



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: PA/50885/2021  
(UI-2021-001732); IA/01972/2021**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 6 September 2022**

**Decision & Reasons Promulgated  
On 10 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE LANE  
DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR AMIR KAMIL SALIH  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Hussain, Counsel, instructed by Halliday Reeves

For the Respondent: Mr McVittie, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is an Iraqi national whose date of birth is 1 January 1992. He arrived in the United Kingdom clandestinely by boat on 24 June, 2020 and claimed international protection as a refugee on arrival having been served with illegal entry documentation.
2. The Respondent's reasons for her Decision are contained in the Refusal Letter dated 12 February, 2021. The Appellant appealed against the refusal of his Protection Claim on the statutory ground that refusal is

contrary to the obligations of the United Kingdom under the Refugee Convention, alternatively, that he met the requirements for a grant of Humanitarian Protection, alternatively, that his removal would be unlawful under Section 6 of the Human Rights Act 1998.

3. His appeal came before Judge of the First-tier Tribunal Hillis (hereinafter referred to as the FTTJ) on 28 June 2021 who dismissed the Appellant's appeal on all grounds.
4. Permission to appeal was sought and on 2 November 2021 Judge of the First-tier Tribunal Gibbs granted permission to appeal stating as follows:

*"3. The grounds of appeal assert that the judge has given insufficient reasons for concluding that the appellant's claim lacks credibility. This is because he made numerous positive credibility findings compared to minimal negative findings.*

*4. The grounds of appeal are arguable because one of the reasons that the judge has rejected the appellant's claim is speculative; why a murder was not reported in the press. Further, it is arguable that given the judge's positive credibility findings he has failed to give adequate reasons for rejecting the appellant's claim.*

*5. The grounds of appeal disclose an arguable error in law. The grant of permission is not limited."*

5. No anonymity direction is made.

### **PRELIMINARY ISSUES**

6. Mr McVittie and ourselves appeared in person at the Hearing Centre and by agreement Mr Hussain appeared remotely over a video connection.
7. No Rule 24 statement had been filed by the Respondent's representative, but Mr McVittie confirmed that the application remained opposed.

### **SUBMISSIONS**

8. Mr Hussain adopted his grounds of appeal dated 28 July 2021 and submitted the FTTJ had erred:
  - (a) the decision to find the Appellant's account lacked credibility was insufficiently reasoned; and
  - (b) the finding the Appellant could return to either Sulaymaniyah or any part of the Kurdistan Region was flawed because there was no basis to find his family could send him his CSID and it was irrational he could return because it was predicated on the erroneous findings of no risk to the Appellant from Mala Bakhtiyar.
9. Mr Hussain acknowledged that an error of law based on insufficient reasons was a difficult argument to present but he submitted that as the

FTTJ had accepted Mala Bakhtiyar was a genuine person and a person of some importance, the reasons given for finding the Appellant's account lacked credibility were insufficient to outweigh the positive findings the FTTJ had made. He submitted that the FTTJ erred by seeking corroboration and too much weight had been attached to the Appellant's failure to claim asylum at the earliest opportunity.

10. With regard to the second ground of appeal, Mr Hussain submitted that if the Appellant was at risk from Mala Bakhtiyar then he would be unable to relocate to any part of the Kurdistan Region.
11. Mr McVittie responded to these submissions and stated it was for the FTTJ to assess the credibility of any claim and whilst the FTTJ accepted Mala Bakhtiyar was a person with a high profile, he went on to consider the individual circumstances of the Appellant's claim and rejected the connection which was said to exist between Mala Bakhtiyar and the Appellant's father. In rejecting the Appellant's claim, the FTTJ gave three reasons for his adverse credibility finding namely:
  - (a) he did not accept his claim he would have been able to hide from such a powerful person;
  - (b) there was no objective evidence to corroborate the death of a member of Mala Bakhtiyar's security; and
  - (c) a finding under section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
12. Mr Hussain submitted in response that there was no reason for there to be a report about the Appellant's father's death as this would bring adverse attention to Mala Bakhtiyar. Having heard these submissions we reserved our decision advising we would issue a written decision containing our reasons for either allowing or rejecting this application.

## **FINDINGS**

13. Mr Hussain's submissions primarily centred on the FTTJ's approach to the Appellant's core claim and in that regard we find it would be helpful to summarise the FTTJ's findings of facts:
  - (a) It was plausible the Appellant's father did work for a high ranking PUK official and had not told the Appellant given his claim his father worked in security.
  - (b) It was wrong for the Respondent to suggest the Appellant's answers were speculative when she invited him to speculate in interview about why Mala Bakhtiyar murdered his father and wanted the Appellant to work for him.
  - (c) There was a lack of anxious scrutiny of his account by the Respondent given he had provided articles and photographs to support his claim. These articles and photographs confirmed Mala Bakhtiyar was a real

person and he was a very high ranking official within the PUK with extensive influence throughout the IKR including Erbil.

- (d) The fact Mala Bakhtiyar was such a high-ranking official undermined the Appellant's claim he was able to hide at his uncle's friend's house and other houses in Halabja.
  - (e) The absence of any report of the father's death, against the background he was one of Mala Bakhtiyar's security staff, undermined the credibility of the claim. The Appellant's account of his father being murdered was not credible or consistent given the lack of any media reporting
  - (f) A section 8 finding under the 2004 Act could properly be made although this finding on its own was not determinative of whether his claim engaged paragraph 339L HC 395.
14. The thrust of Mr Hussain's submissions was that having made positive findings about the Appellant's claim and in particular about Mala Bakhtiyar, the FTTJ erred in rejecting his claim because of the factors detailed above in paragraph 13(d) to (f). Mr McVittie's submission was these findings were open the FTTJ and accordingly there was no material error.
  15. Our reading of the FTTJ's decision is that the FTTJ accepted Mala Bakhtiyar existed and whilst it was plausible the Appellant's father may have worked for Mala Bakhtiyar, he ultimately rejected the Appellant's claim that his father worked for Mala Bakhtiyar for the reasons set out above and more particularly contained in paragraph [49] of the FTTJ's decision.
  16. As Mr Hussain conceded credibility findings are within the jurisdiction of the FTTJ and unless those findings were perverse or based on a error fact then the Higher Courts have made it clear that we should not interfere with such findings.
  17. This was an appeal in which the FTTJ rejected a number of the Respondent's claims including her challenge to whether Mala Bakhtiyar actually existed. However, having accepted Mala Bakhtiyar existed the FTTJ then had to make findings on whether the Appellant had established the risk he complained of.
  18. The FTTJ provided three reasons which collectively led him to conclude the Appellant's claim lacked credibility. We are satisfied that each of those findings were open to the FTTJ.
  19. Having rejected the Appellant's perceived fear, we are satisfied that FTTJ's findings were open to him and the arguments now advanced by Mr Hussain are merely a disagreement with the FTTJ's findings. On ground one there was no material error in law.
  20. To a large extent the second ground of appeal is determined by our decision on the first ground of appeal.

21. The FTTJ went on to make made findings on the availability of the Appellant's CSID and this was clearly a finding open to him on the facts. The rejection of his core claim meant he faced no risk in the Kurdistan Region.
22. We would also add that since this appeal was heard by the First-tier Tribunal, the Upper Tribunal have provided fresh country guidance (SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC) on returnability to Iraq and the Respondent has issued fresh guidance (CPIN: internal relocation, civil documentation and returns July 2022) which includes confirmation from the Iraqi authorities (Annex A) that residents from the Kurdistan Region can now be flown direct to Erbil or Sulaymaniyah. We are satisfied that even if he did not have immediate access to his CSID he could be returned direct to the Kurdistan Region where he would enjoy the immediate support of his family and he would be able to obtain an INID from his local office. On ground two there was no material error in law.

### **NOTICE OF DECISION**

23. The making of the decision of the First-tier Tribunal did not involve the making of an error in law. having been set aside, we have remade the decision. The appellant's appeal against the decision of the Secretary of State dated 5 December 2019 is dismissed.

Signed

Dated



Deputy Upper Tribunal Judge Alis

### **TO THE RESPONDENT**

#### **FEE AWARD**

No fee award made as the appeal has been dismissed.

Signed

Dated



Deputy Upper Tribunal Judge Alis