Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-002362
PA/52316/2021; IA/08213/2021

<u>THE IMMIGRATION ACTS</u>

Heard at Civil Justice Centre, Manchester
On Monday 10 October 2022

Decision & Reasons Promulgated
On Tuesday 14 March 2023

Before

UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

FHA
[ANONYMITY DIRECTION MADE]

<u>Appellant</u>

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

<u>Respondent</u>

<u>Anonymity</u>

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Although an anonymity order was not made by the First-tier Tribunal and no application was made for one by or on behalf of the Appellant, this is an appeal on protection grounds. Accordingly, we have decided of our own volition that it is appropriate to make an order. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

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Representation:
For the Appellant: Dr A Al-ani, Counsel instructed by SH Solicitors Ltd
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Juss dated 8 April 2022 ("the Decision"). By the Decision, the Judge dismissed the Appellant's appeal against the Respondent's decision dated 27 April 2021 refusing his protection and human rights claims for a second time.

2. The Appellant is a national of Iraq coming from the Kurdish region (IKR). He came to the UK on 25 February 2008. He claimed asylum and his claim was refused on 23 October 2009. At that time, he claimed to be a member of the Yazidi minority religious group. His claim was not believed. The Appellant's appeal against the Respondent's decision was dismissed on 16 December 2009 and the Appellant's appeal rights were exhausted on 24 May 2010. The Appellant made further submissions on 17 August 2010 which were refused on 25 August 2010. Thereafter, the Appellant returned to Iraq.

3. The Appellant was granted entry clearance to return to the UK for six months from 29 May 2012 to 29 November 2012. He returned to the UK in June 2012. He was granted leave to remain as a fiancé from 10 November 2015 to 10 November 2017 but his application for further leave made on 26 February 2018 was refused on 19 June 2018. The Appellant made a claim for asylum but withdrew it on 20 July 2018. He then made the claim for asylum which was refused by the decision under appeal.

4. The Appellant claims that he will be at risk on return to Iraq because he was in a relationship with a woman (Q) whose family disapproved of the relationship. The Appellant claims that Q's family are seeking to kill him and that he is also wanted by the Iraqi authorities. The claim was disbelieved by the Respondent. The Judge also rejected the claim as not credible. He therefore dismissed it on protection grounds. The Judge considered a claim based on the Appellant's mental health but rejected that, albeit accepting that the Appellant was a vulnerable witness. The Judge also dismissed the appeal on human rights grounds.

5. The Appellant raises five grounds in writing as follows:

   Ground one: The Decision is "not in accordance with the law" and the Judge has erred by not considering the case on human rights grounds "when clearly Article 3 and Article 8 are engaged".

Ground two: The Judge failed to apply the correct burden of proof (said to be the balance of probabilities) “as the benefit of the doubt should have been given to the Appellant”.

Ground three: The Judge has erred by failing to consider the case before him. This ground is predicated on the Judge’s recital of the immigration history at [2] of the Decision.

Ground four: Paragraph [23] of the Decision is challenged in relation to the findings made about (a) the Appellant’s passport (b) the Appellant’s contact with his brother and (c) the finding regarding “assurances” said to have been given to Q’s family.

Ground five: Paragraph [24] of the Decision is challenged in relation to the treatment of the arrest warrants produced by the Appellant and the further reference to “assurances”.

6. Permission to appeal was granted by First-tier Tribunal Judge Kudhail on 24 May 2022 in the following terms:

> “... 2. The grounds assert that the judge erred by incorrectly setting out the facts of the appellant’s Immigration history, which do not relate to this appellant (para 2). The appellant arrived lawfully in the UK in June 2012 and not July 2016. The appellant did not travel clandestinely through Turkey. The appellant did not claim asylum in Germany. The appellant’s asylum claim was not subject to the Dublin Regulations. The appellant was not screened on 27 July 2016. The appellant was not interviewed *‘in the normal manner’* on 30 October 2019. The appellant’s claim was not refused on 25 November 2019. The variance between the salient facts in the appellant’s case and those contained in the decision is so substantial and, as a consequence, the judge’s reasoning is so obscured as to reveal an arguable error of law.”

7. The matter comes before us to decide whether there is an error of law in the Decision and, if we conclude that there is, whether to set aside the Decision for re-making. If the Decision is set aside, we may either retain the appeal in this Tribunal for redetermination or remit it to the First-tier Tribunal to re-hear the appeal.

8. We had before us a bundle of the core documents in the appeal, as well as the Appellant’s and Respondent’s bundles as before the First-tier Tribunal. We refer to documents in the Respondent’s bundle as [RB/xx] and the Appellant’s bundle as [AB/xx]. We also received from the Appellant an addendum bundle which contained Dr Al-Ani’s skeleton argument for the hearing before us, the core documents in the appeal and various authorities to which we do not need to make reference as most if not all are directed at the principles which apply on a re-making rather than relating to the error of law.

9. Having heard submissions from Dr Al-Ani and Mr Tan, we indicated that we would reserve our error of law decision and issue that in writing. We therefore turn to that consideration.

DISCUSSION AND CONCLUSIONS

10. Given the focus of the oral submissions which was on the protection claim rather than the human rights grounds raised, we leave ground one to last. We deal with the other grounds in order.

Ground two

11. At [16] of the Decision, the Judge set out the burden and standard of proof which applies in protection claims. He there stated that the burden is on the Appellant and that the standard "is usually described as a lower standard, being assessed according to 'real risk' or 'reasonable likelihood'". Dr Al-Ani did not disagree with that statement of the legal position. He also accepted, as the Judge reminded himself at [17] of the Decision, that "the real question…was, notwithstanding that which had happened…whether it would be safe for this Appellant to return". Dr Al-Ani's point was rather that, having correctly stated the law, the Judge had failed to apply the correct burden and standard. As such, we prefer to consider this ground when looking at the remainder of the grounds challenging the Judge's consideration of the protection claim.

12. We observe as an aside that the correct standard is clearly not "balance of probabilities" as the pleaded grounds suggest. With some nuance, that is the relevant standard in relation to the human rights grounds but not the protection grounds.

Ground three

13. We turn then to the principal basis on which permission to appeal was granted.

14. At [2] of the Decision, the Judge said this:

> "The Appellant is a male born on 30th July 1990 and a Citizen of Iraq. He arrived in the United Kingdom in July 2016, having travelled clandestinely via Turkey and Germany (where he lodged an asylum application on 9th February 2016) and claimed asylum in the UK on 26th July 2016. Germany had initially accepted responsibility for him under the Dublin Regulation but this was later withdrawn. In the UK the Appellant was interviewed in the normal manner on 30th October 2019, following his Screening Interview on 27th July 2016, and the Respondent issued her refusal letter thereafter on 25th November 2019. The Appellant then had a visa granted for further leave to remain. This was as a fiancé between 10th November 2015 and 10th November 2017. He then applied for further leave to remain on 26th February 2018. However, he was refused on 19th June 2018, whereupon he then made and withdrew an asylum claim on 20th July 2018. In any event, further submissions where [sic] then lodged 4th October 2018 and these were dismissed in the latest RL and are now the subject of this appeal before this Tribunal."
>
> [emphasis added]

15. We readily agree with the Appellant (as recognised by Judge Kudhail when granting permission) that there is an error in the part of the chronology set out at [2] of the Decision which we have underlined in the citation above. So much is apparent when what is there said is compared with the chronology as we have set out at [2] and [3] above. However, although that amounts to an error of fact in relation to the past chronology, that does not automatically mean that this has led to any error of law. It would not do so unless the error of fact has infected the Judge's consideration of the protection or human rights claims.

16. Although we accept that the recitation of an incorrect chronology in the period 2016 to 2019 is unfortunate, we do not accept that this discloses any error of law for the following reasons.

17. First, the error does not relate to the asylum claim which was made. Indeed, when one reads the underlined section of [2] as set out above against what follows, there is clearly an error in the underlined section because the Judge has correctly recorded that the Appellant was in the UK lawfully as a fiancé between 2015 and 2017, made an application for leave in 2018 which was refused, made another claim for asylum in 2018 which he withdrew and made further submissions on 4 October 2018 which were refused by the decision under appeal. The previous underlined section would be inconsistent with that chronology covering as it does the same period. Although we accept that the way in which the Appellant is recorded as returning to the UK from Iraq in [2] of the Decision is incorrect, it is also accurately stated elsewhere in the Decision that the Appellant was in Iraq in 2016 and did return to the UK thereafter. Indeed, it is his case that this is when the facts on which his current claim is founded occurred.

18. Second, and put another way, it cannot be said that the Judge did not know when the claim which was refused by the decision under appeal was made. More importantly, he knew and understood the basis of the claim. That is correctly set out at [3] of the Decision. When we asked Dr Al-Ani about that part of the claim, the only matter to which he alluded was the reference to "assurances". As we will come to when we turn to grounds four and five, there may be an issue as to the Judge's understanding of the evidence in relation to "assurances", but it cannot be said that this reference is not to the Appellant's case.

19. Although Dr Al-Ani prayed in aid of his submissions in this regard, the comments made by Judge Kuhail when granting permission, we do not accept that the "variance between the salient facts in the appellant's case and those contained in the decision" amounts to an error of fact which is sufficiently significant to amount to an error of law. What is set out at [2] of the Decision is largely the Appellant's immigration history. There might have been an error if the Judge had referred to a wrong date of claim as refused by the decision under appeal or to a wrong date of the decision under appeal as that would be likely to indicate that the Judge was considering the wrong case. However, those facts are

accurately recorded based on the dates given by the Respondent. Moreover, as we have already noted, the facts of the claim are important. Unless the dates are central to those facts or have led to erroneous findings made in relation to the facts of the claim (which is not the case here) what is important is that the Judge has understood the basis of the claim and has engaged with it.

20. For those reasons, although we accept that the Judge has made errors of fact in his account of the Appellant's immigration history (which may indeed relate to the facts of another case), those errors have not led to any error of law. In the alternative, even if there is an error of law in the setting out of irrelevant information, the irrelevant information is not taken into account in what follows. Any error is not therefore material.

Grounds four and five

_21. Since both these grounds challenge what are in essence the Judge's findings on credibility in relation to the Appellant's oral and documentary evidence, it is appropriate to take them together.

22. Ground four challenges the findings made at [23] of the Decision based on the Appellant's oral testimony. Ground five challenges the findings made at [24] relating to the documentary evidence of the two arrest warrants. We begin by setting out the Judge's findings in those paragraphs:

> "23. Third, I find the previous decision as a 'starting point' to be relevant here insofar as it is the case that the Appellant has once again given evidence in a way that he has turned out 'to be inconsistent as to not be credible'. The facts speak for themselves. Thus, in cross-examination when the Appellant was asked about the fact that there were two arrest warrants with one being in 2020 and the second in 2021, he explained that the second one was sent to him by his brother he had now lost contact with him which is simply not plausible. Second, here is an Appellant who actually returned back to Iraq twice already, once in 2010 and then in 2016 on his Iraqi passport, and when he is asked where this expired Passport now is on which he had travelled, all he can say is that he did not know where his passport was. Third, if he had on-going fears of ill-treatment in that country (including from ISIS) it is not credible that when he was asked why he went back in 2016 he should say that his intention was to return 'permanently'. Fourth, and most importantly, it is not credible that he cannot go back because the brother of the lady who he was in a relationship with 'is looking for me' because he responded to Mr Evans's question by admitting that he was released *'because my father came and gave the police assurances'.* Although Mr Evans then put it to him that he had never mentioned his father and never mentioned the giving the assurances [sic], what this suggests is an Agreement between the two families which puts the Appellant beyond all risk from them as far as this particular issue is concerned. Fifth, that leaves the question of ISIS but I find that there is no risk to him from ISIS

because in cross-examination the Appellant admitted that the fear of the lady's family members was the only reason he could not go back. I do not accept that his entire family had to leave the neighbourhood and he had to go into hiding. I do not accept that Appellant the 'neighbourhood' [sic] when he said this lady lived next door as I do not accept that she is married and so could not marry her when previously he had implied she was single. And, I do not accept that he is a person who need fear anything under the 'Iraqi Penal Code' because the claim he has put forward lacks all credibility.

24. Fourth, given that there are Two Arrest Warrants, I should say something about them. They must obviously be looked at in line with the strictures in **Tanveer AHMED IAT 2002 UKAIT 00439 STARRED**. That being so it is significant that the arrest warrant provided has not been authenticated and the details of the arrest warrant are vague, with no specific reference address, occupation or behaviour outlined. Moreover, the offence of law on the warrant is stated to be wrong in his witness statement but he gives no information as to how this is wrong. There are also no credentials for the signatory, no official stamp has been provided and the Appellant has provided no evidence that the arrest warrant is from Iraq. I simply do not accept that the Appellant is wanted by the authorities for your relationship with [Q]. If there was an Agreement between the two families, where the Appellant's side gave 'assurances' to the lady's side, and there has been no reason to assume that the Appellant has then failed to honour those 'assurances', then I cannot see who [sic] these Arrest Warrants can have been issued."

23. Those findings obviously have to be read in the context of the evidence which the Judge received and was considering. It is therefore necessary for us to refer to the Judge's record of that evidence at [8] to [12] of the Decision as follows:

"8. At the hearing before me on 8th April 2022, the Appellant was asked to confirm his two Witness Statements ('WS') dated 18th November 2021 which he did. There was one question by Mr Woodhouse, namely in relation to the Appellant's statements that (at p.7) there was an Arrest Warrant, with respect to which the Appellant now wanted to make a correction. He said that there was a mistake about, so the appellant was asked what these numbers were of 6/372 and that it should not be 6/272. There were no further questions by Mr Woodhouse.

9. In cross-examination by Mr Evans the appellant was asked about the fact that there were two arrest warrants with one being in 2020 and the second in 2021, but that it was not clear what the difference was, and why there were two. The Appellant said that the second one was sent to him here. He said his brother had sent it out. He was asked whether he was in contact with the brother and he said he was not because he had lost contact. He used to call him but could not any longer. He had his parents and his two brothers back home. It was put to the Appellant that had [sic] actually

returned back to Iraq twice already, once in 2010 and then in 2016 on his Iraqi passport. It was put to him that his passport expired in 2019. He replied that he did not know where his passport was. He was asked why he went back in 2016 and he said that his intention was to return 'permanently'. However, he could not go back because the brother of the lady who he was in a relationship with 'is looking for me'. He confirmed that this was the only reason he could not go back.

10. It was put to him that when he went back he had said his intention was to visit his mother and father and the lady he was in a relationship with. He answered that in fact he was already in the UK he was in contact with that lady. So when he went back in 2016 it was to see the lady and his family and to consider whether he could settle there. But when he returned the lady's family were looking for him and he was at risk. He was asked how many times he had met with the lady in 2016. He said he had just met her outside the house and the two of them had gone way in a car to a checkpoint where they were stopped. When I asked him at this stage whether his intention was to elope with the lady he said that it was not. At the checkpoint as he explained, he had his British Driving Licence because his Iraqi ID documents had been left in the UK, and this was the document he showed them.

11. Mr Evans than [sic] asked the Appellant why he had not requested his own family to see if they could get the two of them married by negotiating with the lady's family. He said he could not marry her as 'she is already married'. Mr Evans expressed surprise at this and put it to the Appellant that he had never said before now that this lady was already married. He replied that he must have forgotten. He said that when he had taken her to the checkpoint his intention was not to elope with her, but that when he was stopped at the checkpoint just outside the city, he just turned around and came back. This is because at the checkpoint the authorities contacted the police. He said (at Q.22 of Interview) that eventually he had to return home. He then confirmed that he went driving past her home where she lived back to his home 'which was in the neighbourhood'. It was put to him that in his Interview he had said she just lived next door and had not said she was in the neighbourhood. He said it was the neighbourhood. He said that when they got home the lady told her family they were in a relationship. He was then apprehended by the police.

12. Mr Evans wanted to know why in that case he was he was [sic] released and he said that it was 'because my father came and gave the police assurances'. It was put to him that he had never mentioned his father and never mentioned the giving the assurances. All he had said was that his father and her brother came to the police station but there was no mention of anyone else. He had also said (at Q.26) that he was in Iraq for two weeks, about 12 or 13-days'. He was asked to confirm he was about 20-mins away from the lady's house. He said that his entire family had to leave the neighbourhood and he had to go into hiding because of

the family. He eventually came to the UK by air because he had LTR for 2-years (having originally obtained Leave as a fiancé in the UK)."

24. The Judge's findings also take account of the submissions made by representatives of both parties. Those are set out at [14] and 15] of the Decision as follows:

> "14. In his closing speech, Mr Evans relied on the RL dated 27th April 2021 and the previous decision of the Judge. This was a appeal where the Appellant had returned back to Iraq on two occasions, first in May 2012 and then in 2016. His sole claim is that he is afraid of the family of the lady who claims [sic] to be in a relationship with. Yet, today even in relation this is [sic] narrowly circumscribed claim there were huge discrepancies. The claim was not credible. This was plain to see from the way in which the Appellant had repeatedly altered the details of what he had originally asserted. He has always said this lady was a 'single' lady; that she was from next door, that her father and brother had visited him in jail, where he was detained for 6-8 hours (see Q22). Moreover, he has travelled around extensively on his Iraqi passport which only expired in 2019. As for the Arrest Warrants, although he himself has corrected the dates on them, they are not genuine because they have to be viewed in the context of the rest of the evidence which is not credible at all, especially as the Arrest Warrant is so late in the day. He could have married this lady in the normal way, and yet when this was put to him he said that the lady was already married, and this was the first time this had ever been hinted at. He asked me to dismiss the appeal.
>
> 15. In his closing speech, Mr Woodhouse relied on his Skeleton Argument, and on the WS of the Appellant, and submitted that the appeal was dependent on the 'credibility issues' arising from the evidence. At the time of the refusal decision what the Respondent had said was that 'honour crimes' are against women and so why would anyone want hurt [sic] a person such as the Appellant? Although there was an issue about where the lady lived in relation to the Appellant it is noteworthy that in the Interview he does refer to the 'neighbourhood'. As for the Arrest Warrant, the Respondent queried why the Appellant would have been released from the checkpoint only to be arrested later, but this was because the lady's family had subsequently made complaint to the police about him. Prior to that the police did not know about the relationship. It is this which contributes to the Arrest Warrant. The 'Iraqi Penal Code' (which was emailed over this morning by Mr Woodhouse) shows that 'Immitating [sic] a Religious Event' is a basis for arrest and the first arrest was based on this. The second arrest warrant was based on Article 377 to do with 'adultery' and this is what the Appellant was accused of. At the end of the Appellant's Bundle there is an email from his brother but the Respondent's view is that these are not reliable documents but this was difficult to square with the Respondent's overall position. Finally, there was no CSID issue to argue here because the Appellant had an Iraqi passport which expired in 2019 and so the necessary information in relation to his status can be found there."

25. With that somewhat lengthy exposition, we return to the Judge's findings and to the Appellant's grounds four and five challenging those findings. Before we do so, however, it is necessary to point out that [23] of the Decision begins with the word "Third". That is because it was relevant to the Judge's consideration that there had been a previous appeal. Whilst the claim was very different from that raised in this instance, it remained relevant that the Appellant had been found not to be credible. Dr Al-Ani accepted that the Judge had properly followed the Devaseelan guidance which applies.

26. Taking ground four as pleaded and argued orally before us, the first point which is made is that the Judge was wrong to hold against the Appellant's credibility that he did not know where his passport was. The Appellant must of course have known where that was when he returned from Iraq in 2016 and the Judge was entitled to take that into account. The point made as pleaded is that the passport may be with the Home Office. That is however no answer to the Appellant's evidence that he does not know where it is.

27. In fact, this point was developed rather differently by Dr Al-Ani who appeared to rely on the Appellant not knowing where his passport is to raise an issue in relation to the Appellant's ability to return to Iraq as he would have no CSID. As Mr Tan pointed out, the Appellant's representative at the hearing before Judge Juss conceded that there was "no CSID issue" ([15] as cited above) and the Judge did not therefore have to consider this issue. That could not be an error of law. As Mr Tan submitted, the passport issue was something of "a red herring". In any event, said Mr Tan, the Appellant had admitted he thought during interview that he still had his Iraqi identity documents. Although the Appellant was not asked in interview about the whereabouts of his CSID, he volunteered in answer to question 22 ([RB/220]) that, when stopped at the checkpoint in Iran, he did not have his Iraqi CSID with him because "it was here (in the UK)". That disposes of any point which might be made in that regard. It was not in any event something which was raised with Judge Juss. The Judge was entitled not to believe the Appellant when he said that he did not know the whereabouts of his passport.

28. The next point raised relates to the Appellant's loss of contact with his brother. It is said that it is not clear why the Judge found this to be implausible. That finding however has to be read in context. The Appellant's evidence was that he was in contact with his brother in 2021 when his brother had sent the second arrest warrant but had since lost contact ([9] as cited above). There is an email (untranslated) purporting to be from the Appellant's brother at [AB/22] dated 30 September (no year). That is referred to in the submissions of the Appellant's representative ([15] as cited above). The hearing was a little over six months later. The Appellant offered no explanation save that he "used to call him but could not any longer". He did not say why. There is no mention of this loss of contact in the Appellant's statement dated 18 November 2021 ([AB/4-5]). In those circumstances, the Judge was

entitled not to regard as credible the evidence that the Appellant had lost contact with his brother in the six months since he sent the warrant.

29. The Appellant says that it is not relevant that he travelled to Iraq in 2016 as he did not have a fear of return until the events which he says occurred whilst he was there. That ignores of course that the Appellant had previously claimed that he feared return albeit for different reasons which was relevant to his credibility on this occasion. That is the point being made by the Judge particularly in the context of the Appellant saying that he had intended in 2016 to return permanently.

30. The focus of Dr Al-Ani's submissions in relation to both [23] and [24] of the Decision was on the "assurances" which the Judge thought were between the Appellant's and Q's family. The grounds assert that the Judge has misunderstood the evidence. It is said that the Appellant was released by the police who were holding him due to his lack of Iraqi identity documents. He says that he was not held due to adultery as that was not known until Q returned home and told her family about the relationship. Dr Al-Ani made this submission somewhat differently. He said that there was "no reference anywhere to any assurances between families". We referred him to what is said in this regard at [23] of the Decision. However, he said that this related to assurances between the Appellant's father and the police and had nothing to do with the two families.

31. Having carefully read the interview record ([RB/211-274], the further submissions made on behalf of the Appellant ([RB/8-11]) and the Appellants' statements at [RB/202-203] and [AB/4-5], we consider that the Judge was amply justified in understanding the Appellant's case as he did.

32. In the further submissions dated 5 September 2018, the Appellant's solicitors said this:

> "Our client's threat of persecution is as a result of his relationship with [Q] an Arabic teacher in Iraq. She used to live next door to our client and they would often speak to one another. Their relationship gradually developed when he visited in September 2016 and they had agreed to meet away from home. On one occasion they were driving and came to a check point where they were stopped. They were asked to provide their details which they did. She had already been reported to the police as missing as she would hardly ever leave home and when she did it would be with her parent's consent and they would know where she was.
>
> That information was communicated back to the local police station who then informed the family that she had been located. She was then reunited with her family. Our client was also detained for a short while and after questioning he was released."

33. We observe that this account also supports some of the other inconsistencies relied upon (for example about where [Q] lived relative to

the Appellant). However, we do not need to refer to those as those inconsistencies are not disputed. What this does show however is that the Appellant's case was not (or was not consistently) that he was detained due to lack of identity documents or that the police were not aware of the "adultery" at the time of his detention.

34. The account given by the Appellant at that time is largely consistent with the further submissions letter. His statement is at [RB/202-203] and reads as follows so far as relevant:

> "5. The threat of persecution I am facing is as a result of my relationship with [Q] an Arabic teacher in Iraq. She used to live next door to me and we would often speak to one another. Our relationship gradually developed when I visited in September 2016 and we had agreed to meet away from home. On one occasion we were driving and came to a check point where we were stopped. We were asked to provide our details which we did. She had already been reported to the police as missing as she had to return home by 5.00pm and when she did not it would be with her parent's consent and they would know where she was.
>
> 6. This information was communicated back to the local police station who then informed the family that she had been located. She was then reunited with her family. I was also detained for eight hours at [name of police station] and after questioning I was released."

35. Once again, this is not consistent with what is said in the pleaded grounds that the Appellant was detained at this stage for lack of identity documents because the police did not know of the "adultery" at the time of the detention.

36. Turning then to the interview record, when the Appellant was being asked what had happened to give rise to the risk, he said this (question 22 – [RB/219-220]):

> "Something happened at that time which I didn't believe that it would happen. When you drive back to Arbil, there is a checkpoint there, they stopped us there. They asked me this girl was with me. I didn't have my Iraqi CSID with me it was here (in the UK) they asked for an ID I had a British driving licence. I gave him the licence he had a look, and he told me where this was issued and then he saw the UK flag on the licence. We got out of the car, they questioned us so they made us late. They separated us there, and they kept me. They also kept her. I was asked many questions about [Q], they wanted to know who she was I've told them she was my neighbour and I was taking her home. They kept me there for around 5 to 6 hours. They let her go a little bit earlier, probably about half an hour before they let me go. I didn't know what happened to her, when they let me go I didn't find her at the checkpoint she had gone. Then I asked a police man at the checkpoint, I asked him if he knew what happened to the woman who was with me, he replied and he said we let her go. I became really concerned and I drove home. I was also very scared and I was thinking what to do next. [Q] went home I don't know what her family did to her, they asked her where she had been and why

she was late. When she failed to go home, her mother, her father and her brother wen to the local police station to report her missing. When she returned home they beat her, they asked her where she went too, who she was with and what did she do. She was beaten severely by her brothers, so she confessed to her brothers and told them that she was with me. After that her brothers were looking for me, I didn't stay in father's house anymore. I went to one of my paternal uncle's house, I stayed there and I was petrified. I didn't go out at all. After that I left and I returned to the UK."

37. Whilst we appreciate that this says nothing about assurances, it does give a wholly different account of who detained the Appellant and why. This explanation might support an account that the Appellant was detained due to his identity documents not being in order. However, it does not explain and is inconsistent with the Appellant's earlier account that he was detained by the local police (and not at the checkpoint) and that this was linked to [Q] having been reported missing.

38. By the time of the statement for his appeal dated 18 November 2021, the Appellant's account had changed again ([AB/4-5]) to the following:

> "3. On one occasion, we decided to meet up together away from home. We were driving and came to a checkpoint where we were stopped by the police. They asked for our ID. However, [Q] did not have an ID and we were taken to the police station. We were at the police station for 5 hours.
>
> 4. Before we came out of the police station, her family found out that she was missing. Her family reported this to the police. She was never allowed to leave home alone without her parents consent. The police informed [Q]'s parents that she had been located. She returned home and was questioned by her parents. She was physically abused by her parents as a result of going out with me."

39. That account is a hybrid between the two earlier versions. It suggests that the Appellant and [Q] were detained at the checkpoint but then taken to the local police station. It suggests that they were originally stopped due to lack of identity documents (although notably the Appellant here says that it was [Q] who did not have the right papers). However, it again suggests that the local police were aware by the time of their release that the Appellant was with [Q] and that she had been reported as missing by her family.

40. Of course, none of this is relevant to the "assurances" point but does lay the background to how the "assurances" came to be relevant. In fact, as appears from [12] of the Decision, this point first emerged in cross-examination. The Appellant said that his father came and gave the police assurances. As was pointed out, the Appellant had never mentioned his father being involved or his father having given assurances. The following sentence of that paragraph is then crucial to the Judge's understanding because what is said is that "[a]ll he had said was that his father and her brother came to the police station but there

was no mention of anyone else". As we understand it, that is a suggestion that members of both families went to the police station. We do not know if that is an interpretation problem and what was meant was that her father and brother went to the police station or his father and brother went. Given the lack of prior evidence about any of this, it is perhaps unsurprising that there should be confusion if indeed confusion it was. The evidence which the Judge has recorded at this stage suggests that it was the Appellant's father and [Q]'s brother who attended the police station. In the following paragraph however, the Respondent's Presenting Officer submitted that it was "her father and brother" who went to see the Appellant when he was detained at the police station. Again, though, that would suggest that [Q]'s family were not pursuing the Appellant at that stage.

41. Although we accept that there may have been some confusion arising from the evidence in this regard, due we must say to the way in which the Appellant's evidence emerged, we are unpersuaded that any misunderstanding taints the Judge's conclusions. In other words, we consider it to be immaterial for the following reasons.

42. First, as is clear from the exposition of the evidence above, the Appellant's account has changed over time as to why and where he was detained on the day of the incident he claims occurred. It was therefore open to the Judge to be sceptical of the evidence that the police would be interested in him given that on most of the Appellant's accounts, the police were well aware by the time that the Appellant was released that he had been with [Q] and that her family had reported her missing.

43. Second, the suggestion in the grounds that the police were not aware of the "adultery" at the time of the Appellant's detention and that this was due to lack of identity documents is not borne out even on the Appellant's own account.

44. Third, if as the Appellant now says is the case, the "assurances" were given by his father to the police, it is still not clear (due to lack of evidence) what those assurances were or why they were given.

45. Fourth, and in any event, the "assurances" point is only one of a number of credibility points taken against the Appellant. There are at least five points taken in relation to the Appellant's credibility given inconsistencies in his account and more generally. None of those are open to challenge.

46. Accordingly, we are unpersuaded that ground four discloses any error of law.

47. Turning then to ground five, the warrants are at [AB/6-7] and [AB/9-10]. We assume the first to be the most important as that is closer in date to the incident which the Appellant says occurred. It is also dated 2018 and therefore must be that referred to in the further submissions and the Appellant's first statement.

48. The first point worthy of note is that the translation states that it is "Number 128; Date: 29/11/2016" whereas there is a handwritten note with a name and date of 22nd August 2018. We do not place much weight on that as Judge Juss did not do so. However, the Judge was correct to point out that the content of the warrant is "vague". It does not state the date of the complaint or who made it. It does not state the "behaviour" which we assume to relate to the particulars of the offence.

49. As Judge Juss points out, the Appellant says that the code of the penal law is wrong. Whilst we accept that he does say that it should read "6/372" and not "6/272" (see [8] of the Decision), there is no explanation from the person who translated that document as to why the translation was wrong. That is the point being made by the Judge at [24] of the Decision.

50. In relation to the reference to "authentication", we accept Dr Al-Ani's submission that it would be odd to expect an asylum seeker to apply to the authorities of the country he says he fears to "authenticate" an official document. However, our reading of the Judge's reference at [24] of the Decision (which appears to be taken from the Respondent's decision letter) is as to the lack of any independent evidence about the form of the document. The Respondent had taken issue with the genuineness of the document. She made many of the points which the Judge makes at [24] of the Decision. It was therefore open to the Appellant to provide evidence from a suitable expert as to the form of the document.

51. Importantly, as Mr Tan pointed out, there was no evidence about the document chain from Iraq to the UK. There was no evidence about how he had acquired the first warrant. His evidence (recorded at [9] of the Decision) related only to the second warrant.

52. Finally, we return to the "assurances" point which is made again by the Judge in relation to the lack of plausibility of the police issuing warrants if the families had reached an accommodation. We repeat what we said above in this regard. It is not a central part of the Judge's reasoning. There were ample other reasons for rejecting the genuineness of the arrest warrants. The Judge applied the correct case law to that issue and was entitled to reach the conclusion he did.

53. For those reasons, ground five is not made out.

54. In relation to the protection claim, we return finally to the second ground. The Judge has set out the appropriate test in relation to burden and standard of proof. None of the grounds as raised shows that the Judge applied any different burden or standard to the issues. This case turned on credibility. Giving the "benefit of the doubt" to an appellant does not mean accepting an account which is for good reason found not to be credible. The Judge has provided adequate reasons for rejecting the credibility of the Appellant's account based on inconsistencies and

general credibility issues arising from his circumstances the decision in the previous appeal. Those were all matters on which the Judge was entitled to place reliance. The Judge might have set out the inconsistencies in more detail as we have endeavoured to do above but, ultimately, he was entitled to reach the conclusion he did for the reasons he gave.

Ground One

55. Finally, in relation to the human rights ground of appeal (ground one), the Judge considered the Article 8 claim at [27] of the Decision. Although the Judge treated the Appellant as a vulnerable witness ([18] to [21] of the Decision), there is no indication that the Appellant's representative presented the Appellant's mental health as a claim under either Article 3 or Article 8 ECHR (see summary of submissions at [15] cited above and skeleton argument for the First-tier Tribunal hearing at [AB/1-3]). As is clear from the skeleton argument in particular, a claim under Article 3 (or Article 2) related only to the facts of the protection claim. The Article 8 claim was based only on an interference with private and family life. The Judge considered the claim as made and has given reasons for rejecting it. We can discern no legal error in his approach and the grounds as pleaded do not identify any.

CONCLUSION

56. For the foregoing reasons, we conclude that the grounds do not disclose any error of law in the decision of First-tier Tribunal Judge Juss. We therefore uphold the Decision with the consequence that the Appellant's appeal is dismissed.

DECISION

We are satisfied that the Decision does not involve the making of a material error on a point of law. We therefore uphold the Decision of First-tier Tribunal Judge Juss dated 8 April 2022 with the consequence that the Appellant's appeal remains dismissed.

Signed L K Smith Dated: 24 October 2022
Upper Tribunal Judge Smith