IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002563

First-tier Tribunal No: PA/00359/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 19 October 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MMI
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr F Ahmed, Hanson Law
For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 2 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Iraq and of Kurdish ethnicity. He claims to have arrived in the United Kingdom on 6 December 2017. He made a claim for international protection. In summary the appellant and his wife claim they are at risk upon return to Iraq because they had entered into a relationship before marriage that the appellant's wife's family disapproved of. She became pregnant and they married in October 2015. Six months later, in April 2016, their son was born. The appellant's claim for international protection was refused by the respondent on 13 February 2019. An appeal against that decision was dismissed by First-tier Tribunal Judge Obhi for reasons set out in a decision promulgated on 31 May 2019.

2. The appellant and his wife gave evidence at the hearing of that appeal. Judge Obhi found that their evidence was inconsistent in material respects. She found that the appellant and his wife had fabricated their account and it is likely that the appellant and his wife married with the consent of their families, and for their son to have been conceived after their marriage. She found the appellant and his family are not at risk upon return to the IKR and she found the appellant and his wife have identity documents (CSID), which they will be able to access if required to do so.

3. On 21 September 2020 the appellant made further submissions to the respondent. The appellant maintained that he and his family remain at risk upon return to Iraq as his wife's family do not approve of their relationship. The respondent considered new material relied upon by the appellant and although the claim for international protection was again refused, the respondent accepted the claim amounted to a fresh claim giving rise to a further right of appeal.

4. The appellant's appeal against the respondent's decision dated 4 February 2021 was dismissed by First-tier Tribunal Judge Freer for reasons set out in a decision promulgated on 22 March 2022.

5. The appellant claims the decision of Judge Freer is vitiated by material errors of law. Six grounds of appeal are identified. Permission to appeal was granted on all grounds by First-tier Tribunal Judge Beach on 4 May 2022.

6. Before I turn to the grounds of appeal, it is useful to record that the background to the appellant's claim for international protection is summarised at paragraphs [1] to [5] of the decision of Judge Freer. The further submissions and documents relied upon by the appellant are summarised at paragraph [8] of the decision:

> "8. …There was an attack on the house of the Appellant's father in 2019 by armed members of the family of the Appellant's wife. This has been shown in a video clip of 1 minutes 40 seconds' duration which shows footage of the raid including shots fired, filmed simultaneously by four different cameras in fixed positions (as is normal with CCTV). It is reported that the attackers accused the father of sheltering the Appellant and they demanded to know where he is. There is support for the incident as the Appellant's father laid a complaint with the police and there is among other relevant documents, a police report, a police investigation record and an arrest warrant, together with the Judge's statement about it from Ranya

> Court. The police have been unable to apprehend the attackers. It is said that a lawyer obtained these documents."

7. The appellant and his wife again gave evidence at the hearing of the appeal. The evidence of the appellant is set out at paragraphs [19] to] 36]. The evidence of the appellant's wife is at paragraphs [37] to [40] of the decision.

8. At the outset of the hearing before me, Mr Ahmed confirmed the appellant continues to rely upon the six grounds of appeal set out in the grounds of appeal dated 5 April 2022. He submits grounds five and six can be taken together since they both concern the judge's consideration of the appellant's identity documents and the relevant country guidance.

9. Although the decision of Judge Freer could have been better expressed, I have reminded myself of the restraint which an appellate body must exercise when considering an appeal against the decision of a specialist judge at first instance. In UT (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 1095 the Court of Appeal reminded appellate courts:

> "It is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in AH (Sudan) v Secretary of State for the Home Department at [30]:
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> > "Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently.""

Ground 1; the Judge erred in law

10. There are two stands to the first ground. First, in considering the 'video footage' the appellant claims Judge Freer erred in concluding, at [55], that the evidence of the appellant's wife is 'hearsay and carries no weight', and in concluding, at [56], that the footage, on its own, 'has no value'. Mr Ahmed submits 'hearsay evidence' is admissible and the appellant's wife gave evidence. The judge should have considered her evidence on its own merits and it was insufficient to simply say that the video footage has no value. The video footage was free-standing evidence supporting the appellant's claim and Judge Freer should have attached due weight to that evidence.

11. I reject the claim that Judge Freer erred in his assessment of the 'video footage', as claimed by the appellant. I accept the Tribunal Procedure Rules provide that the Tribunal may admit evidence whether or not the evidence would be admissible in a civil trial, and that the overriding objective is to enable the Tribunal to deal with cases fairly and justly. That includes avoiding unnecessary formality and permits flexibility in the proceedings to ensure, so far as practicable, the parties are able to participate fully in the proceedings. Judge Freer recorded at paragraph [40] of his decision that in her evidence the appellant's wife confirmed that she had heard about the attack on her husband's family home from her husband. Her husband had been told of the attack by his brother. The appellant's wife therefore had no direct knowledge of that attack, and in

effect, she was simply repeating what she had been told by her husband. In context, it was plainly open to Judge Freer to conclude that he could attach no weight to the evidence of the appellant's wife in that respect.

12. Furthermore, contrary to what is said by Mr Ahmed, it is clear Judge Freer considered the 'video footage' relied upon by the appellant in its own right. Although not eloquently set out, at paragraph [57], as Mr Williams submits, Judge Freer acknowledges that there is random and organised violence throughout the country. At paragraphs [58] to [60], he went on to explain why the video footage, on its own, has no evidential value. He noted the lack of evidence to establish the provenance of the footage relied upon by the appellant. Judge Freer gave adequate reasons for his conclusion that the video footage on its own, is of no value.

13. The second strand to this ground is that Judge Freer erred at paragraph [72] in attaching no weight to the evidence of the appellant and his wife that they were being hunted, threatened or had been in hiding. The appellant's challenge amounts to nothing more than a disagreement with a finding and conclusion that was open to the judge. Judge Freer, properly noted that the appellant and his wife were previously found by Judge Obhi, not to be credible witnesses. He agreed with that assessment. Judge Freer was entitled to note that there was an inherent inconsistency between the appellant's claim that he was being hunted and was in hiding, but he also claimed he was working as a lorry driver.

Ground 2; the judge made assumptions

14. The appellant claims Judge Freer made an assumption at paragraph [52] that it would be possible to obtain a completed birth certificate from a reputable source regarding the birth of the eldest child in Iraq. The appellant claims Judge Freer also assumed, at [57], that incidents such as the attack on the house of the appellant's family are never filmed, and that he assumed, at [63] and [83], that the appellant's father, brother and uncle had assisted him in 2019 and so they would probably assist him now. Mr Ahmed submits the language used by the judge in the paragraphs identified, demonstrates the Judge made assumptions.

15. There is in my judgement no merit to this ground. The decision of the First-tier Tribunal judge must be read as a whole. The judge considered the evidence now relied upon by the appellant. Judge Obhi had previously made adverse credibility findings against the appellant. That was the starting point for Judge Freer. In an appeal such as the present, where the credibility of the appellant is in issue, a Tribunal Judge adopts a variety of different evaluative techniques to assess the evidence. The judge will for instance consider: (i) the consistency (or otherwise) of accounts given by the appellant at different points in time; (ii) the consistency (or otherwise) of an appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the appellant should be able to adduce in order to support his or her case; and (iv), the overall plausibility of an appellant's account. A judge is not required to take at face value an account of facts proffered by an appellant, no matter how contrary to common sense and experience of human behaviour the

account may be. Read as a whole, Judge Freer explains in his decision why he considers the core of the claim advanced by the appellant is not credible.

Ground 3; the judge erred in fact

16. The appellant claims Judge Freer erred his conclusion, at [60], that the credibility of the 'video footage' is undermined by the absence of any documentary corroboration from the person who extracted the film from the recording. The appellant also claims it is 'absurd' to conclude as Judge Freer did at [62], that the appellant has failed to establish that the documents relied upon by the appellant are reliable because that evidence has not been assessed by a country expert. Mr Ahmed submits no corroborative evidence is required. He accepts there was no evidence before the First-tier Tribunal regarding the provenance of the 'video footage' relied upon by the appellant, and that the only evidence before the Tribunal was evidence in the appellant's bundle establishing that the documents now relied upon were sent to the appellant from Iraq.

17. This ground too has no merit. I accept, as Mr Ahmed submits, that corroboration is not required, but where, as here, there is no good reason why evidence that should be available is not produced, the judge is entitled to take that into account in the assessment of the credibility of the account. The Judge carefully considered the 'video footage' that is relied upon by the appellant to support his claim that his family's home was attacked, but as Judge Freer noted, and Mr Ahmed acknowledges, there was no evidence before the Tribunal regarding the provenance of the evidence relied upon by the appellant. In my judgment, Judge Freer was entitled to have concerns about the absence of evidence to establish who by, how, when and where, the video footage was obtained. Without some evidence confirming the provenance of the footage, as Judge Freer noted, the footage could be of any random attack on a house of the type that frequently occurs in Iraq.

18. In Tanveer Ahmed v SSHD [2002] UKIAT 00439 the IAT confirmed that in asylum and human rights cases it is for an individual to show that a document on which he or she seeks to rely can be relied on and the decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. Judge Freer carefully considered documents relied upon by the appellant in the round, and it was open to Judge Freer to have regard to the fact that there was no evidence before the Tribunal that the evidence is internally consistent with reliable background material.

19. It is clear in my judgement that Judge Freer adopted the correct approach to his consideration of the evidence relied upon. He considered the evidence and whether that evidence is evidence on which reliance should properly be placed, after looking at all the evidence in the round. The weight to be attached to the evidence was a matter for the judge.

Ground 4; Standard of Proof

20. The appellant claims that in summarising the findings of fact, at paragraph [74], Judge Freer states he is "*fairly certain*" that the appellant

has access to help from the three men in his family that live in the KRI. He also said that he was *"almost certain"* that the appellant will obtain the necessary identity documents for himself and his family on return to the KRI. Judge Freer also said he was "*certain"* that the appellant was well-connected enough and well educated to obtain a job in local television and that he can use those connections again to find work. Mr Ahmed submits the appellant was only required to establish his claim for international protection on the 'lower standard', but Judge Freer imposed a requirement of certainty or almost certainty. Mr Ahmed accepts that at paragraph [75], Judge Freer states that he has applied "the low threshold", but he submits, it is not clear from what the judge said at [74] that he has applied the correct threshold.

21. I reject the claim that Judge Freer imposed a higher standard of proof than the applicable 'lower standard' in a claim for international protection. At paragraph [15] of the decision, Judge Freer plainly directed himself properly as to the burden and standard of proof. He noted that it is for the appellant to prove, to the lower standard, that he is entitled to international protection as claimed. Having given himself that direction, reading the decision as a whole, I am quite satisfied that he applied the correct standard of proof. Judge Freer was fairly certain that the appellant continues to have access to help from his father, brother and uncle. The phrases adopted in paragraph [74] are unfortunate but they do not establish that the Judge imposed a higher standard of proof. If a Judge is 'almost certain' about a matter, it does not follow that the judge has imposed a higher standard. It is indicative of the strength of the evidence weighing against the appellant, and establishes that the judge was satisfied beyond the lower standard. Here, Judge Freer confirmed, at [75], that he had applied the lower standard but concluded the appellant has failed to establish his claim.

Ground 5 and 6; redocumentation and the relevant country guidance

22. The appellant claims Judge Freer failed to make any finding as to whether the appellant has access to a CSID or INID. The appellant claims that is material because of the country guidance set out in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ("SMO & Others II"). The appellant claims that as someone of Kurdish ethnicity the appellant will, in accordance with SMO & Others II, be returned to Baghdad and will require his CSID or INID for his journey from Baghdad.

23. Mr Ahmed submits the failure to have regard to relevant country guidance is material to the outcome of the appeal because when Judge Obhi considered the risk upon return in her decision promulgated on 31 May 2019, she did so, based upon the country guidance then in force. Matters have since moved on.

24. Mr Willaims submits Judge Freer properly noted that Judge Obhi had concluded that the appellant has access to his CSID. Judge Freer confirms at paragraph [74 (iii)] that he has no reason to differ with that finding. In any event, the appellant can now be returned to Sulaymaniyah, in the IKR. In SMO & Others II, the Tribunal said, at headnote [30]:

> "*Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.*"

25. The difficulty for the appellant is that as Mr Williams submits, at paragraph [74(iii)] of his decision Judge Freer noted that Judge Obhi had previously found that the appellant has access to his CSID and Judge Freer found no reason to differ. At paragraph [63] of her decision Judge Obhi had clearly found that the appellant has a CSID and that the appellant and his wife have identity documents which they will be able to access if required to do so. She expressly rejected the appellant's claim that he does not have a CSID. Judge Freer also found at [74] that the appellant has access to his father, brother and uncle, who had all helped him in 2019 and that the appellant will be able to obtain the necessary identity documents for himself and his family on return. As Mr Williams submits, if as Judge Freer found, the appellant and his wife have identity documents which they will be able to access if required to do so, there is no reason why the relevant documents cannot be sent to the appellant and his wife in the UK, or why the appellant and his wife could not be met by the family in Baghdad, with the documents.

26. Judge Freer rejected the core of the appellant's account, as had Judge Obhi previously. The appellant is therefore not at risk upon return to Iraq for the reasons he claims. He plainly has access to the relevant CSID documents. They can be sent to him in the UK or the appellant can be met in Baghdad, if that is where is returned, by male members of his family. Any failure to refer to the country guidance in SMO & Others II is therefore immaterial to the outcome of the appeal.

27. Judge Freer comprehensively rejected the claims made by the appellant as set out in his evidence before the Tribunal and in light of the findings made, it was clearly open to the Judge to find the appellant and his wife will have access to the documents they require. I accept Judge Freer does not expressly state that the documents could either be sent to the appellant by his family prior to his return to Iraq, or that he could be met by his family in either Baghdad or Sulaymaniyah, but it was in my judgement sufficient for Judge Freer to find the appellant will have access to documentation. The appellant's claim that he has no contact with his family was rejected. It is sufficient that the appellant has access to the documents. Whether the appellant and his family choose to have the documents sent to the appellant in the UK or to meet the appellant on return, is immaterial.

28. Reading the decision as a whole, it is in my judgement clear that in reaching his decision, Judge Freer considered all the evidence before the Tribunal in the round and reached findings and conclusions that were open to him on the evidence. The decision is to be read looking at the substance of the reasoning and not with a fine-tooth comb in an effort to identify errors. Despite the best efforts of Mr Ahmed to persuade me

otherwise, it is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. A fact-sensitive analysis of the risk upon return was required. In my judgement, the findings made by Judge Freer were rooted in the evidence before the Tribunal. The findings reached cannot be said to be perverse, irrational or findings that were not supported by the evidence.

29. It follows that I dismiss the appeal.

Notice of Decision

30. The appeal is dismissed.

V. L Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber
28 September 2023