evidence submitted in support of it and reaches no apparent conclusion about whether it is true. Instead the Judge discusses the appellant's claim that he was beaten and hospitalised and "accepts" evidence from Mr Wahab that he visited the appellant while he was in hospital in a poor condition. However, the Judge gives no indication of what conclusion he has reached about the cause of the appellant's hospitalisation and specifically whether it was because he had been beaten by men sent by AB.
10. At [11] the Judge says he does not accept the appellant's account of travelling from Turkey to the United Kingdom after an agent deceived him into leaving his family behind *"because they had all travelled together to Turkey and there was no reason why they would not have continued to do so"*. The Judge then says that the appellant's failure to claim asylum in France "goes to his credibility" suggesting but not determining whether the appellant's credibility is undermined by that failure.
11. At [12] the Judge refers to photographs of the appellant attending demonstrations outside the Iraqi embassy in London adduced in a supplementary bundle, but says that it was accepted on behalf of the appellant that he was a supporter not a leader at those demonstrations.
12. At [13] the Judge says that there are not very significant obstacles to the appellant settling back in Iraq with his family and says that he has not accepted the appellant's account to be credible. On this basis he announces at [14] his decision to dismiss the appellant's appeal.

## **The parties' submissions**

13. In relation to ground one Ms Niama submitted that the Judge failed to consider the video footage and the photographs the appellant adduced of the attack on his house and car in which gunshots were fired, making no reference to this evidence in his decision at all. In relation to ground two Ms Niama argued that the Judge failed to adequately explain (i) his conclusion at [9] that it was extremely unlikely the appellant would have reported AB to the police; (ii) his conclusion at [10] that photographs of the appellant's lorry showed different tankers in the light of the appellant's explanation that while the metal tanks on the lorry would change, the vehicle body shown in the photographs remained the same; (iii) his conclusion on the cause of the injuries to the appellant Mr Wahab witnessed; (iv) his conclusion about the impact of the appellant's failure to claim asylum in France.
14. In response, Ms Ahmed acknowledged that the Judge's decision was concise but argued that it was adequate to enable the appellant to understand why he has lost his appeal. Ms Ahmed submitted that the Judge was not required to list all the evidence he has considered but that he has made reference in his decision to the supplementary bundle and it is safe to assume in those circumstances he has considered the evidence contained in that bundle. While Ms Ahmed accepted therefore that the Judge did not refer to the video evidence at all, she argued that it should not be assumed the Judge had failed to consider that evidence.

## **Analysis**

### **Ground one**

15. A failure by a Judge to take into account or resolve material matters will amount to an error of law: R (Iran) v SSHD [2005] EWCA Civ 982. Here it is apparent that the Judge has failed to consider material evidence and has failed to reach a conclusion about material matters raised by the appellant.
16. The appellant's claim to have been attacked and hospitalised by men sent by AB was fundamental to his claim that he would be unsafe on return to Iraq. The Judge does not however resolve this issue, making no explicit finding about whether the claim is true until his final conclusion that the appellant's account was not credible. In fact, the Judge's apparent finding that that the appellant was hospitalised and was in a poor condition when visited by Mr Wahab would appear to support this aspect of the appellant's claim. The Judge makes no reference to the medical evidence adduced by the appellant which would also appear to support this part of the appellant's claim. The failure to resolve this material matter of whether how the appellant came to be in a poor condition in hospital amounts to an error of law.
17. Likewise, the appellant's claim that his house and car (taxi) was shot at by men sent by AB was fundamental to his asylum claim. As identified above, while he makes reference to this part of the appellant's claim, the Judge says nothing about it and makes no apparent finding about whether or not it is true. Neither does the Judge refer at all to the video evidence showing damage to a house and vehicle adduced in support of this part of the claim by the appellant. Nor does the Judge refer to the video footage which the appellant says shows the men shooting at the house and car from a passing car. Indeed, there is nothing in the Judge's decision to indicate he is aware of this evidence or has taken it into consideration. Whilst 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 (Volpi v Volpi [2022] EWCA Civ 464 at [2]), the failure by the Judge to make any mention of such key evidence, plus the failure to analyse this part of the appellant's claim in any way at all provides in our judgment compelling reason to conclude that the Judge has simply failed to take it into account. The failure to consider this highly relevant evidence and the failure to resolve this material matter amount to errors of law.

18. Overall, there were a number of material aspects to the appellant's claim for asylum which the Judge has failed to resolve. There was also evidence that was highly relevant to the appellant's asylum claim which the Judge appears not to have considered. These failures amount to material errors in law.

### **Ground two**

19. The Judge does resolve other material aspects of the appellant's asylum claim, however we agree with the assertion made in this ground that when he did he failed to give adequate reasons for his conclusions on those matters.
20. As identified above, at [9] the Judge concludes that it is highly unlikely that the appellant would have reported AB to the police following the seizure of the lorry and the burning of the tanker. The only explanation provided by the Judge for this conclusion is the possible consequences of the appellant doing so. We agree that this reasoning is inadequate. In particular, this reasoning fails to explain the Judge's assessment of evidence, including police report and Court Orders, which on their face indicate that, contrary to the Judge's misgivings, a report was in fact made to the police about AB.
21. Likewise, the Judge's conclusion at [11] that the appellant's account of travel from Turkey to the United Kingdom was not true is also inadequately reasoned. The explanation for not accepting the appellant's account about his journey is that there was no reason why the appellant would not have continued to travel with his family having left Iraq together. We confess we find it hard to understand what this means, but on the face of it there would seem to us to be many reasons why a person would not want to travel across Europe with his wife and daughter hidden in the back of a lorry. Whilst the Judge raises the appellant's failure to claim asylum prior to his arrival in the United Kingdom in the same paragraph, he does not explain the impact of that failure other than to say it "goes to his credibility".
22. The Judge expresses his general conclusion in respect of the appellant's claim at [13] when he says that "*I have not accepted his account to be credible*". This conclusion however is wholly unexplained. Apart from the paragraphs already discussed, the only other clue as to why the Judge disbelieved the appellant is the statement at [10] of the decision that photographs adduced show different tankers rather than the same tanker as claimed by the appellant. The appellant disputes this finding of fact saying that, although the tankers in the photographs are different, the body of the vehicle is the same in all the photographs. Whether or not the Judge was right in his criticism of the photographs, this statement does little to explain the Judge's apparent rejection of the appellant's whole account as not being credible. The appellant (and indeed this appellate jurisdiction) is left entirely in the dark about what the Judge made of the other evidence such as medical evidence, video footage, photographs court and police documents adduced by the appellant to support the credibility of his account. To record that the account is not credible without assessing that evidence is to state a conclusion without providing any explanation for that conclusion.

## **Conclusion**

23. Overall the Judge has failed to show the anxious scrutiny required to determine an asylum claim. The decision very strongly suggests that the Judge has not considered material evidence. It fails to resolve material issues and fails to provide adequate explanation for the limited conclusions that are reached. As such, we are of no doubt that the Judge's decision contains errors of law such that it must be set aside.
24. We heard submissions from Ms Ahmed and Ms Niama about the appropriate course having set the judge's decision set aside and both agreed that a fresh hearing was required with no findings preserved. We agree, with these submissions and remit the matter for a re-hearing in the First-tier Tribunal.

## **Notice of Decision**

**The decision of the First-tier Tribunal contains errors of law such that it must be set aside.**

**The appeal is remitted for a fresh hearing before any First-tier Tribunal Judge other than Judge Sweet.**

**Luke Bulpitt**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

13 January 2025