IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005066

First-tier Tribunal No: PA/00763/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 31st of January 2025

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HR
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Amanda Dennis instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 24 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 appeals with permission a decision of First-tier Tribunal Judge Hands ('the Judge'), promulgated on 10 September 2024, in which she dismissed his appeal on protection and human rights grounds.

2. The Appellant is a citizen of Iraqi born on 29 August 1990 who arrived in the UK clandestinely on 29 August 2022, having left Iraq in January the same year.
3. The Judge's findings are set out from [10] of the decision under challenge.
4. The Judge notes the Appellant was seeking asylum for a Convention reason based on his political opinion and was satisfied that the treatment he fears would reach the threshold required by the Nationality, Asylum and Borders Act 2022.
5. The Appellant's fear is said to have arisen from a book that he wrote critical of the ruling parties in Iraq. At [27], having looked at the evidence as a whole, the Judge finds she is not satisfied the Appellant had demonstrated to a reasonable degree of likelihood that he wrote a book that would have brought him to the adverse attention of the authorities in the IKR. Therefore, the Judge did not accept that the Appellant had demonstrated to a reasonable degree of likelihood that his home was raided or that the authorities confiscated copies of such a book and his personal documents from his home [28].
6. The Judge finds the Appellant's credibility damaged as he travelled through a number of European countries on his way to the UK, after spending a year in Serbia, without claiming asylum [29].
7. The Judge finds the Appellant has not established he required protection for a Convention reason and is an economic migrant who travelled to the UK in the belief he will be able to access a better life than he has in Iraq [30].
8. The Judge went on to consider risk in light of country guidance case of SMO [2019] UKUT 400 but finds no real risk arising on that basis, and in relation to documentation finds although the Appellant claimed his identity documents were taken by the authorities he has not been found to be a credible witness so the Judge does not accept that happened. The Judge finds the Appellant is able to contact his family and has done so during the period he has been away from Iraq, and there is no reason why the family could not send the documents he requires or arrange for them to be sent to him through a friend as happened with his nursing qualifications [32]. The Judge finds the Appellant had not established he cannot be re-documented on return to Iraq or that such re-documenting would take such a length of time that he would find himself destitute [33].
9. The Judge finds the Appellant is of Kurdish ethnicity and can return to the IKR where he could re-establish himself, the point of return being to either Erbil or Sulaymaniyah.
10. As no credible real risk has been made out, the Judge finds the Appellant was not entitled to a grant of Humanitarian Protection nor had he established an entitlement to remain pursuant to Article 2 and 3 ECHR.
11. The Appellant sought permission to appeal, Ground one asserting the Judge failed to have proper regard to the expert evidence of Dr George and failed to give sufficient reasons for rejecting his conclusions, Ground 2, the Judge made a material error of fact and materially erred in failing to deal with the letters from Ashti sufficiently or at all, Ground 3 asserts it is unclear how the Judge was qualified to comment on the motivation of the Appellant taking into account his life in Iraq. For the reasons more fully set out in the Grounds of Amanda Dennis dated 22 September 2024.
12. Permission to appeal was refused by another Judge of the First-tier Tribunal on 17 October 2024 but granted on a renewed application by Upper Tribunal Judge O'Brien on 12 November 2024, the operative part of the grant being in the following terms:

> 2. The grounds assert that the judge erred as follows. The judge failed to have proper regard to the expert evidence of Dr Alan George. The judge erred in

her approach to the evidence from Ashti and made material errors of fact regarding the same. The Judge took an impermissible approach to plausibility.

3. The judge records at [23] that the appellant's friends at Ashti had written letters of support for his account of events. It does appear to have been the appellant's consistent evidence that he was introduced to Ashanti by one of his friends (Farhad) who was a member of that organisation. The judge acknowledges that the documents from that organisation supported the appellant's version of events. However, it appears (although she does not expressly say so) that she consequentially placed little if any weight on the evidence from Ashti.

4. It is arguable that the judge misunderstood the appellant's evidence and/or made a finding unsupported by evidence in respect of the connection between the Appellant and Ashti. It is arguable that, if the judge did so err, that she then placed materially less weight on that evidence than she would had she properly understood the relationship between the appellant and Ashti and/or made a finding on the same in accordance with the evidence.

5. It is arguable that such an error if established was material to the judge's findings on credibility. Similarly, it is arguable that the judge's conclusions on the plausibility of the appellant wishing to place himself in danger were contrary to the guidance in Y v SSHD [2006] EWCA Civ 1223 and were arguably material to her conclusions on credibility.

6. Whilst the criticisms of the judge's approach to the expert evidence are of less apparent merit, the appellant may argue all of the pleaded grounds

13. The Secretary of State opposes the appeal in a Rule 24 response dated 21 January 2025, the operative part of which reads:

2. The respondent opposes the appellant's appeal.

GROUND 1

3. The grounds state that the First-tier Tribunal (hereafter referred to as FTT) had failed to have proper regard to the 110-page country expert evidence by Dr George and had failed to provide sufficient reasons for rejecting their conclusions.

4. It should be noted that although the appellant's skeleton argument (hereafter referred to as ASA) is dated before the expert report, no updated ASA was provided to assist both parties at the hearing.

5. There is no suggestion that the First-tier Tribunal Judge (hereafter referred to as FTTJ) was pointed to the specific parts of the expert report highlighted in the grounds for consideration by the appellant's legal representative during their submissions at the hearing. It is respectfully submitted that it is not for the FTTJ to trawl through papers to identify what issues are to be addressed in their decision (please refer to **Lata (FtT: principal controversial issues) India [2023] UKUT 163 (IAC) (13 June 2023)**, headnote 4).

6. [6] of the grounds quotes from [26] of the FTT decision:

"The expert concludes that the risk to the Appellant would be based on the veracity of his testimony in respect of his political opinion but otherwise, the Appellant would only face a low level of risk generally in the IKR".

7. With due respect to the quote above, the respondent submits that the FTTJ has not made any error in this regard.

8. Regarding the appellant's own account, the sole political activity he had allegedly engaged in whilst in Iraq amounted to him allegedly producing copies of a book and distributing them, which purportedly brought him to the adverse attentions of the Iraqi authorities.

9. Given that the FTTJ at [28] of the decision did not accept that the Iraqi authorities had:

   a. Raided the appellant's home,

   b. Confiscated his books, and

   c. Confiscated his identity documents,

   the respondent submits that the quote rightly concludes that as an ordinary Iraqi citizen, the appellant would not be subject to adverse risk on return. It is submitted that this is the correct literal interpretation of the FTTJ's quote at [26] of the decision.

10. The country expert themselves had not concluded that ordinary Iraqi citizens would be at risk on return due to adverse country conditions: indeed, the grounds do not allude to any part of the report coming to any such conclusion. As the grounds accept at [4], credibility is a matter for the FTTJ, especially when assessing the evidence as a whole which the FTTJ did do (please refer to [28] of the FTT decision).

11. The grounds at [9] also refers to the FTTJ's alleged failure to assess the risk of the appellant being kidnapped or subject to general violence via the expert report.

12. Again, the respondent reiterates the submission that these aspects of the expert report were not put to the judge to consider by the appellant.

13. Although the grounds at [8] – [9] specifically refer to [143] – [144] and [149] of the expert report, there is no reference in the grounds to the expert's conclusions that:

   a. The risk of the appellant being kidnapped "would not be high" (see [148] of the report, underline my emphasis), and

   b. Due to the "general improvement in the security situation in Iraq since the defeat of the Islamic State group means that in most areas the risk that Mr Rafeeq would presently face from general violence would not be high" (please refer to [149] of the expert report, underline my emphasis).

14. Regardless, the FTTJ referred to **SMO, KSP & IM (Article 15(c); identity documents) (CG) [2019] UKUT 400** and concluded at [31] of the FTT decision that "…the situation in the whole of Iraq is not at a level which would prevent the Appellant from returning" when assessing the viability of the appellant's return to Iraq. She additionally assessed the appellant's risk on return at [36] – [38] and concluded that Article 15(c) of the Qualification Directive was not engaged.

15. The respondent also relies on **Volpi & Anor v Volpi [2022] EWCA Civ 464 (05 April 2022)**, [2iv]:

   "The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him" (underline my emphasis).

16. The respondent submits that the weight attached to the expert report was a matter for the FTTJ taking into account the evidence as a whole.

GROUND 2

17. The grounds at [10] submit that the FTTJ made material errors when dealing with the letters from the Ashti organisation. Seven committee members are mentioned in these letters and it is alleged that the FTTJ at [24] had lessened the weight attached to this evidence by referring to aforementioned seven

committee members as “friends” of the appellant, thus questioning their independence.

18. There is no dispute that one of the seven committee members in the letter is the appellant’s friend. It can be inferred by extension that the other six committee members are friends of the appellant as well, in the sense that they would be well-disposed towards him and would want to help him.

19. However, even if this explanation is not accepted, the grounds do not make any reference to the other salient points held against the appellant in the FTT decision. The FTTJ commented that:

    a. The appellant had contradicted himself in terms of his political motivations. The FTTJ did not accept that the appellant (as an intelligent individual) would have been unaware at the time that the actions of distributing allegedly inflammatory documentation in Iraq could bring him to the adverse attention of the Iraqi authorities (FTT decision [19] – [20]),

    b. Despite the danger, the appellant allegedly distributed the contentious documentation in public on the streets of surrounding markets of Erbil and Sulaymaniyah (FTT decision, [25]),

    c. The extract of the appellant’s book was not accompanied by a copy of the book itself in the appellant’s bundles of evidence. It was not even accompanied by a translated copy of the book ([21] – [22]),

    d. The appellant had not highlighted any problems patients in his care may have had accessing the appropriate care and medication for any ailments whilst in Iraq, concluding that his daily life had not motivated him to write his book ([24]). A careful reading of this paragraph does not demonstrate that the FTTJ had concluded that there were no other possible motivations for the appellant’s political expression.

    e. There was no evidence before her of any information in the book that was not in the public domain and was personal to the appellant himself ([25]).

    f. There was a lack of physical evidence linking the book to him ([25]).

20. On this basis, the FTTJ assessed the evidence as a whole (also taking into account the background evidence) and did not find the appellant credible for fully sustainable reasons at [27] – [28]. It should also be noted that at [29], the FTTJ found as damaging his credibility his recorded behaviours after his departure from Iraq in line with **Section 8 of the Asylum & Immigration (Treatment of Claimants, etc.) Act 2004**.

21. The respondent submits that the FTTJ had not erred. In the alternative, the error was not material given the other credibility issues highlighted.

GROUND 3

22. The grounds also allege that the FTTJ materially erred in assessing plausibility when questioning the appellant’s political motivations. The grounds also quote [25] and [27] of **Y v Secretary of State for the Home Department [2006] EWCA Civ 1223 (26 July 2006)** which summarises that a judge should be cautious about rejecting an account as inherently incredible through the lens of their own society but if they do they should do so in the context of the country conditions an appellant comes from. This was also accepted at [46] of **SB (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 160 (14 February 2019)** which confirmed that the assessment of plausibility remains relevant to credibility.

23. The respondent accepts the above authorities, but also notes that **Y** also confirmed that a decision maker does not have to accept what is said at face-value so at to suspend their own judgement.

24. The respondent respectfully submits the FTTJ has correctly assessed plausibility with appropriate reference to the country conditions.

25. The FTTJ had referred to all the documents available to her at [4] – [5] of the FTT decision.

26. The FTTJ made specific reference to:

    a. the appellant's oral evidence (FTT decision, [20] & [21]),

    b. the contents of the translated extract of the appellant's book (which the FTTJ notes contained a "plethora of information" in text form (see FTT decision, [21]),

    c. the country expert report at [26] of the FTT decision

    d. the case law of **SMO & Others** at [31] of the FTT decision.

27. It is not disputed that the background evidence highlights corruption and human rights violations but as mentioned already in this response, the conclusions that the FTTJ has made was with reference to from abovementioned documentation.

28. It is also noted that plausibility was not the only credibility device relied upon by the FTTJ: the FTTJ had recorded the appellant's inconsistent evidence as well as the appellant's failure to provide evidence (as the actual book along with the translation) for the appeal, which are examples of evaluative techniques also used to assess credibility as outlined at [46] of **HB**.

CONCLUSION

29. In summary, the respondent submits that the FTTJ directed herself appropriately and the grounds are nothing more that mere disagreements with her fully sustainable findings.

Discussion and analysis

14. I have taken account of the guidance provided by the Court of Appeal to appellate judges in Volpi v Volpi [2022] EWCA Civ 462 at [2], Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 at [26], and Hamilton v Barrow and Others [2024] EWCA Civ 888 at [30-31].
15. I make a specific finding that the Judge clearly took all the evidence made available into account with the required degree of anxious scrutiny, adopted the issue-based approach required of judges of the First-tier Tribunal, and has made findings supported by adequate reasons. The test being whether the reasons are adequate, not perfect.
16. In relation to Ground 1, the report of Dr George sets out extensive text relating to the general situation in Iraq before specifically mentioning the Appellant at [120]. The Judge does not contradict Dr George's opinion in relation to the country situation in Iraq. The Judge's finding is that on the specific facts, the Appellant had not established he faced any credible real risk.
17. At [124] Dr George writes:

    124. Lacking direct, first-hand knowledge of the events described by Mr Rafeeq that affected him personally, I am not in a position to comment on these in any detail. As a general comment, however, I can say that I found his testimony to be broadly plausible in the sense that it accords generally with my understanding of conditions in Iraq and the wider region at the relevant times. In saying this, I should like to stress that I make a clear distinction between plausibility, which I have just defined, and credibility. The latter concerns whether Mr Rafeeq should be believed and I understand well that that is a matter for the Tribunal, and not for me.

18. At [133] Dr George writes:

133. In my firm opinion, on the basis of his testimony in Iraq Mr Rafeeq would be at serious risk from the authorities and from leading personalities linked to the authorities because of his book detailing corruption and nepotism and naming guilty parties and individuals. This risk would apply particularly throughout the KRG but could very well extend to non-Kurdish Iraq, given the anger that his book very likely would have provoked amongst Kurdish officials.

19. In relation to risk arising from his being a Sunni Muslim Dr George writes:

143. In my opinion, Mr Rafeeq could be at risk in Iraq on account of his Sunni religiopolitical identity. As a Sunni, he would be most vulnerable in the Shia-dominated south and in mixed Sunni-Shia communities in central parts of the country, including 186 57 Baghdad. In my view, however, this risk on account of religio-political identity would be low.

20. In relation to kidnapping, Dr George writes the Appellant could be regarded by armed criminals and by militia in central and southern Iraq as a target for kidnapping because he spent a lengthy period outside Iraq and would therefore be perceived to be relatively well off, but at [148] writes:

148. In my view, however, the risk of kidnapping that Mr Rafeeq could face in Iraq would not be high. Kidnapping is far from being as widespread as it was at the height of the sectarian civil war in 2006-8 and it is now mainly political activists and protesters who fall victim. In relation to the population as a whole, the numbers of kidnappings are small.

21. Dr George finds the Appellant could be at risk in the central and to a lesser extent in the south of Iraq from general violence due to the security situation there, but concludes “in my view, however, the general improvement in the security situation in Iraq since the defeat of Islamic State groups means that in most areas the risk that [the Appellant] would presently face from general violence would not be high” [149].

22. In his concluding sections at [264 – 269] Dr George writes:

Conclusions

264. In my opinion Mr Hana Rafeeq’s testimony is broadly plausible in the sense that I explained at my Paragraph 124; and I would reiterate my understanding that it will be for the Tribunal to determine the credibility of that testimony.

265. In my opinion and on the basis of his testimony, if returned to Iraq Mr Rafeeq could be at risk, certainly in the KRG and possibly further afield, of being targeted in retaliation for the book he wrote and self-published detailing corruption and nepotism in the KRG. In non-Kurdish Iraq he could be targeted as a Sunni. In the same parts of the country he could face a risk of being kidnapped because of his perceived wealth, and he would face more general risks as a result of the ongoing, albeit much reduced, violence.

266. In my opinion, the risk he would face from the KRG authorities would be severe. The risks he would face as a Sunni and as a returnee would be low. The risks from indiscriminate violence would also generally be low, other perhaps than in rural areas of north-central Iraq, where Islamic State cells are active.

267. In my opinion, internal flight, whether within the KRG or to non-Kurdish Iraq, would not be a viable option for Mr Rafeeq. The Baghdad-based authorities would be unable and/or unwilling to extend him effective protection. Leaving aside that Mr Rafeeq would be at grave risk from the KRG authorities, the latter would be able to protect him from the other risks that he would face in central and southern Iraq.

268. In my firm opinion, in Iraq, and especially non-KRG Iraq, Mr Rafeeq would likely face serious challenges finding employment and accommodation. A particular problem in non-Kurdish Iraq would be his lack of a supportive family network. Notably in central/southern Iraq, he would also face difficulties with water and

electricity supplies and with access to adequate healthcare. He would be especially vulnerable because of his lack of Arabic.

269. I understand that my duty is to provide an impartial expert opinion with a view to assisting the Court in reaching its decision, and that my duty is to the Court and not to those instructing me. I believe that I have complied with that duty. I confirm that, insofar as the facts stated in my Report are within my own knowledge, I have made clear which they are, and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion. I confirm that I have read and understand the requirements placed on Expert Witnesses as stated in the Ikarian Reefer case; at Paragraphs 23-27 of the case of MOJ and Others (Returns to Mogadishu) Somalia CG (2014) UKUT 00442 (IAC); and in the Tribunal's own Practice Directions.

23. Dr George properly recognised that the question of the credibility of the claim was a matter for the Judge, and that any real risk to the Appellant sufficient to warrant a grant of international protection would only arise if the Appellant's claims were credible. There is nothing in Dr George's report that undermines the Judges adverse credibility findings for the reasons the Judge considered they should be made. The Judge identifies a number of issues arising from the Appellant's evidence which the Judge had the benefit of being able to consider in both its written and oral form. The core finding of the Judge that she was not satisfied the Appellant had published the book in question which it is claimed gives rise to fear of harm from the authorities, is a finding clearly within the range of those available to the Judge on the evidence, and is supported by adequate reasons. As noted by the Judge at [27] it was only when looking at the evidence as a whole that led the Judge not to find the Appellant had demonstrated to a reasonable degree of likelihood that he wrote a book that would bring him to the adverse attention of the authorities in the IKR.
24. The Appellant fails to establish legal error in relation to Ground 1 as the Judge clearly had due regard to the report of Dr George.
25. Ground 2 is a weight challenge, but the weight to be given to the evidence was a matter for the Judge. The Appellant's claim is that the Judge's finding that all members of the panel were his friends is wrong when only one member of the panel was his friend.
26. The Judge clearly took this evidence into account as there is specific reference to it in the determination at [24]. The Judge refers to the source of her finding that the author of the letters in the Ashti organisation are the Appellant's friends as being his own evidence. Even if it was only one member of the organisation who was a friend the Judge was entitled to be concerned about the weight that could be given to this evidence which she clearly considered in the round together with the other evidence. It also relevant to note the purpose of the letter was to provide support for the Appellant's account of events that, as found by the Judge when considering all the available evidence, is an account of events that lacked credibility. The Judge was therefore entitled to place the weight that she did upon this evidence which was not determinative of the Appellant's claim in any event. The Judges finding at [27] is one reasonably open to the Judge on the evidence.
27. Ground 3 challenges what is claimed to be a finding regarding the plausibility of the Appellants political motivation, with a specific reference to [24] of the decision under challenge.
28. At [24] the Judge writes:

24. I do not believe he did. His friends in the Ashti organisation have written letters of support for his account of events, but as he said, they are friends of his so they would want to assist him. In fact, one of them was securing evidence for him to prove his credentials as a nurse, no doubt to help him

> secure employment here. He claims to have had a million Iraqi dinars at his disposal to print this book. His everyday life as a nurse would bring him into contact with many sick people, not just those suffering from cancer. He makes no claim that the people in his care did not receive the medication they required or the nursing care needed. There is no motivation for him to take the actions he claimed he did from his daily life in Iraq.

29. The first point to note is that this ground appears to be an attempt to cherry pick one line out of the determination and build an alleged legal error around it. The Judge's finding regarding motivation is her finding based upon the evidence given by the Appellant. It is quite clear that the Judge was considering the Appellant's case very carefully for in addition to the physical evidence and evidence had been provided directly relating to the book in question, the Judge was also exploring whether there was anything behind that, based upon the Appellant's life in Iraq and his evidence in relation to the same, to explained why he had acted as he claimed to have acted. The Judge's finding that there was no evidence of any motivation for him to take the action is therefore clearly a finding within the range of those available to the Judge on the evidence when taken together with the points set out in the Rule 24 response in relation to this element.
30. Whilst the Appellant disagrees with the Judge's findings such disagreement is not sufficient.
31. The Judge was not required to set out each and every aspect of the evidence provided.
32. The key question is whether the findings made by the Judge are within the range of those reasonably open to her on the evidence as a whole considered with the required degree of anxious scrutiny and supported by adequate reasons. I find they are.
33. On the basis the Appellant fails to establish legal error material to the decision to dismiss the appeal, which has not been shown to be rationally objectionable, there is no basis for the Upper Tribunal to interfere any further in this decision.

Notice of Decision

34. No legal error material to the decision of the First-tier Tribunal is made out. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 January 2025