IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001549
First-tier Tribunal No:
PA/53214/2021
IA/08184/2021

THE IMMIGRATION ACTS

Heard at Manchester CJC
On the 8 November 2022

Decision & Reasons Promulgated
On the 14 February 2023

Before

UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

RIS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Woods, Immigration Advice Service
For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Garratt written on 19 January 2022 in which he dismissed

the appellant's appeal against a decision of the Secretary of State made on 8 June 2021 refusing his protection claim.

The Appellant's Case

2. The appellant is a national of Iraq. He claims asylum on the basis of having a well-founded fear of persecution in Iraq by non-state actors due to his imputed political opinion, by reason of association with his brother who he says worked as an interpreter for an American organisation. Specifically, he says he was visited at home by four armed men who threatened him and abducted his father because they were looking for his brother. The appellant claims that if he were to be returned to Iraq, he would be killed by non-state actors because of his brother's employment. He says he left Iraq in August or September 2015 travelling via Turkey, Hungary, Germany (where he stayed for three years) and France (where he stayed for one year) before arriving in the UK on 16 September 2019 and claiming asylum the next day.

3. In a letter dated 8 June 2021 ("the Refusal Letter") the respondent accepted that the appellant is from Kirkuk, Iraq and of Kurdish ethnicity. However, it rejected his claims that his brother worked as an interpreter for an American organisation and that he feared unknown masked men. The letter essentially said the appellant's account was so lacking in detail as to not be credible. It refused the appellant's claims on asylum, humanitarian protection and human rights grounds. On review on 29 November 2021, the respondent maintained the refusal decision.

4. The appellant appealed that decision. The appeal was heard by First-Tier Tribunal Judge Garratt ("the Judge") on 14 January 2022, after which his decision was written on 19 January 2022.

The First-tier Tribunal's decision

5. The Judge heard evidence from the appellant and submissions from his representative, Mr Wood. The respondent was represented by Mr McBride who cross-examined the appellant. The decision does not state whether an interpreter was used.

6. The Judge's key findings, with reference to the relevant paragraph numbers, were as follows:

(a) He was not satisfied to the lower standard that the appellant had given an accurate account of his reasons for leaving Iraq, due to inconsistencies and vagueness. There was insufficient evidence to enable a finding that the appellant had a brother who worked as an interpreter for either a western or an American organisation [45] [48] and the Judge did not accept that the incident with the masked men took place [45] [50] as the account was vague and lacking in detail. The appellant had been inconsistent at interview and later expanded his evidence about his brother's work [48].

(b) It was not reasonably likely that the appellant's brother was working in an official capacity as an interpreter unless he possessed a qualification that would show his translation work was accurate. A professional achievement would be known to the appellant and other family members [49].

(c) It was not reasonably likely that the appellant's neighbour (a Mullah) would be able to find someone to remove the appellant and his sister from Iraq within three hours of their father being taken away by masked men [50]. The Judge was not satisfied that the appellant had shown he left Iraq with his sister as he had claimed [52] [53].

(d) The appellant's fears, put at their highest, were of suffering serious harm at the hands of unidentified non-state agents [46]. The appellant did not seek the help of the authorities but left Iraq on the advice of a neighbour. The appellant did not fulfil the requirements of being a refugee [46] [53].

(e) If the appellant's claims are true, he would have taken both his passport and CSID card with him so as to ensure there were no identification difficulties on that part of his journey which took him to the Turkish border (rather than taking his passport and leaving his CSID at home). It was reasonably likely that the appellant's passport would be available to him on request to the German authorities. His CSID ought also to be available to him given the other unfavourable findings of fact [51] [54].

(f) In light of **SMO**, and given the appellant was from Kirkuk, return would be to Baghdad [54] – [56] with his passport. As the Judge was not satisfied that the appellant had lost contact with his family, if his CSID was still in Iraq, it could be sent to him or passed to him after arrival. Otherwise, a replacement identity document could be obtained via a proxy. He could return to live with his family in Kirkuk [58], taking into account the sliding scale assessment required in **SMO**.

(g) Due to these factors, he dismissed the appellant's claims for asylum, humanitarian protection and human rights grounds [53] – [60].

Appeal History

7. The appellant sought permission from the First -tier Tribunal to appeal to the Upper Tribunal on several grounds, namely:

(a) Ground 1: That the Judge made a material misdirection in law by failing to consider the Appellant's account in conjunction with country information, specifically:

(i) There was objective material to support the assertion that persons perceived to be opposing certain non-state actors (by collaborating with the US) could be at risk; and

(ii) The appellant was criticised for failing to seek protection from the authorities but the respondent's published guidance accepted that outside the KRI, the Iraqi authorities are generally unable to provide effective protection.

(b) Ground 2: That the Judge made an irrational finding of fact on material matters. Specifically, his conclusions that:

(i) the appellant's brother would not be employed as an interpreter in an official capacity without having a professional qualification; and

(ii) the appellant would be able to obtain his passport from the German authorities on request

were unsupported by any evidence and were therefore irrational.

(c) Ground 3: That the Judge permitted a procedural unfairness in finding that the appellant's brother would have needed a professional qualification to be an interpreter when this had not been raised as an issue by the respondent and did not go to an inconsistency in the appellant's evidence. There was objective country information to suggest 'informal' interpreters had been used by American forces and the appellant was not given a fair opportunity to deal with the issue.

(d) Ground 4: That the Judge failed to apply anxious scrutiny. Specifically the Judge found the appellant had embellished his account concerning the car and persons that collected his brother for work, when he had mentioned such details previously in his substantive asylum interview.

(e) Ground 5: That the Judge materially misdirected himself in law when assessing the plausibility of the Appellant's account. This appears interlinked with ground 1 but adds that there was an absence of reasoning for the rejection of the appellant's evidence regarding his lack of information about his brother's work and a failure to consider the consistency of his account in this respect.

(f) Ground 6: That the Judge materially misdirected himself in law regarding the terms of extant country guidance in **SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) (20 December 2019) ("SMO**") in what it said concerning the CSA office in Kirkuk likely having an INID terminal and not being willing to issue a CSID through a proxy.

8. The application sought for the Judge's decision to be set aside and for the matter to be remitted to the First-tier Tribunal to be heard afresh.

9. On 5 January 2022, First-tier Tribunal Judge Mulready granted permission to appeal without limiting the grounds, saying as follows:

"[2] The grounds assert that the Judge erred in (i) failing to consider the Appellant's account in conjunction with country information, (ii) making irrational findings of fact on material matters, including the Appellant's brother's professional qualifications (iii) permitting a procedural unfairness by disbelieving the Appellant's account that his brother was an interpreter for reasons that were not part of the Respondent's case; (iv) failing to apply anxious scrutiny to the Appellant's case; (v) materially misdirecting himself in law when assessing the plausibility of the Appellant's account by failing to follow the guidance in HK v Secretary of State for the Home Department [2006] EWCA Civ 1037 and (v) failing to take account of SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) before concluding that that the Appellant can use a proxy to obtain a replacement identity document.

[3] The Appellant claims a risk on return arising from his brother's work as an interpreter for a US organisation. The judge found it not reasonably likely that the Appellant's brother would be employed as an interpreter without a relevant qualification, but did not describe the evidence on which this finding was based. It was not part of the Respondent's case, not put to the Appellant, and is directly contradicted by country information highlighting the lack of qualifications of interpreters in such circumstances. This is an arguable error of law material to the outcome of the appeal and so permission is granted."

The Hearing

10. The appeal came before us on 8 November 2022.

11. It serves no purpose to recite the submissions here at length as they are set out in the record of proceedings. Essentially, Mr Wood confirmed he relied on the grounds of appeal and took us through them, confirming nothing needed to be changed in light of the second **SMO** case and updated Country Policy and Information Note(s) ("CPINs") concerning Iraq.

12. Mr Bates confirmed that no rule 24 response had been filed and that the respondent's position was as follows:

(a) Grounds 1 and 5: The Judge clearly considered all the evidence then looked at the account, after which he finds the account to be vague and later expanded upon, which went to credibility.

(b) Ground 2: Irrationality has a high threshold; the country evidence adduced shows informal interpreters were used as a matter of necessity during times of conflict which was not the case here; the appellant could not even say for whom his brother worked but his description of it as an organisation indicates it was a private company as opposed to the military. As such, it is reasonable that they may

require only professionally qualified interpreters. It was up to the appellant to prove his case and, as there was a vacuum in the evidence, the Judge was entitled to find as he did.

(c) Ground 3: The Refusal Letter did not accept the brother was an interpreter so the issue of qualifications did not even arise; the Judge was picking up on evidence arising during cross-examination where the appellant was asked his brother was educated to interpreter standard, so there was no unfairness. The appellant was asked the question, his representative could have re-examined him, they could have asked for an adjournment if it was deemed to be a new matter, or they could have requested an allowance of post-hearing evidence. The Judge was entitled to find that merely completing secondary education was unlikely to be sufficient to work as an interpreter for a big corporation, taking everything into account in the round. Even had the evidence now argued been brought up, the Judge could have reached the same conclusion given the appellant had adduced so little evidence of the brother's job at all.

(d) Ground 4: the Judge was entitled to find there was a shift in the evidence given the colour and make of the 'khaki jeep' had not previously been mentioned. The appellant's account about whether he asked his brother about his job was in fact inconsistent.

(e) Ground 6: The point on redocumentation is immaterial given the findings that the appellant still has access to his original CSID.

(f) Overall, the Judge gave sufficient, cogent reasons as to why he rejected the core of the appellant's account, from which flowed the findings that the appellant had family contact and could get his CSID.

13. Mr Wood replied to say:

(a) Regarding ground 2, he maintained it was irrational to make a finding of fact wholly unsupported by evidence and based on speculation.

(b) Regarding ground 3, this was not a point taken by respondent's representative at the hearing, Mr Woods was there and had the point been taken, he would have taken one of the options just mentioned by Mr Bates but he only found out when the decision was issued and it is pure speculation. The appellant's evidence was that his brother was fluent in Arabic and English, so on the face of it, he had the skills to be an interpreter and we do not have the basis of the company's business to know what skills were required.

(c) The last ground is material if the adverse credibility findings are disturbed by material error(s).

Discussion and Findings

Grounds 2 and 3

14. We shall deal with grounds 2 and 3 together first as they are interlinked and potentially have an impact on the remaining grounds.

15. We accept that the question of what, if any, qualifications were required to be an interpreter for a Western or American organisation working in Iraq was not raised in the Refusal Letter or the subsequent review by the respondent. We have not been taken to any evidence that was brought to the Judge's specific attention at or prior to the hearing begore him. It does appear only to have been touched upon during cross-examination, the Judge recording at [29] of his decision that:

> *"The appellant was asked how his brother came to be educated to interpreter standard. In response the appellant said that his brother studied to the end of secondary school and was fluent in English and Arabic."*

16. The Judge refers to this evidence when he later says at [49] that:

> *"The appellant was also asked questions about his brother's ability to be an interpreter. All he could say was that his brother had completed secondary education and was fluent in Arabic and English. If the appellant's brother was working in an official capacity as an interpreter, it is not reasonably likely that he would be employed in that capacity unless he possessed a qualification that would show to his employers that his translation work was accurate. A professional achievement by the brother in that respect would, I conclude, be known to the appellant and other family members."*

17. We accept there is no reference in the decision as to the matter being raised by either party in submissions. We do not have a record of the proceedings before us. Mr Wood says he was the same Mr Wood as appeared before the Judge and that the point was indeed not taken in submissions.

18. We accept that the Judge does not state the evidence on which his conclusions in [49] are based, other than what was said in oral evidence. The cross examination itself was not clear in what was meant by 'interpreter standard'. The Judge does not state what weight he attributed to this evidence. We accept that the said evidence, in itself, is not a sufficient basis upon which to find that that the appellant's brother needed a qualification in order to be employable/employed as an interpreter. This is particularly the case since there was very little evidence, if any, as to what kind of organisation the brother worked for.

19. We do not accept that the evidence we have now been taken to (concerning the use of interpreters during conflicts) necessarily takes the matter much further given there is no mention of the appellant's brother working in that kind of scenario. However, we accept that the appellant/his representative were not on notice that this specific point was being taken

against him, such that he/they did not have a proper opportunity to address it. We find this to be an error of law.

20. As to materiality, as above, it is far from clear how much weight was afforded to this point. Had the judge found that the appellant's brother did not need any qualifications in order to be an interpreter, it does not automatically follow that he would have gone on to find he was in fact an interpreter. He does, after all, several times refer to the vagueness of, and lack of detail in, the appellant's account, and makes other findings against him due to these factors, such as that in [45] concerning the speed and circumstances of the appellant leaving the country, and in [46] concerning the lack of information about the identity of the masked men i.e. the appellant himself was unable to say who these men were such that the Judge's finding at [46] that the appellant feared "unidentified non-state agents" was correct.

21. To prove his case to the lower standard as regards asylum, the appellant needed to show that he had a well-founded fear of persecution from non-state actors for the convention reason of his imputed political opinion. He needed to show that he had an imputed political opinion, and his case was that he had this due to his brother being an interpreter for an American organisation. Even if the Judge had found the brother was an interpreter, he found the appellant had not shown for whom his brother actually worked. We consider he was entitled to make this finding, given the evidence of the organisation being American appears to have consisted of two factors.

(a) One was the appellant's evidence about seeing his brother going to work. This was at best on a '*couple of mornings'* according to his statement as described by the Judge at [17], when he saw that "*The official car that picked up his brother was khaki in colour and he saw one person in military uniform. That person had an American flag on his arm"*. However, the Judge refers to the evidence about whether he saw his brother being picked up or not being contradictory. We note it is correct that the appellant said at Q151 of his substantive interview that "When I left home he was asleep" and at Q153 "when he returned home I was always asleep" so he did not know what time his brother left for work. It does not follow that one person wearing a uniform with an American flag picking up the brother meant that the brother worked for an American organisation. The man may have been employed by a security agency, we do not know.

(b) Two was the appellant's evidence that it was well-known in the neighbourhood that his brother worked for the Americans [24]. The Judge refers to this assertion in [48] as being in contrast to the appellant's own lack of knowledge of his brother's occupation.

22. Otherwise, we cannot see that the appellant states in his substantive interview or elsewhere, how exactly he knows his brother worked for an 'American' organisation.

23. Even had the appellant proved both that his brother was an interpreter and worked for an American organisation, he still had the hurdle to cross that he himself did not know who the masked men were. The Judge refers in [20] to the appellant's evidence that the neighbour/Mullah attended after the masked men had left and so was not in a position to identify them [46]. On the appellant's evidence, the men were searching for his brother because he was an 'infidel and a traitor' [18] and Q173-194 substantive interview. We cannot see that the appellant says he was told or explains how he really knew that the men's motivation was because the brother was an interpreter working for a western or American organisation.

24. Overall, we consider the finding concerning interpreter qualifications to be just one of several factors that the Judge considered, such that it was not determinative. The other factors, such as the identity and motivation of the men as described above, were not related to, or dependant on, that finding. The Judge could have reached the same conclusions as to credibility and the appeal overall as he did, even had he found the appellant's brother to have been an interpreter. We therefore find that the error is not material.

25. We shall discuss the passport within ground 6 given it relates to redocumentation.

***26.* Ground 4: That the Judge failed to apply anxious scrutiny.**

27. We note the appellant said in his substantive interview that:

(a) Q158 "*on many occasions a car from the organisation came to pick him up in the morning"*

(b) (Q160) "*the car was bulletproof vehicle*" because (Q161) "*there is too much metal on the car"*

(c) (Q162) "*on Fridays when I wasn't going to work on a few occasions, I saw the car when they came to pick up my brother and one or two of them were wearing military uniform"*

(d) (Q165) "*I didn't know them but they were English/ Americans*" because (Q167) "*I saw the American flag on the side of their shoulder (applicant pointing to shoulder)*"

28. In his witness statement of 22 September 2021, the appellant says:

> *"24. Once or twice when I was not working I would see him being picked up in a car on my off days. I did not work on Fridays but my brother would go out.*
>
> *25. What I meant by official car was that is [sic] was khaki in colour and I saw one person in military uniform, with an American flag on his arm. I did not see any weapons*."

29. The Judge recorded the Appellant's oral evidence at the hearing at [29] as:

> *"He claimed that the vehicle which he saw picking up his brother was military in style `like a jeep'."*

30. The finding under issue is that in [48] as follows:

> *"The appellant also gave contradictory evidence in interview. On the one hand he denied that he knew when his brother went to work because he, the appellant, was asleep but then gave evidence to say that he saw a car come to pick up his brother in the mornings. Subsequently, in his statement, and at the hearing, the appellant expanded upon this to say he saw the vehicle in which his brother went to work on one or two occasions which was `like a jeep'. He also claimed that the vehicle was khaki in colour and a passenger wore a uniform with the American flag. I regard the appellant's later expansion upon his evidence as an embellishment rather than because it is true."*

31. It is correct that both the colour and type of the car used were not mentioned prior to the hearing, and that the appellant had not been entirely clear or consistent as to how often he saw his brother being taken to work. The Judge was incorrect to say that mention of the American flag was an embellishment, as this was mentioned in interview. Overall, whilst others may disagree with the Judge's findings, we find there is insufficient inaccuracy in them to disclose an error of the nature claimed, or even if there is an error, we find it not to be material as the judge gave several other reasons for finding the appellant's account insufficiently proved, as we have detailed above.

Grounds 1 and 5

32. We do not find these grounds to be made out; rather they are in the nature of mere disagreement with the outcome.

33. We find the Judge did assess the appellant's account against the country evidence before him. He summarises the appellant's evidence in [16] – [31] and refers to the appellant's skeleton argument in [35] – [37] and [54], which in turn refers to the country evidence relied upon by the appellant.

34. We refer to our comments above concerning the lack of evidence as to the identity of the masked men and our finding that the Judge was entitled to conclude the appellant had not sufficiently proved his account to the lower standard. The objective material concerning 'perceived collaborators' was of limited relevance given the Judge found the appellant had not made out that his brother worked in his alleged role nor whom the masked men were.

35. We note the evidence that was before the Judge concerning the sufficiency of protection that the authorities could or could not have provided but this

was not the question the Judge was addressing when criticising the appellant for not seeking protection. We find the Judge was instead drawing inferences (as he was entitled to do) from the appellant choosing to rely on a neighbour who had not witnessed the masked men for himself instead of turning to the authorities for assistance before very quickly making the decision to leave the country. The Judge was entitled to find that the appellant's explanations as to why he did not seek assistance were not satisfactory when viewed in light of the evidence as a whole i.e. saying at Q229 of the substantive interview that he did not go to the police "*because my fathers friend stated that those people are powerful and influential everywhere and that's why we were scared to stay there".*

36. We do not consider it made out that there is an absence of reasoning for the rejection of the appellant's evidence regarding his lack of information about his brother's work and a failure to consider the consistency of his account in this respect. We note the appellant's witness statement at paragraph [26] simply says "I *did not ask my brother questions about his job over and above finding that he was an interpreter for American. The Home Office does not understand the culture of Iraq*". It does not explain what was meant by this comment and we have not been taken to any evidence before the Judge supporting there being such a culture. The Judge details the evidence about the brother at [24] and later makes findings at [48] in relation to it. Even if parts of the appellant's account were consistent, that did not preclude the Judge from finding them to be vague and lacking in detail, which are findings he was entitled to reach. We do not agree that the Judge was assessing plausibility rather than credibility.

Ground 6

37. Given we have found the Judge was entitled to his findings concerning the appellant's account, in turn we find he was entitled to conclude that the appellant would have access to his CSID and therefore need not redocument himself either prior to or on return.

38. The Judge's finding at [51] that the appellant's passport would be available to him on request to the German authorities appears to be based on the appellant's confirmation that it was being held by the German authorities. There is no reference to any other evidence considered when reaching this view. We find this does disclose an error as the Judge appears to be applying what he assumes would happen in the UK to what would happen in Germany, without stating the basis for doing so. However, given our finding above concerning the CSID, we find this error not to be material, especially as the burden of proof lay with the appellant to show he could not obtain his passport. We were not taken to any evidence that was before the Judge to show that the German authorities had refused to provide it to the appellant, beyond the appellant's own word in his witness statement that "*the Germans would not give me back the passport*" which the Judge did not accept.

39. To conclude, we find the decision is not infected by any material errors of law. The decision therefore stands.

Notice of Decision

1. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Garratt dated 8 June 2021 is maintained.

2. An anonymity direction is made due to the nature of the issues underlying the appeal.

Direction regarding anonymity – rule 13 The Tribunal Procedure (First-Tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Until this appeal is finally determined the appellant (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court

This order does not restrict disclosure of information relating to this appeal to law enforcement or regulatory agencies, the Bar Council, the Solicitors Regulatory Authority, the Law Society, OISC, or where disclosure is otherwise required by law

Unless this Tribunal or a court directs otherwise, this order expires when the appeal is finally determined i.e. when the appellant becomes appeals rights exhausted at the conclusion of the proceedings, including any onward appeal, or when the appeal is abandoned, withdrawn (or treated as withdrawn) or lapses. If there is an onward appeal or challenge, an application to amend or vary the anonymity order must be made to the tribunal or court concerned.

Signed: L. Shepherd Date: 12 December 2022

Deputy Upper Tribunal Judge Shepherd