IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000476

First-tier Tribunal No: PA/52261/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

AHA
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs Johnrose a Solicitor
For the Respondent: Mr Diwnycz a Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 9 August 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 was born on 20 January 1999. He is from Ranya in Sulaymaniyah which is in the Iraqi Kurdish Region (IKR). He is a citizen of Iraq. He appealed against the decision of the Respondent dated 30 May 2022, refusing his international protection and human rights claim. The Appellant appeals against the decision of FtT Judge Malik, promulgated on 17 January 2023, dismissing the appeal.

Permission to appeal

2. Permission was granted by FtT Judge Komorowski on 27 February 2023 who stated:

> "2. An appeal on the grounds advanced has a real prospect of resulting in the First-tier Tribunal's decision being set aside. In particular:
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> a. Paragraphs 15 and 19 of the application criticise the judge's rejection of the credibility of the appellant's account partly based on conclusions as to the inherent unlikelihood of individuals courting certain risks. Those conclusions are, arguably, speculative or irrational given what is known of the range of ordinary human behaviour (for example, that people might act recklessly or irrationally in the context of personal relationships). On the judge's approach, arguably, it is difficult to envisage why anyone would enter an affair that might result in an 'honour killing'.
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> b. Paragraph 32 of the application criticises the judge's rejection of the credibility of the appellant's account on the basis that his alleged persecutor would have located his wife at the shelter, or would have located the appellant in hiding in Erbil, which is arguably speculative or irrational as it arguably presupposes a level of state capacity and efficiency in tracking or tracing individuals that would be unreasonable to expect.
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> 3. Permission to appeal is granted without restriction given the consideration noted in the Joint Presidential Guidance 2019 No. 1: Permission to appeal to UTIAC, para. 48 (second sentence)."

Grounds seeking permission to appeal

3. The grounds seeking permission to appeal stated:

> "**Ground 1 Material Error –Article 3 ECHR - Documentation**
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> 3. The IJ gives no reasons for finding at paragraph 16 that the Appellant will have the required documents to facilitate his return to the IKR, such as his passport and CSID card. The evidence before the IJ is that his passport was taken by the agent. The Refusal letter makes no finding on the availability or whereabouts of his passport or CSID Card. [Rfrl 50 – 51]
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> 4. The tribunal is aware that the Appellant required either a CSID card or INID card, to return to the IKR to avoid a breach of Article 3 ECHR.
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> 5. It is unclear how the IJ has concluded at paragraph 16 that the Appellant will have the required documents to facilitate his return, "**such as his CSID and passport**." Irrespective of whether the Appellant can obtain a laissez passer, the IJ is required to undertake an assessment as to whether the Appellant is in possession of his CSID card and if not whether and how he is able to redocument himself. No such assessment has been made.
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> 6. The finding at 16 strongly indicates that the IJ is finding that the Appellant can be redocumented in the United Kingdom with the assistance of his mother. The tribunal will no doubt be aware that this finding is erroneous. The country guidance cases of SMO and respondents own CPIN make it clear that the Appellant cannot be redocumented in the United Kingdom. He would have to be in possession of the CSID card or INID prior to removal, to avoid a breach of Article 3 in Baghdad.
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> 7. The IJ makes no finding on the evidence that the Appellant's passport and CSID card were taken from him by the agent in Turkey. There is no reason given for this omission. The assessment in respect of documentation is fundamentally flawed.
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> 8. The finding at paragraph 17 is also fundamentally flawed. The Appellant will not return Iraq voluntarily. The IJ fails to engage at all with a principal finding within SMO, and the respondents CPIN, that in these circumstances, the point of return is Baghdad. In omitting to follow country guidance and apply the respondents own CPIN, the IJ falls into material error and further, omits to undertake an adequate assessment of the risk arising to the appellant under Article 3 arising and the fact that he will be stranded in Baghdad.

9. Despite the IJ's reference to the CPIN dated May 2022, there is no cogent evidence before IJ to allow her to depart from the existing country guidance case of **SMO, KSP & IM (Article 15(c); identity documents) CG Iraq [2019] UKUT 400 (IAC) (20 December 2019)** [SMO (1)] and **SMO and KSP (Civil status documentation, article 15) (CG)) Iraq [2022] UKUT 110 (IAC) (16 March 2022)** [SMO (2)] . The Appellant will not be in possession of his CSID card. Consequently, the IJs findings on risk on return and internal relocation are flawed. …

Ground 2- Failure to give any/or adequate reasons and failure to undertake an objective assessment of the evidence.

11. At paragraph 9 (b) the IJ rejects the claimed relationship between Chiman and the Appellant because Chiman was married to his boss who was his boss in the Peshmerga who had killed two of his children in 2016.

12. It is respectfully submitted that the IJ has merely adopted the reasons of the Respondent [paragraph 31 of the refusal letter] and has omitted to undertake an adequate or objective assessment of the evidence before her and has omitted to make findings on material evidence.

13. The Respondent rejected the Appellant's account of his relationship alleging that he had failed to provide a specifically detailed, internally, and externally consistent account of the relationship. [paragraph 30 refusal letter].

14. The tribunal is referred to the evidence highlighted within the skeleton argument at paragraphs 4 and 9 where the Appellant set out extensively, in his asylum interview – and subsequent witness statement - the development and progression of the relationship between him and Chiman. The IJ omits to engage with this evidence and gives no reason for the omission. This approach is erroneous. The approach is unfair and lacks objectivity.

15. The IJ's reasoning for rejecting the relationship and subsequent threats to the Appellant is based substantially on the finding that an individual would not engage in an affair with the partner of a powerful individual.

16. It is respectfully submitted that the IJ points to no authority that supports the conclusion that the partner of any powerful individual would not engage in an extra-marital relationship. The IJ had before her inter alia the CPIN – Iraq : Honour Crimes (March 2021). There is nothing within the CPIN that supports the contention that extra-marital affairs are entered into only by those who are not the partner of powerful individuals.

17. It is incumbent on the IJ to consider all material evidence before her and assess this in the round, against country evidence. It is then incumbent upon the IJ to determine whether it is reasonably likely that the Appellant and Chiman had a relationship, as claimed. This includes consideration of the evidence provided by the Appellant. It is respectfully submitted that the determination lacks an adequate assessment and displays a lack of anxious scrutiny, so as to make the findings on the alleged relationship unsafe.

Ground 3- Unfairness

18. At paragraph 9 (b) the IJ makes no finding on whether the article dated February 2016 related to MAT, yet relies on this to find that the Appellant would not have engaged in a relationship with Chiman because he had killed his children. It is submitted that this approach amounts to unfairness.

19. It is further submitted that the IJ also falls into unfairness at paragraph 9 (c) for the same reason, where the IJ places significant weight on the assertion that the Appellant and Chiman would not have exchanged mobile numbers and the Appellant would not have called her in January 2019 as he would not have known whether MAT was not at home or "*indeed any other members of the household who may have become suspicious*."

20. Notwithstanding the material fact that there was no evidence before the IJ that anyone other than Chiman, her child and MAT resided at the house, therefore it is unclear to whom the IJ is referring when stating "*indeed any other members of the household*," – more importantly, the IJ did not raise this with the Appellant as a matter of concern.

21. If the IJ is to place such significance on this issue, the Appellant ought to have been given the opportunity to address this concern. The IJ has penalized the

Appellant for not addressing a factor that was not put to him at all. This amounts to unfairness.
22. At paragraph 9 (3) it is respectfully submitted that the IJ has again fallen into unfairness.

Ground 4 – Failure to consider material evidence

23. There was no evidence that MAT required the presence of bodyguards for his home or for his spouse. Yet, no consideration is given to the evidence paragraphs 10 -11 of his witness statement and AI 52; 53 and 55
24. The IJ's approach to the Appellant's evidence displays a propensity to disbelieve everything that he has stated, without undertaking an objective assessment of his evidence and failing to make any findings on the material evidence, except that which is relied upon to make adverse findings on his claim. It is submitted that this approach amounts to unfairness.
25. The IJ seemingly accepts only that the Appellant was a Peshmerga and worked for MAT.
26. At paragraphs 9 (f), (g), (h), Moreover at paragraph 9 (g) the IJ gives inadequate reasons. The IJ was referred specifically to the extensive evidence provided by the Appellant in the skeleton argument where he addresses the points at 9 (f) to (h). The IJ gives no reason for this omission. The findings therein cannot be considered safe.
27. In respect of the divorce issue, at paragraph 9 (i) the IJ has not taken account of the Appellant's evidence on this specific point. The tribunal is referred to the record of proceedings where it was clarified that Chiman did not ask for a divorce directly from MAT. There was no evidence before the IJ that Chiman had already asked for a divorce prior to escaping to the shelter. The evidence is that the intention was that the shelter would facilitate the divorce and after the divorce Chiman would seek permission to marry the Appellant. There is no reason given for omitting to consider this evidence.
28. At paragraph p(i) the IJ again omits to consider material evidence as to why the Appellant had his passport on his person. This arising from the material fact that he was leaving the area with no intention of returning there but with the intention to get married at a later date. The IJ gives no reason for omitting to engage with this evidence. The IJ concludes that the possession of his passport has the hallmarks of a pre-planned trip. It is respectfully submitted that the Appellant's evidence was that he and Chiman had a pre-planned trip, that being to leave the area of Ranya. It is submitted that again, the IJ displays a propensity to disbelieve everything stated by the Appellant save for that which the IJ relies on to make negative findings and omits to consider the material evidence and make an assessment of the evidence.
29. At paragraph 15 the IJ again omits to consider the oral evidence concerning his Facebook account. The tribunal is referred to the record of proceedings where the Appellant stated that he "Tried to get his old account but he had lost the details", and that he used to use Facebook to contact Redwar when he was in Kurdistan but had lost the details so could not get back his old account and that he had never set up a Facebook account himself. The IJ omits to make any findings on this evidence and gives no reason for the omission.

Ground 5 – Mistaken facts and Speculation

30. The IJ relied on a mistaken fact that Chiman had asked for a divorce prior to leaving for the shelter. That was not the mistake of the Appellant nor his representatives. The IJ's finding on this point is unsafe.
31. The IJ makes a further mistake of fact at paragraph 9(j). There is no evidence to support the IJ's finding that the women's refuge gave his name or disclosed the relationship to anyone. It is unclear why the IJ records this as a reason for disbelieving the Appellants evidence about the refuge. This finding is unsafe.
32. At paragraph 9 (k) the IJ falls into speculation. There is no evidence to support the IJ's finding that MAT would have been aware where his wife was staying, by the time the Appellant attempted to take her out of the refuge. Moreover, the IJ's finding that MAT would have been able to find him in the 2 days that he was in hiding in Erbil, given the circumstances at the time, is pure speculation.
33. It is unclear what point the IJ is making at paragraph 14 where it states that the Appellant can write a letter to his home address."

The First-tier Tribunal decision

4. The Judge made the following findings:

> "9. I accept "honour" killings take place in Iraq/IKR, yet having considered the appellant's account, I find he has fabricated the core of his claim to form what I find to be a false asylum claim, for the following reasons:
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> a) In summary, the basis of the appellant's claim is that he was a Peshmerga from May 2017, based in Rania. He claims he had a relationship with Chiman, the second wife of MAT, his boss who was a Brigadier in the Peshmerga and a powerful individual in the IKR. The appellant claims he was a bodyguard for MAT, who asked him to deliver items to his home in August/September 2018 and take his wife Chiman for appointments etc.; thereafter, he claims, he and Chiman embarked on a friendship, and then a relationship in March 2019. The appellant also claims Chiman was in an abusive relationship with MAT.
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> b) Whilst I accept relationships do occur where one party is married, I do not find it reasonably likely that the appellant did enter into a relationship with Chiman given she was the wife of his boss in the Peshmerga, that either of them would have considered it safe to embark on a relationship in MAT's home – even if he was not present at the time - or that the appellant or Chiman would have entered into such relationship given the appellant claims MAT was responsible for the murder of two of his own children - and that he was aware of this prior to embarking on his claimed relationship with Chiman. If as the appellant claims MAT did kill two of his own children and injured another - for which he has provided a newspaper article dated in February 2016, but which does not name MAT - I do not find it reasonably likely the appellant would have considered he and Chiman could have had a future together once she had divorced MAT and could have remained living in Iraq/IKR given his claim that MAT is a powerful individual.
>
> c) I do not find it reasonably likely that having exchanged mobile numbers that the appellant would have considered it safe to have messaged Chiman in January 2019 as he could not have known, at the time, that MAT was not home or indeed any other members of the household who may have become suspicious.
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> d) I further do not find it reasonably likely that even if the appellant did feel sorry for Chiman because of his claim that she was being physically abused by MAT, that he would have developed a friendship with her, text message her or comforted her knowing that her husband, his boss, was, as per his claim, a powerful and dangerous individual who had previously killed family members. I also do not find it reasonably likely that if MAT was out of town, given that he himself required a number of bodyguards, that he would have left his wife and disabled child (who the appellant made no mention of in his asylum interview (AI)) alone in the home such that the appellant would have been able to visit the house in the middle of the night without coming to the attention of others.
>
> e) Further as the appellant claims Chiman had already been a victim of domestic violence at the hands of MAT, I also do not find it reasonably likely that she would have taken the risk of embarking on a relationship with one of her husband's bodyguards knowing her husband was capable of physical violence and presumably, like the appellant, she too was aware of the appellant's claim that her husband had previously killed his own children.
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> f) The appellant claims Chiman suggested she would first divorce MAT, then live an independent life; during this time, they would keep their relationship secret and then discuss getting married with her family. The appellant claims they hoped they could go far away from MAT - but I do not find this reasonably likely given the appellant's claim of MAT as a powerful individual, as neither the appellant, nor Chiman, could have had any expectation whatsoever, that they would be able to leave the country with Chiman's disabled child to escape MAT.
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> g) Given the appellant claims he cannot return to the IKR because it is a small place, and he would be found, this would also have applied had he and Chiman sought to live there together once she had divorced MAT. I also do not find it

reasonably likely, if as the appellant claims, Chiman was married to MAT because of a blood feud, that it would be as simple as divorcing him without there being any repercussions - or that either of them could have envisaged a scenario whereby they would eventually be able to marry without reprisals from MAT.

h) The appellant stated at AIQ71 that he had not told anyone about his relationship with Chiman. He claims they agreed to keep their relationship secret. If this is so, there is no reasonable explanation as to why in August 2019 he claims he told his friend Redwan about the relationship. Equally if MAT is a powerful individual in the Peshmerga, I do not find it reasonably likely that Redwan, who the appellant claims is also a Peshmerga, would have actively involved himself in helping the appellant, Chiman and her disabled child by taking them to a women's refuge in Erbil.

i) The appellant claims he left Chiman at the woman's refuge and went to stay in a hotel. The appellant claims the intention in the going to the woman's refuge was to seek their assistance in Chiman obtaining a divorce – but the appellant stated at AIQ101 that Chiman had asked MAT for a divorce. If this was so, there is no reasonable explanation as to how then Chiman was able to leave her home and travel to Erbil to the woman's refuge, as presumably MAT would have been enraged by her request.

j) The appellant claims MAT then called him on 10/08/19 as he had discovered his relationship with Chiman and he threatened to kill him. The appellant claims MAT was told by Chiman's aunt of the relationship. Again, I do not find it reasonably likely, given the potential for both the appellant and Chiman to come to harm if MAT found out about their relationship, that Chiman would have told her aunt (or that the woman's refuge would have given his name/disclosed the relationship if their very purpose was to help and protect woman); nor do I find it reasonably likely, if Chiman had told her aunt, that her aunt would have told MAT and so placed both her niece and the appellant in danger.

k) The appellant claims thereafter he attempted to collect Chiman from the woman's refuge. I do not find this reasonably likely as MAT would have been aware that his wife was staying there by now - and by the appellant attending there in person this would have placed him at risk of being apprehended by MAT. Further the appellant claims, prior to leaving the country, he was in hiding in Erbil. Again, if MAT is as powerful as the appellant claims, such that he was not, the appellant claims, prosecuted by the authorities for killing his children, he would be able to locate the appellant; there is no reasonable explanation as to why he did not do so whilst the appellant was in Erbil, which causes me to find the affair with his wife did not take place as claimed.

l) The appellant claims the woman's refuge then refused to hand over Chiman as he was not part of her immediate family. He claims, again with the help of his friend Redwan, he then went into hiding. I do not find it reasonably likely that Redwan would have again assisted the appellant in leaving the country - more so as by now the appellant claims MAT was aware of the claimed relationship with Chiman and had made threats to kill. If MAT is as powerful as the appellant claims, this would have placed Rewan at risk of serious harm. I also find the appellant, in leaving the country with his own passport with visa for Turkey, a matter of days after he claims MAT threatened him, that this has all the hallmarks of a pre-planned trip and not one made in haste to save his life, as there is no reasonable explanation as to why the appellant would have been carrying his passport when he claims he went to Erbil to take Chiman to the women's refuge - other than it was always his intention to leave the country for reasons other than protection. He would not have needed his passport at checkpoints in the IKR as a valid Iraqi passport is not recognised as acceptable proof of identity for internal travel. Further if MAT what looking for the appellant and is as powerful/dangerous as the appellant claims, there is no reasonable explanation as to how the appellant was able to leave the country safely through an airport using his own passport without being apprehended. This too causes me to find the appellant did not have a relationship with Chiman, nor is he at risk from MAT because of it.

10. Consequently, for all the reasons given in this decision, I find the appellant's account incredible and find he would be at risk on return to Iraq/IKR for any of his claimed reasons.

Internal relocation

11. For the reasons set out in this decision, I find the appellant is not at risk on return to the IKR for any of his claimed reasons. That being so, I find relocation is not an issue as he can return to his home area and resume his life there with his family. With reference to Article 15 c, the evidence does not suggest it is engaged in this appeal.

Feasibility of return

12. Turning next then to feasibility of return, the onus is the appellant to evidence why he is unable to obtain the required documentation to return to Iraq/IKR. Lack of documentation does not of itself form the basis of a finding of protection.

13. The appellant says he has his mother and two younger siblings in the IKR. He does not claim they have moved from their home address, believes they still live there - but claims to have lost contact with them. He says they are not on social media. He also has paternal and maternal uncles and aunts. There is nothing to suggest his family will be unable to accommodate and support him on his return.

14. He says he is on Twitter, Snapchat and Instagram, but claims to no longer use Facebook; he claims he has tried to contact Redwan and to contact Chiman through the Red Cross, but they did not give him anything. As the appellant was able to give details of the street where the woman's refuge is located in Erbil at AIQ99 and claims he went there himself on at least two occasions, I find this claim to lack credibility. Whilst the appellant claims he hoped to ask Chiman about his family, there is no reasonable explanation as to why he could not write to them given he will know his own home address.

15. The appellant claims he has tried to set up a new Facebook account in the UK to search for Redwan, but if this is so, there is no reasonable explanation as to why he cannot reactivate his existing Facebook account with new login details. I find his claim not to know how to do so is merely an attempt to thwart his removal – and even if he does not have the skills to do so, there is also no reasonable explanation as to why he did not, or could not, now ask someone in the UK to assist him. Consequently, I find the appellant has not provided a credible account of losing or not being in contact with his family or friend in the IKR.

16. The appellant says he has his Iraqi national certificate (which will prove he is an Iraqi national) and ration form in Iraq (AIQ30). Given I have found his claim to lack credibility, I find he will have the required documents to facilitate his return, such as his CSID and passport. His family can also send him his Iraqi national certificate from which he can then obtain a laissez passer for his return travel to the IKR. The onus is the appellant to show why he cannot reasonably obtain the necessary documentation and I find he has not.

17. Also, the respondent's CPIN Internal Relocation, Civil Documentation and Returns, Iraq May 2022. (Version 12) at paragraph 2.6.3 says failed asylum seekers can now be returned to any airport in Federal Iraq and the IKR. Paragraph 2.6.8 says "*Those persons whose return is feasible and who would arrive in Iraq or the KRI in possession of a CSID or an INID, or could be provided with an original or replacement document soon or shortly after arrival, would be able to return to their home government via the various security checkpoints and are, in general, unlikely to encounter treatment or conditions which are contrary to paragraphs 339C and 339CA (iii) of the immigration rules/Article 3 of the ECHR"*. The CPIN indicates the appellant can be removed direct to the IKR, where he has family who will be aware of the page/family book details; such family can meet him at the airport and attend with him at the CSA office to obtain a new INID if required. This I find would not place him at risk of harm.

Appendix FM, Paragraph 276ADE (1) and Article 8

18. The appellant does not meet the requirements of Appendix FM as a partner or parent. Due to his age/time here - and that he is aware of the language, customs and culture in Iraq/IKR and has family there, I find there would not be very significant obstacles to his integration on return. I find Article 8 family life is not engaged as the appellant has no family in the UK. I heard no evidence of any

private life. There is no medical evidence before me to suggest any medical condition the appellant may have is of such severity as to engage Articles 3 and/or 8."

Rule 24 notice

5. The Rule 24 notice stated that;

"3. In granting permission, learned Judge Komorowski, in his paragraph 2a, stated the following;-
"*On the judge's approach, arguably, it is difficult to envisage why anyone would enter an affair that might result in an 'honour killing'*. "
While that observation is perfectly correct, it does not in of itself prevent any judge arriving at that conclusion, given the same evidence presented to them. The learned Judge of the FTT weighed the claim carefully and diligently, and arrived at a conclusion regarding the appellant's credibility in respect of his claimed relationship, and the threats to him, which was within the spectrum of findings open to any reasonable judge weighing those self-same claims. .... the learned Judge's findings from paragraphs 12-17 of the decision, deal more than adequately with the feasibility of return to the IKR.
4. At paragraph 2 b of his permission, Judge Komorowski states thus:-
"*b. Paragraph 32 of the application criticises the judge's rejection of the credibility of the appellant's account on the basis that his alleged persecutor would have located his wife at the shelter, or would have located the appellant in hiding in Erbil, which is arguably speculative or irrational as it arguably presupposes a level of state capacity and efficiency in tracking or tracing individuals that would be unreasonable to expect*."
Once more, while that observation is perfectly correct, it is something of a double-edged sword in respect of the capability of the alleged persecutor. If he ,or the state, do not have a "*pre-supposed level of capacity and efficiency*…", then the claimed risk to the appellant is not made out. If the capacity and efficiency did exist as claimed, then it must not have been set in train by the persecutor, else the appellant would have been located, as he claimed he would have been. The appellant is seeking to reargue a point which would appear to be unarguable, to wit, taken either way, either the alleged persecutor did not have the effective means to find him, or he did not invoke those means if indeed he did have them. Either way, the claimed risk to the appellant falls away, even if he is to have been believed on the nature of the relationship.
5. Regarding that relationship, at 9 k) of the FTT decision, as reproduced below: (my emphasis) –
k) The appellant claims thereafter he attempted to collect Chiman from the woman's refuge. I do not find this reasonably likely as MAT would have been aware that his wife was staying there by now - and by the appellant attending there in person this would have placed him at risk of being apprehended by MAT. Further the appellant claims, prior to leaving the country, he was in hiding in Erbil. Again ***, if MAT is as powerful as the appellant claims****, such that he was not, the appellant claims, prosecuted by the authorities for killing his children, he would be able to locate the appellant; there is no reasonable explanation as to why he did not do so whilst the appellant was in Erbil, which causes me to find the affair with his wife did not take place as claimed.*
It is submitted that the finding of the Judge has been misapprehended in some way in the grounds submitted. It is the claim of the appellant that his alleged persecutor, MAT, was a powerful individual, whom the appellant claimed could have found him, and Chiman. The learned Judge examined the claimed threat to the appellant from that basis, and found that if matters were as claimed, then MAT would have been able to find the appellant and Chiman. Clearly, the Judge did not find the appellant or Chiman to have been in the relationship as claimed. That leads inexorably to the finding that MAT would not have any interest in, or any need to use or abuse his

> allegedly extensive powers in tracking either or both of them down, in the absence of any relationship which it is claimed would precipitate such action by him."

Oral submissions

6. Mrs Johnrose added regarding Ground 1 that **SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 00037 (IAC)** headnote (v) was relevant as;

> "In Iraqi protection appeals, enforced removal is only currently possible to Baghdad International Airport because the authorities of the IKR only accept voluntary returnees. Where P might safely return voluntarily to the IKR, that is determinative of the 1951 Convention ground of appeal (against him) but is irrelevant to the human rights ground of appeal, since the focus can only be on the safety of P's enforced removal to Baghdad."

7. In relation to [17] of the judgement and the observation regarding the Respondent's CPIN on Internal relocation, Civil Documentation and Returns, Iraq May 2022 (Version 12) at [2.6], there is no authority to support the contention that this relates to those forced to return. The Judge should have considered only forced removals. The Respondent's refusal letter states at [62] that "Your travel to Iraq will not require you to travel via Baghdad therefore when you arrive at the border of the IKR you will be required to be screened before being granted access to the territory." The Judge should have made a finding as to where his CSID was as explained in **SMO(2)** and erred regarding his family's ability to meet him at the airport. The Judge should have considered [2.6.9] of the May 2022 CPIN which states that;

> "However, those who return to Iraq or the KRI without a CSID or INID, cannot obtain one via a family member on arrival and who would be required to travel internally to a CSA office in another area of Iraq or the IKR to obtain one would be at risk of encountering treatment or conditions which are contrary to paragraphs 339C and 339CA(iii) of the Immigration Rules/Article 3 of the ECHR."

8. Regarding Ground 2, Mrs Johnrose added that the Judge did not refer to the Appellant's statement at [10 to 24] regarding the relationship. The judgement does summarise the evidence but does not give adequate reasons for rejecting the Appellant's account.

9. Regarding Ground 4, Mrs Johnrose added that the Judge did not refer to the oral evidence as noted by Counsel that she only spoke to Rebwar, a close friend who she trusted and was a Peshmerga, about the relationship in order to find a solution, Rebwar introduced them to the organisation for help with the process, and she never asked MAT directly for a divorce. The Judge would not have made the finding in [9(i)] if this evidence had been taken into account. The Judge has not considered the screening interview at [1.8] that the Appellant's passport was in Turkey as he lost it there, as clarified in the Solicitor's email of 18 April 2020 that it was lost there as it was taken by the agent. He had the document going to the refuge.

10. Regarding Ground 3 and 5, Mrs Johnrose added nothing to the written grounds.

11. Regarding the Rule 24 notice, the sole reason for rejecting the account is that MAT was a high ranking individual. There was no evidence before the Judge to show MAT would have known the Appellant's whereabouts at the time of the phone call referred to in the substantive interview at q107.

12. Mr Diwyncz submitted that there was no material error of law. The decision is lengthy and excoriating. If MAT was as powerful as claimed he would have dealt with the Appellant as brutally as was feared. A Home Office Circular from November 2022 was disclosed to the Tribunal stating that returns to the IKR can be on a Laissez Passer. A CSID is not required for internal travel in the IKR. He is not sure if the Circular was shown to the Judge. It is known. It adds to **SMO(2)**.

13. Mrs Johnrose responded that the Circular referred to by Mr Diwyncz was not referred to the Tribunal.

Discussion

14. There are numerous authorities that confirm that;
    (1) the weight of competing evidence is pre-eminently a matter for the trial Judge as is the credibility of oral testimony (see for example **Perry v Rayleys Solicitors [2019] UKSC5**),
    (2) Judicial restraint should be exercised when the reasons that a Tribunal gives for its decision are being examined (see for example **R (Jones) v First-tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19**),
    (3) the Upper Tribunal was only entitled to interfere with findings in fact made by the First-tier Tribunal if those findings were infected by some error of law (see for example **YZ v Secretary of State for the Home Department [2017] CSIH 41**),
    (4) the mere fact that one Tribunal reaches what may seem to be an unusually generous view of the facts of a particular case does not mean that it has made an error of law (see for example **Mukarkar v Secretary of State for the Home Department** [2006] EWCA Civ 1045), and
    (5) it is generally unnecessary, unhelp and unhealthy for First-tier Tribunal judgements to seek to rehearse every detail of issue raised in the case (see for example **Budhathoki** (reasons for decision) [2014] UKUT 00341).

15. I am not satisfied that the Judge materially erred in relation to Ground 1 for the following reasons. Contrary to that asserted in the grounds, the Judge did make a finding as to where the Appellant's CSID was. He has it - see [16] of the decision. As will be seen shortly, the Judge gave adequate reasons for rejecting the Appellant's credibility throughout the findings section of the decision and therefore finding he will have the

required documents to facilitate his return, such as his CSID and passport, and his family can also send him his Iraqi national certificate from which he can then obtain a laissez passer for his return travel to the IKR. He would be able to therefore be forcibly removed to Baghdad and can safely return to the IKR where he would be admitted in line with **SMO(2)** Headnote 7 and 10. **SA** does not therefore assist, and the concern as to whether the Judge should have considered the November 2022 Circular was therefore irrelevant.

16. I am not satisfied that the Judge materially erred in relation to Ground 2 for the following reasons. The Judge did not base the conclusions on the inherent unlikelihood of individuals courting certain risks. Nor did the Judge simply adopt the Respondent's concerns. The Judge considered the Appellant's evidence and gave numerous reasons at [9(b) to (f)] for finding it was not reasonably likely that this relationship had occurred, namely his employment, MAT's role power and reputation, Chiman being an alleged victim of domestic violence to MAT, and the lack of a future. Contrary to that which was asserted, the Judge did summarise the claimed development of the relationship (see [9 (a)]). The Judge did not have to give more detail than was recorded. This finding was therefore open to the Judge and the grounds are merely a disagreement with it.

17. I am not satisfied that the Judge materially erred in relation to Ground 3 for the following reasons. There is nothing in [18] of the grounds as by saying that that the Appellant would not have entered the relationship as MAT had killed his children, the Judge took the Appellant's claim at its highest. The Judge did not therefore act unfairly in that regard. Nor did the Judge act unfairly regarding the finding it was not reasonably likely the Appellant would have messaged her as he could not have known MAT was not at home. Whether or not there were any other house members was irrelevant as the threat was from MAT. It was an unnecessary remark from the Judge but of such secondary concern that it was not material to the principle finding on that point given the claimed threat from MAT.

18. I am not satisfied that the Judge materially erred in relation to Ground 4 for the following reasons. The Judge does not have to recite every piece of evidence (**Budhathoki**), gave a more than adequate summary of the Appellant's case, and gave adequate reasons for rejecting that throughout [9] all of which are sustainable. In particular, the grounds at [24] are disingenuous especially when considering what the Judge accepted as conceded in [25] of the grounds. It would have been better if the Judge had referred to the oral evidence of not asking MAT directly for a divorce and regarding the Facebook account, but as the Judge had comprehensively rejected the account of the relationship, its omission was not material.

19. I am not satisfied that the Judge materially erred in relation to Ground 5 as the Judge was entitled to make the finding he did regarding the refuge in the decision at [9(i)]. The concern regarding the divorce has been dealt with at [18] above.

20. In summary the grounds amount to nothing more than a disagreement with findings the Judge was entitled to make on the evidence and for which more than adequate reasons were given. The findings and conclusions are not speculative or irrational.

Notice of Decision

21. The Judge did not make a material error of law.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 August 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.