IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004029
First-tier Tribunal No:
PA/55028/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 August 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

MWB (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Bundock, Counsel, instructed by Elder Rahimi
For the Respondent: Ms S Cunha, Senior Presenting Officer

Heard at Field House on 3 August 2023

ANONYMITY ORDER

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

Introduction

1. This is an appeal by the appellant against the decision of Judge of the First-tier Tribunal Chana ('the Judge') sent to the parties on 22 May 2022, dismissing his international protection appeal.

Anonymity

2. By an order dated 14 July 2023, Upper Tribunal Judge Keith granted the appellant anonymity and issued reporting restrictions.

3. Neither representative requested that the anonymity order be set aside. I observe that this appeal concerns international protection matters and so I conclude that the appellant's rights protected under article 8 ECHR presently outweigh the rights of the general public to know personal issues arising in this matter, as protected by article 10 ECHR. The order is detailed above.

Brief Facts

4. The appellant is a citizen of Iraq, and of Kurdish ethnicity. He states that he hails from Sulaimaniyah. He is presently aged 27.

5. He entered the United Kingdom clandestinely on 16 July 2018 and claimed asylum on the same date. By means of his original application for international protection he asserted a fear of non-state agents of persecution, namely the PKK. He stated that he worked for the PKK for three months (or alternatively three or five years). He worked under duress as a taxi driver for two members of the PKK before being arrested and subsequently escaping.

6. The appellant was interviewed in 2019 and his claim for international protection was refused by the respondent on 3 September 2019. The appellant appealed against this decision, which was subsequently dismissed by Judge of the First-tier Tribunal Sweet at Hatton Cross. The core of Judge Sweet's decision, dated 29 October 2019, is that the appellant was wholly incredible as to his purported personal history. Several inconsistencies in the appellant's evidence were identified including significant changes as to events said to have occurred. Judge Sweet made adverse findings of fact at [37] to [41] of his decision, observing at [40] that the appellant's account "is wholly lacking in credibility". Ultimately, the appellant was found to be wholly incredible in respect of his asserted activities in Iraq.

7. Judge Sweet held in respect of the appellant obtaining a CSID, at [42]:

> '42. The appellant also claims that he is no longer in contact with his family members, being his parents and his sister. His reason for saying that he was not in contact with them was that if he had

> done so, he would be located through his mobile phone number and through 'spies'. He did not identify those spies, although he claims that the photograph of him on holiday in Turkey (which those who arrested him saw on his mobile phone) made them suspicious that he was a spy for Turkey. I consider this part of his claim to be wholly fabricated. It follows therefore that his alleged inability to return to Iraq, in particular to Baghdad, where returnees are returned, would be feasible because his family could assist him with obtaining a CSID, which is required on return, and then to enable him to travel from Baghdad to Kurdistan or to a Kurdish area. Following the country guidance in **AA (Iraq) [2017]** and **AAH [2018]** he would have the support of family members who could assist him in obtaining the relevant documents for his travel back to his home area.'

8. The appellant served further submissions in April 2021. The respondent accepted that the submissions constituted a fresh claim in accordance with paragraph 353 of the Immigration Rules by a decision dated 30 September 2021. The appeal before this Tribunal flows from that decision.

9. The appellant's appeal came before the Judge on 14 April 2022. The new issue advanced was that he was at real risk of persecution consequent to his online social media activity, in particular through his engagement with Facebook. He stated that he had posted blogs critical of the PKK and additionally that the PKK had an adverse interest in him due to his previous activities in Iraq.

10. The Judge observed Judge Sweet's previous findings of fact and noted the judgment of the Tribunal in *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka** [2002] UKIAT 00702, [2003] Imm AR 1. She concluded that as there was no new evidence relating to historic events in Iraq, Judge Sweet's starting point remained determinative, at [25]

11. The Judge proceeded to consider the appellant's use of social media and found:

> '26. At the hearing the appellant admitted that he began his Facebook account after his appeal was dismissed. When he was asked at the hearing when he started his Facebook account he said that he is not sure but it must have been some six months ago. His disingenuous explanation for opening a Facebook account was that he wanted to prove to the Home Office that he is wanted by the PKK. Therefore, the appellant deliberately and opportunistically began a Facebook account and posted adverse material on the PKK to try and attract their attention. I find that the appellant's motivation for adverse articles and comments about the PKK, was to prove to the Home Office that he is at risk and not because he genuinely has a political profile as it has been contrived.
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> 27. I accept, that even if the appellant's political activities in the United Kingdom are opportunistic and done in order to lay a claim for asylum and humanitarian protection, I must consider whether

his activities will be discovered by the PKK and that this will put him at risk on his return.

28. The appellant said that he set up his Facebook page, with his name and telephone number. When asked why he would put his telephone number on his Facebook account if he was in fear of the PKK, the appellant at first said that he wanted to conceal his telephone number and then said that he forgot. He also explained that one cannot open a Facebook account without one's telephone number. He also said, the PKK can find you anywhere in the world. There is no background evidence before me to say that a person cannot open a Facebook account without a telephone number. Furthermore, if the appellant claims that the PKK can find them anywhere in the world, he accepted that the hearing that no one has been in touch with him.

...

30. The question I have to ask is whether it is reasonably likely that the appellant's Facebook page would come to the attention of the PKK. The appellant's Facebook account was set up some five months ago. The appellant said that he has some 1,600 followers. There is no evidence before me that the appellant's Facebook page would have come to the attention of the PKK in the limited tome that his Facebook page has been operational. [The] appellant does not have a profile in Iraq and that [sic] he is not suspected to be a spy for Turkey. Judge Sweet found his claim that a photograph of him on holiday and that is what made them believe that he is a spy to be totally incredible. Therefore, in all likelihood, he would not eb someone they would be following as so many Kurdish people are against the PKK and have adverse posts about them. There is no evidence before me that the PKK have the resources or the intention to follow all Kurdish people abroad with Facebook accounts.'

12. Having found against the appellant as to the risk of persecution flowing from his use of social media in this country, the Judge turned to whether he could return to Iraq. She found:

'31. The appellant has family in Iraq. His claim before Judge Sweet was that he did not contact his parents because the PKK believes he is a spy and any telephone calls he would have made to his parents would have come to their attention. The appellant has advertised his telephone number on Facebook and therefore the appellant can contact his family who can assist him to obtain the necessary documents. In the skeleton argument that it was stated that the appellant would not be able to appoint a 'nominated representative in Iraq' to facilitate the issue of a Registration Document'. The appellant has paternal family and he would be able to nominate them. The onus is on the appellant to show why he cannot reasonably obtain the necessary documentation.'

13. The Judge proceeded to dismiss the international protection appeal.

14. In respect of article 8 the Judge concluded:

> '38. In order to meet the requirements of paragraph 276ADE(1)(vi), an applicant must show that they are aged 18 or above and that there would be very significant obstacles to their integration into the country to which they would have to go if required to leave the UK. A very significant obstacle to integration means something which would prevent or seriously inhibit the applicant from integrating into the country and were their return would be unduly harsh.
>
> 39. I find that there are no very significant obstacles preventing the appellant from continuing and re-establishing his private life upon return to Iraq. Iraq is the country of his birth and he has spent the majority of his life there. The appellant can fluently speak the language and therefore would be able to reintegrate back into society the appellant's family members can assist you in reintegrating back into society. The appellant came to the United Kingdom and adjusted to this country and therefore he can readjust back to life in Iraq and it would be reasonable to expect him to do so.'

Grounds of Appeal

15. The appellant relied upon two grounds of appeal:

    i) The Judge failed to properly consider the threats he had received by means of social media; and

    ii) The Judge unlawfully considered the ability of the appellant to obtain either a CSID or INID.

16. Upper Tribunal Judge Kamara granted permission to appeal by a decision dated 14 November 2022. She primarily relied upon ground 1 but granted the appellant permission to appeal on both grounds.

17. The appellant filed a skeleton argument the day before the hearing, drafted by Mr Bundock. Whilst it proved a helpful document, I observe that the skeleton argument in respect of ground 2 went beyond the grounds of appeal as drafted. However, as addressed below, I was satisfied at the hearing that the newly identified issue could properly be established as constituting a 'Robinson obvious' point: *R v Secretary of State for the Home Department, ex parte Robinson* [1997] 3 WLR 1162.

Discussion

18. I commence by thanking both Mr Bundock and Ms Cunha for the concise and helpful submissions.

19. At the outset of the hearing Ms Cunha conceded ground 1 observing that the Judge failed to engage with the appellant's case that the social media posts were shared and so failed to lawfully engage with the appellant's case that he received threats consequent to his posts. Having considered

the decision with care, I am satisfied that Ms Cunha properly made the concession.

20. The second ground is identified in short terms at [16]-[17] of the document:

> '16. It is clear, however, from the Appellant's evidence that he does not have any identity documentation. Moreover, he is not in contact with any family members in Iraq. Therefore, even if CSIDs are still being issued in his home area, it is unlikely that he would be able to use a proxy.
>
> 17. Furthermore, the Appellant's family assisted him to escape from persecution in Iraq. Accordingly, they would not facilitate his return by assisting with redocumentation.'

21. Paragraph 16 of the grounds amounts to no more than a restatement of the appellant's case. Judge Sweet found that the appellant was untruthful as to having no contact with his family, and the Judge gave adequate and cogent reasons for finding the same.

22. The assertion identified in paragraph 17 is not located within the appellant's witness statements of 8 April 2021 and 31 January 2022, nor is it recorded as being asserted at the hearing. His case was that he did not know where his family were, not that they would refuse to assist him with redocumentation. It is not appropriate for this contention to be raised for the first time before the Upper Tribunal: *Lata (FtT: principal controversial issues)* [2023] UKUT 00163 (IAC). It should not have been advanced in the grounds of appeal. Ground 2 is dismissed.

23. Mr Bundock raised as a *Robinson* obvious point that where a CSA office has installed INID terminals, it is unlikely to issue a CSID at all, whether to an applicant in person, or to a proxy. Additionally, INID cards can only be obtained by a person attending their home Civil Status Affairs ('CSA') office in person to enrol biometrics. INID cards cannot be obtained by proxy. In the appellant's case, his home CSA office is Sulaimaniyah. Mr Bundock properly observed that these contentions flow from the country guidance decision in *SMO and KSP (Civil status documentation, article 15) (CG)* [2022] UKUT 00110, at headnote 12.

24. Whilst the Judge considered, as did Judge Sweet, the ability of the appellant's family to assist him, I conclude that she did not lawfully take the next step of ascertaining whether the appellant could, at the date of hearing, secure a CSIS/INID in the United Kingdom or Baghdad. I therefore consider that the appellant succeeds on this ground, having established a material error of law.

Remaking the Decision

25. Though mindful that a resumed hearing will usually take place in the Upper Tribunal, I agree with both representatives that the most appropriate course would be for this matter to be remitted back to the First-tier Tribunal. Though I have preserved several findings of fact made

by the Judge, upon careful reflection they are primarily concerned with matters previously addressed by Judge Sweet and subject to the guidance provided in *Devaseelan*.

26. I consider that the core of the appellant's claim in respect of his social media activity has not been fairly considered to date, and additionally there is a likelihood of significant findings of fact to be made at the resumed hearing, with the appellant indicating that he would wish to file further evidence in respect of the ability to secure an CSID/INID with or without the assistance of family members.

27. The parties agreed that the following paragraphs of the Judge's decision are to be preserved: [26] to [28], [31] to [34] and [36] save for the removal of one sentence detailed below.

28. In respect of the article 8 (private life) appeal both [38] and [39] are preserved, though as Mr Bundock observed these findings may be impacted if the appellant secures a positive decision upon the article 3 appeal.

29. As to [26], Mr Bundock accepted that this paragraph was not expressly challenged by the grounds of appeal.

30. In respect of [27], Mr Bundock identified the paragraph as constituting legal reasoning only, but had no objection to it being preserved.

31. [31] to [34] are preserved to the extent that findings made are to be considered in light of *SMO (2)* and further objective evidence.

32. [36] is preserved, save for the last sentence - "It is not accepted that the appellant's circumstances would give rise to a breach of Article 3" - which is set aside. Consideration as to the risk of a breach of article 3 rights remains outstanding.

33. Consequently, the findings at [29], [30] and [37] are set aside, as is the finding at [35] which is understood not to have been addressed before the Judge.

34. The appellant seeks time to secure further objective evidence. It is not normally a matter for this Tribunal to issue directions on behalf of the First-tier Tribunal, but it remains open to the applicant to approach the First-tier Tribunal and request that the resumed hearing be listed no earlier than three months from the sending of this decision and to observe that Ms Cunha, on behalf of the respondent, was supportive of such request.

Notice of Decision

35. The decision of the First-tier Tribunal sent to the parties on 22 May 2022 is set aside for material error of law.

36. The findings identified at paragraphs 27 to 32 above are preserved.

37. This matter is remitted to the First-tier Tribunal sitting at Hatton Cross to be heard by any Judge other than Judge of the First-tier Tribunal Chana.

38. The anonymity direction is confirmed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 August 2023