IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005043

First-tier Tribunal No: PA/62909/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 February 2025

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

DB
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms J Heybroek, Counsel, instructed by Barnes, Harrild and Dyer, Solicitors (by CVP)
For the Respondent: Mr A McVeety, Senior Presenting Officer (by CVP)

Heard at Field House on 4 February 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family 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 or any member of her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

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1. The appellant appeals with the permission of the Upper Tribunal against a decision, dated 30 July 2024, of Judge of the First-tier Tribunal Sangha ("the judge") dismissing the appeal brought by the appellant on the grounds that removing him to Iraq would breach the United Kingdom's obligations under the Refugee Convention and the Human Rights Convention.

2. The First-tier Tribunal made an anonymity order and I have continued the order in view of the fact this appeal concerns international protection issues.

The factual background

3. The appellant is a Kurdish citizen of Iraq. He arrived in the United Kingdom by small boat on 22 March 2022 and he claimed asylum the next day. He gave an account of having entered into a sexual relationship with a woman in Iraq whose family discovered some intimate photographs of the appellant with the woman. He fled because he feared an "honour-killing". Furthermore, the woman's father was a high-ranking member of the KDP. The appellant feared the Iraqi authorities because of his illegal exit. He feared Shia militias, who operate checkpoints in Iraq, because of his Kurdish ethnicity and Sunni religion. The respondent rejected the entirety of the appellant's account save for his nationality. The appellant maintained his account on appeal.

4. The appellant was represented by counsel at the hearing in the First-tier Tribunal. He attended and gave evidence. He submitted a bundle containing a witness statement responding to the credibility challenges made in the reasons for refusal letter. He also provided evidence of sur place activities in the United Kingdom.

5. The agreed issues were: (1) the credibility of the appellant's account; (2) the risk from sur place activities; (3) article 3; and (4) the feasibility of return and identity documentation.

The judge's decision

6. The judge dismissed the appeal on all grounds. He directed himself to the low standard of proof and stated he did not find the appellant to be a credible, plausible or reliable witness. He set out his reasons for reaching this conclusion in detail at [13] to [19]. He concluded at [20] that the appellant's attendance at some demonstrations and some Facebook posts which had been posted were a "cynical attempt to bolster his asylum claim", which would not lead to a risk on return. At [22] he found the appellant's INID card was kept at home and he did not believe the appellant had lost contact with his family.

The issues on appeal to the Upper Tribunal

7. The grounds analyse the judge's reasoning in paragraphs [14], [15], [16], [17] and [18] of his decision and argue the judge made errors in his

understanding of the evidence. The judge's findings on sur place activities and documentation were not challenged.

8. The First-tier Tribunal refused to admit the appellant's application for permission to appeal, which was lodged two days late. However, Upper Tribunal Judge Landes extended time and also granted permission to appeal in the following terms:

> "3. The grounds are, I consider, arguable. Whilst my reading of the appellant's witness statement is that he did say he left Iraq on the same day as the threats, the other contentions in the grounds appear arguable. The appellant's witness statement did say that he had known his former partner since 2010 (although the appellant does appear to have been inconsistent about the date) and he did refer to last seeing his former partner 1 – 2 days before leaving. The judge has assumed that, because the men took the appellant's real passport and took him to Baghdad, they only had half an hour to obtain the false passport, but this assumes that the genuine passport was physically used to obtain the false passport. This is arguably not obvious.
>
> 4. I have considered that the judge also took other points against the appellant's credibility which have not been challenged, some apparently significant such as the lack of detail and plausibility of why the appellant would pursue such a risky relationship or the couple would allow intimate photographs to be taken or how the photographs came to be discovered. Nevertheless, at this stage, I cannot say that if there are any errors they could not even arguably be material."

9. The respondent has filed a Rule 24 response opposing the appeal.

10. A bundle had been uploaded on the Upper Tribunal's platform running to 581 pages.

The submissions

11. Ms Heybroek prefaced her submissions by pointing out that the appellant's answers at interviews and in statements must be read in the context that he was a young person and he had undergone a harrowing journey to reach the United Kingdom during which time he had been in the hands of people smugglers. There had been a long passage of time between the events the appellant was questioned about and the interview, which was held by video-link with an interpreter who also joined by video-link.

12. Ms Heybroek and Mr McVeety made detailed submissions on the five grounds of appeal by reference to the judge's decision, the interview records and the appellant's statements. It is easier to set these out when giving my reasons for my decision on error of law below.

13. I reserved my decision.

Decision on error of law

14. Having carefully considered the oral submissions made to me, the relevant parts of the judge's decision and the parts of the evidence relied on by the parties, I have concluded that the judge's decision does not contain a material error of law and shall stand.

15. I have taken on board Ms Heybroek's observations regarding the appellant's young age, the passage of time and the circumstances of the interviews. The appellant did say in answer to one question at his interview when pressed for dates that "his mind was so busy" [Q56]. However, there is no reason to believe the judge was not aware of all these matters and his decision does not record any concerns being raised by counsel. The judge correctly recorded the appellant's age and the date of his arrival in the United Kingdom. The appellant did not raise any concerns about the conduct of his interview or interpretation at the time or when his solicitors emailed corrections to his answers. No medical evidence has been filed regarding the appellant's ability to answer questions.

16. The judge's reasons for rejecting the appeal turned entirely on his assessment of the appellant's credibility so it is also appropriate for me to point out that the judge saw and heard the appellant give oral evidence, including under cross-examination. I have not done so and Ms Heybroek acknowledged she did not represent the appellant at the hearing in the First-tier Tribunal. I should accord some deference to the fact-finder: SB (Sri Lanka) v SSHD [2019] EWCA Civ 160, [44], MAH (Egypt) v SSHD [2023] EWCA Civ 216.

17. My reasons for finding that the grounds of appeal have not been established are as follows.

Ground 1

18. At [14] the judge set out what he regarded as inconsistencies in the appellant's account regarding his secret relationship with a young woman in Iraq. The grounds focus on the judge's reference at the end of the paragraph that the appellant had never mentioned before the hearing that he had known her since 2010. I accept this was an error because the appellant did state this in his witness statement at [8]. However, this is only one of a list of reasons given by the judge for finding the appellant had given an inconsistent account.

19. In [14] the judge also highlighted that the appellant had given inconsistent evidence regarding how long the relationship lasted (2 years according to the screening interview, [Q4.1], and about 4 years according to the asylum interview, [Q28]). No correction was made on this point by the solicitors in their email of 17 October 2023. After the issue was flagged in the reasons for refusal letter [fourth page], the appellant stated in his witness statement that the relationship began in 2018 and he left Iraq in December 2021, which meant it lasted "almost 4 years" [4], but he does not explain why he had miscalculated at his screening interview by a

significant margin. The judge was entitled to find this was an unexplained inconsistency and to give it weight as undermining the appellant's credibility.

20. The other matter raised by the judge in [14] is the slight variance in the appellant's account of the relationship commencing in 2018/2019 (asylum questionnaire [third page]) and 2018 (substantive interview [Q24]). That is a more minor discrepancy. However, as with the judge's reliance on the length of the relationship, this has not been challenged in the grounds seeking permission to appeal. There is no error of law in the judge finding this contributed to his overall impression that the appellant's account was unreliable. The judge found the appellant had been inconsistent about the matter at the core of the appellant's account.

Ground 2

21. At [15] the judge set out his reasons for finding the appellant had given an inconsistent account of the threats he received from the young woman's family. He noted that the appellant said in his interview that the threats were made to him directly [Q41], whereas in the asylum questionnaire he said the threats were relayed by his uncle [third page]. Again, this was not corrected. The appellant said in his witness statement that there was a misunderstanding during the interview and he did not receive direct threats [5]. This was plainly a discrepancy which the judge was entitled to rely on and this has not been challenged in the grounds of appeal.

22. The judge went on in [15] to say he did not find it "plausible" that the appellant did not know the date the threats were made because he left Iraq the same day. The grounds challenge the accuracy of the judge's recording of the evidence and deny that the appellant said he left Iraq the same day as the threats were made. The grounds refer to the appellant's oral evidence but no transcript has been provided. In any event, as Mr McVeety pointed out, the appellant did say in his witness statement that he left the same day [6]. The submission has no merit.

23. Ms Heybrook pointed out that the appellant also said elsewhere he had travelled to Baghdad and remained there a few days. Clearly, the appellant's chronology is flawed. However, that is no reason to find the judge erred in reaching the conclusion that the reason for this was that the appellant had given a false account.

Ground 3

24. At [16] the judge set out his reasons for rejecting the appellant's claim that the young woman's father was an influential person. The appellant claimed at his interview that her father would be able to find him anywhere in Iraq but the judge found this inconsistent with the fact the appellant had been able to travel to Baghdad without being located. He noted the well-known fact that there are many checkpoints in Iraq and he

rejected the claim the appellant would have been able to evade them by traveling on other routes.

25. The grounds make three points: (i) this challenge was not put to the appellant; (ii) the judge's reasoning did not take into account that the father could not have known where the appellant had gone; and (iii) the judge did not take into account that the Kurdish sphere of influence does not extend to Baghdad. Ms Heybroek reminded me that the country guidance case of BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) made clear that, as a Kurd, the appellant could not be expected to relocate to Baghdad and the appellant was in the hands of people smugglers.

26. I agree with Mr McVeety that the ground, as drafted, misconstrues what the judge actually says in [16]. Having noted the appellant's evidence that the father would be able to locate him wherever he went in Iraq, the judge noted that the father had not been able to find him when "he left his home town for Baghdad". That is an entirely reasonable observation. Even if notice were taken of the fact that an influential Kurd would be less likely to exercise that influence in GOI-controlled areas, the judge could not be criticised for making that finding because he based his assessment on what had happened – or, in this case, did not happen – when the appellant left his home town.

27. In any event, I note the appellant's claim regarding the reach of the young woman's father was stated in the asylum questionnaire [third page] and repeated in the corrections to question 51, which confirmed that the father had "substantial connections" within the Government of Iraq. In other words, it was the appellant's own case that he could be located anywhere in Iraq. It follows that the argument contained at (ii) in the grounds cannot possibly prosper.

28. Ms Heybroek did not develop the point made at (i). She was right not to do so because it is clear from the reasons for refusal letter that the reach of the woman's father was in dispute.

Ground 4

29. At [17] the judge gives reasons for considering the appellant had not given a sufficiently detailed account of the relationship as to be assessed as credible. His list of reasons included the following: at his interview the appellant could not recall when he last had contact with the young woman he claimed to have been in love with; he had not provided a plausible explanation as to why he would have entered into a sexual relationship given the risks involved; he had not explained why he would allow intimate photographs to be taken given the risks involved; he had not given a plausible account of how her family discovered the photographs or came into possession of them; it was not credible that her family would come to his family home and show the photographs, with a 14-year old

boy present; and, the appellant had added to his account that his uncle was present.

30. The grounds single out from this list two points: firstly, the judge erroneously recorded that the appellant had said he last saw the woman 1 to 2 months before he left Iraq, whereas he had actually said 1 to 2 days; and, secondly, the judge had failed to take into account that the appellant said in his witness statement that he had been in contact with the young woman at school the day before the threats were made [7].

31. The judge's error regarding 1 – 2 months does appear to overlook the correction to Q54, where the appellant had actually said he did know the date he was last in contact with her. There is no genuine discrepancy here.

32. However, a fair reading of the whole paragraph in the judge's decision shows that he found the appellant's vagueness about his last contact with the young woman to be inconsistent with his account of finding his true love, conducting a lengthy relationship with her and placing them both at significant risk by having sexual relations. The majority of the judge's list of reasons are not challenged in the grounds and they stand as valid reasons for the judge's overall conclusion.

Ground 5

33. At [18] the judge set out what he saw as confusion in the appellant's account as regards how he obtained a false passport at speed. He appears to have understood the appellant's account to be that the people smugglers provided him with a false passport before travelling to Baghdad, whereas the appellant had actually stated that they obtained the false passport after arriving in Baghdad. The appellant was consistent about this as between the asylum questionnaire [third page] and the substantive interview [Q72]. I cannot see the appellant ever said he was given a false passport before travelling to Baghdad and it is possible the judge misunderstood that the appellant was referring to his genuine passport as being the passport he had in his possession during the journey to Baghdad but which was taken from him by the people smugglers once they had reached Baghadad. I therefore disagree with Mr McVeety on this point and find there was a factual error on the part of the judge. I note this particular ground was not responded to in the Rule 24 response.

34. Whilst an error of fact can amount to an error of law (R (Iran) & Ors v SSHD [2005] EWCA Civ 982 at [9]), I do not consider this point sufficient to overcome the entire edifice of cogent reasons which the judge sets out elsewhere in his decision for finding the appellant not credible. In short, it could not affect the outcome of the appeal. Having given sound reasons for finding the appellant had manufactured his account of being at risk of harm, an error regarding his account of making an illegal exit could not be material.

35. The judge's decision contains numerous cogent reasons based on the evidence for the overall conclusion that the claim put forward by the appellant could not be believed to the lower standard applicable.

Notice of Decision

The decision of the First-tier Tribunal, dismissing the appellant's appeal, did not involve the making of an error of law and shall stand.

Signed

N Froom

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated

6 February 2025