**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-002482**
**First-tier Tribunal No:**
**PA/53667/2021**
**IA/10143/2021**

**THE IMMIGRATION ACTS**

**Heard at Bradford Hearing Centre**
**On the 26th October 2022**

**Decision & Reasons Promulgated**
**On the 03 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**RMA**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Mr T Hussain, Direct Access
For the Respondent: Ms Z Young, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant a national of Iraq of Kurdish ethnicity born in 1999 appeals against the decision of First-tier Tribunal O'Hanlan dated 31st March 2022 which dismissed the appeal against the Secretary of State's refusal to

grant him asylum, humanitarian protection and protection under the European Convention on the 13th July 2021.

2. The appellant's grounds of appeal, which asserted an error of law in the decision noted the appeal was dismissed on the basis of the following reasons:

   (i) The appellant's motivation for not letting the matter rest lacks plausibility given there has never been any suggestion put forward that the cause of the road accident was anything to do with the condition of the road [44];

   (ii) Lack of plausibility that the appellant was allowed a few days off work [45];

   (iii) The appellant was vague as to the identity of the people making the threats [48];

   (iv) The judge found it implausible his employers would not have knowledge of where the appellant lived [49];

   (v) The judge found it implausible he could not access his former Facebook account notwithstanding he had forgotten his password [50]; and

   (vi) The police report named Anwar Majid Hussein yet in his asylum interview he said he only knew the factory owner as Anwar [51].

**Ground 1: unsafe credibility findings**

3. It was submitted that the judge's findings did not withstand scrutiny and the first two findings were simply not open to the judge to conclude. It was not clear on what basis he could find that the appellant would not have been allowed a few days off. Nor was it open to him to find it lacked plausibility that the appellant's parents' death was caused by the condition of the road. This was never put to the appellant, but he has been consistent throughout and it was never disputed his parents had died as a result of a road accident. Even if they had died of a road collision then it is plausible, he would not wish others to die in the same way.

4. These findings on credibility were tainted and infected the rest of the credibility assessment, for example the judge had decided from the outset that his account lacked plausibility and therefore he was not telling the truth about the reasons he left.

**Ground 2: failure to take into account cognitive abilities**

5. Moreover, the appellant had impaired cognitive ability and showed a remarkable consistency throughout. The appellant's purported vagueness as to the identity of the people making the threat would have been seen through this lens but it is not referred to at that point. While the judge did

later refer to the appellant's cognitive impairment, when considering his inability to re-access his Facebook account, even then the judge ignored the fact that Facebook was a highly secure social media site and detailed questions, email accounts etc are needed for re-access to avoid them being hacked. Moreover, given the appellant's cognitive abilities and giving the appellant the benefit of the doubt, the appellant may well have remembered Anwar's full name when he reported the matter but had forgotten it by the time he arrived in the UK and was interviewed under formal conditions without the interviewer knowing he had special needs.

6. Overall, there was a failure to consider the appellant's account with reference to his cognitive impairment.

**Ground 3: failure to Apply SA (Iraq)**

7. The judge was specifically referred to **SA (Removal destination; Iraq: Undertakings) Iraq [2022] UKUT 37** and identified the decision at [37] but then failed to apply it. If he had, then the appellant's appeal should have been allowed under Article 3

**The Hearing**

8. At the hearing Mr Hussain submitted that he relied on the grounds of appeal. There were a series of findings and each individual finding on its own may not be problematic but there were a number of findings, which shown together, constituted an error of law. It was insufficient to state that there was a lack of plausibility and that was not a lawful basis on which to reject the appellant's account. Mr Hussain relied substantially on the written grounds of Ms Cleghorn. Mr Hussain added that the judge should have followed the guidance in **KB and AH (credibility - structured approach)** [2017] UKUT 491. on credibility [28].

9. Ms Young submitted there was no material error on either ground. In relation to ground 1 taking each aspect in turn:

10. It was not that the judge simply found it was not plausible that the appellant would take a few days off work, the reasoning was drawn from the appellant's own evidence. The judge went on to state what was not credible regarding questions, at [45] to [49] including q147 of the AIR and why it was not credible. The judge assessed the facts and referred back to the account of the appellant in the asylum interview and made his findings.

11. The appellant had the opportunity to expand on why his parents had died and presenting his case and I was referred to [43]. The judge had drawn the findings from the account before him.

12. When reading the decision as a whole, the judge made clear and reasoned findings. There was no error of law in the other points raised.

13. In relation ground 2, the judge made reference to the doctor's report at [23], treated the appellant as a vulnerable witness and at [42] made a clear indication that he considered his account in the light of the report and still found that he was not credible. The judge also alluded to the cognitive issues at [50] and applied those to the credibility considerations as a whole.

14. In relation to ground 3 the judge found the appellant had access to his CSID and so enforced return to Baghdad would not breach Article 3. This was based on the judge's findings which were open to him and he would not need to address **SA** further.

## Conclusion

15. The judge set out the appellant's own account in detail at [43] and [44] and it was indeed open to the judge in the context of the findings overall, noting at [36] that he should take into account the background evidence, to give the weight he did to the evidence and make the findings that he did.

16. The judge at [44] was correct to state that there was no suggestion that the parents' death in a road accident was in fact *as a result of* the condition of the road. The appellant at question 126 of his asylum interview merely stated that his "parents had died in a road accident" but there was no further detail of that accident or reasons given for its causation or a link of the accident to the actual condition of the road and thus the judge was entitled to make the finding he did on '*motivation*' in the face of this assertion. There was no assertion of perversity merely that the finding was 'unsafe'. It was within the range of reasonable responses for the judge to reject the motivation of the appellant of acting against the asphalt production when so little detail had been given on this issue. Further, the finding by the judge was one finding amongst a myriad of findings. It was open to the judge to take the approach he did bearing in mind how the case was presented. Even if there could have been further motivation of attempting to stop others from experiencing similar road conditions, in the overall presentation of the case and the context of the remaining findings that that finding was not material. Not every point needs to be put to the appellant given that his claim was set out in detail, and he was legally represented.

17. In relation to the second point, it was not simply that the judge found it not plausible that he had taken some time off work. The judge specifically stated:

> *"At Question 127 of his asylum interview the Appellant stated that he got permission from the factory for a few days off having told them he was quite tired. I do not find this to be credible. On the basis of the Appellant's account there were relatively few operatives at what he describes as a big factory, and it does not seem credible that his employers would let him have time off at*

*short notice because he was feeling quite tired." [my underlining]*

18. The judge made clear and reasoned findings as to why he did not find the appellant's credible, simply that the description of the resources of the factory would not account for someone taking "a few days off" because he was "quite tired". That reasoning was entirely open to the judge, which the judge explained.

19. The judge made a balanced assessment of the appellant's account noting at [47] that he did not take a point on the chronology that the Secretary of State had taken and ignored certain discrepancies which had been corrected in his asylum interview amendments.

20. In relation to the appellant's ability to access his mobile phone the judge made a clear finding that although he accepted the appellant was "somewhat illiterate" and having already noted that the report of Dr Farhy and the doctor's view on the appellant's cognitive abilities as being "rather poor" that the appellant had a facility with such technology. The judge found at [50] "it is clear from the Appellant's own evidence that he had some degree of ability with mobile phones and in particular had a Facebook account both whilst in Iraq and in the United Kingdom which suggests a degree of ability to utilise that forum". In that light it was the judge was entitled to make the findings he did in relations to the appellant's said inability to access his Facebook account.

21. It is also clear that the judge factored in the appellant's cognitive ability when assessing the evidence, specifically setting out the opinion of Dr Farhy and acknowledged that the appellant had "a rather low IQ". Nonetheless the appellant was able to understand the tasks which were given to him in the course of testing and the examination. Against that background the judge, having taken into account that the appellant s should be treated as a vulnerable witness and having taken into account the appellant's cognitive abilities, the judge was entitled to consider that the appellant would be more specific about the identity of the person threatening him bearing in mind that was the basis on which he *"left his life in the KRI as he feared being killed".* The point made by the judge at [51] was that the appellant had not known Anwar's full name not just that he had forgotten. The report to the police station by the appellant giving the full name of Anwar was only a year and 9 months earlier than the asylum interview.

22. The judge however at [53] states that he 'also' noted in relation to that the report was not on any form of headed notepaper and was handwritten. An important point is that the document itself was found to be unreliable on this basis. The judge carefully assessed the evidence in relation to the police report and stated in that regard "*I also note that on the basis of the appellant's own evidence the document was obtained by the appellant's maternal uncle paying a bribe to the police officer involved. I further note that the original document is not on any form of headed notepaper and is*

*also handwritten. Having considered all of these issues I do not find that I can place any weight upon this document*."

23. It was open to the judge to find overall that this unreliable document damaged the credibility of the appellant's account "as a whole". There were numerous points thus, that caused the judge to reject the copy of the police report. The judge applied, as was open to him, **Tanveer Ahmed v SSHD** [2002] Imm AR 318.

24. It was also entirely open to the judge to make an adverse finding against the appellant on the basis that his factory employers would not have knowledge of where the appellant lived particularly given that there are only a few small number of employees at the factory and he had worked there for three months.

25. The judge also noted at [54] that the appellant stayed in Sulaymaniyah five days after the said claimed initial threats were made and although the factory employers were set to be powerful and influential people they were unable to locate the appellant.

26. Finally, the judge repeated at [55], that he had taken all of the evidence into account. He evidently understood the case, directed himself appropriately and applied the lower standard of proof [ 17] to the facts. Having considered all the evidence against the background of the appellant's cognitive issues, which were threaded through the findings in the decision, the judge still found that the appellant's account was vague and inconsistent, and his credibility was damaged overall by the submission of a document found, for cogent reasoning, not to be reliable.

27. A careful reading of the determination does not disclose that the judge made up his mind at the outset and the findings were serially tainted. None of the findings is individually determinative and the complaints do not undermine the findings on a cumulative basis.

28. The decision shows the judge clearly took into account the cognitive abilities of the appellant throughout and considered all of the evidence without adopting a view on credibility overall from the outset. Nothing in the decision contravened **KB and AH**, which guidance contains indicators rather than strictures.

29. Turning to the last ground, the judge made a specific finding against the background evidence and the judge stated at [62] this:

> *"62. I have considered the question of feasibility of the Appellant's return. For the reasons that I have previously given, I have not accepted the Appellant's account and that includes his account that his CSID card and passport were taken from him by the Agent in Turkey. I find that the Appellant's evidence in this respect was to bolster his asylum claim. I find that the Appellant is either in possession*

*of his CSID card and passport or alternatively is able to access the same."*

30. The judge did not find the appellant credible and found the appellant was either in possession of his CSID card or was able to obtain it. This was not a case where the judge considered that the appellant needed to make an application for the issue of a card but clearly the judge found that the appellant was able to access a card that had already been issued to him. The judge found at [64], should the appellant not wish to return voluntarily, that the appellant would be able to travel from Baghdad to his home area without real risk. As **SMO v MO & KSP (Civil status documentation; article 15) Iraq CG** [2022] UKUT 110 states in the headnote:

*'Kurds*

*27. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*

*28. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by air is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*

31. Thus, enforced return to Baghdad from which the appellant could travel on would not breach Article 3. On the judge's findings which were open to him, the judge would not need to address **SA (Removal destination; Iraq; undertakings) Iraq** [2022] UKUT 37 (IAC) further.

## *Notice of Decision*

32. For the reasons I find there is no error of law in this decision and the appeal is dismissed. The First-tier Tribunal decision will stand.

## Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant

and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington Date 2nd December 2022

Upper Tribunal Judge Rimington