IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001712

First-tier Tribunal No: PA/54502/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

2nd October 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

RFM
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Wood, Immigration Advice Centre (Manchester)
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 11 September 2023

DECISION AND REASONS

1. The appellant is a citizen of Iraq born on 26 May 1993, from Sulaymaniyah. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claims.

2. The appellant arrived in the UK on 5 July 2019 by lorry and claimed asylum the same day. He claimed to be at risk on return to Iraq as a result of problems arising

through his work, in his father's company, Halwa, in quality control of petrol coming from Iran into Iraq, where he worked with the Iraqi customs.

3. The appellant claimed to have represented, on many occasions, a company called Ninkas, in particular a branch of the company called Petrolestan run by three businessmen, in their import of petrol into Iran, and to have encountered no problems with them. He would pay the duty for the petrol tanks and complete a quality control test to see if the petrol was 'safe'. However in May 2017 he had had to fail the company on a quality control test of the petrol they were importing into Iraq in petrol tankers, as a result of which their lorries and petrol tankers were unable to cross the border into Iraq. The appellant claimed that Ninkas businessmen then went to a different company which they bribed to approve the petrol and demanded that he handed back the paperwork, which he did. The tankers were then able to enter Iraq. The appellant claimed that he contacted Asayesh and the KNN TV Channel to tell them about what had happened with the petrol tankers, following which Qubad Talabani, the Deputy Prime Minister of the KRG, gave assurances to the nation that the petrol tankers would be seized and the three businessmen involved in Ninkas punished. The tankers were then seized at a checkpoint and eventually returned to Iran.

4. The appellant claimed that Qubad Talabani and the three businessmen were in fact secretly partners and Qubad Talabani made sure that the Ninkas company was not fined and was not closed down. The appellant claimed that he continued his work in customs. He received calls from the businessmen requesting $3 million from him as that was the money they had lost as a result of the company within Iran not accepting the fuel back from Ninkas. He told them that he did not have the money and that he had not reported Ninkas himself and he then heard nothing for three months until July 2017 when they contacted him again with the same request and continued to make threatening telephone calls over the next year and a month. The appellant claims that shots were fired at him on 25 August 2018 and he believed that that was a message from the three businessmen. He went to the police but they did not do anything. He fled Iraq six days later, on 31 August 2018 using a visa to enter Turkey. The appellant claimed that in December 2021 his brother was kidnapped and thrown off the eleventh floor of a building. He feared the armed group working under the PUK because of the connection between the Ninkas company and the PUK.

5. On 24 September 2022 the appellant made further submissions claiming to be in a relationship with an Iraqi woman, NM, whom he had met on his way to the UK from Turkey and who had been granted refugee status in the UK on 30 June 2022 for 5 years. He claimed that her husband was a policeman in Sulaymaniyah and that he was at risk from her husband if he returned to Iraq.

6. The respondent refused the appellant's claim on 6 October 2022. The respondent accepted that the appellant was an Iraqi national of Kurdish ethnicity and accepted that he had worked in customs at Halwa Company. However the respondent considered that the appellant's claim did not engage the Refugee Convention and rejected his claim to have attracted adverse attention as a result of his role in customs. The respondent considered that the appellant had failed to explain what intervening events had led to a change to Ninkas in attempting illegal activities and considered that the account he had given was inconsistent, in particular in regard to whether the tankers were able to enter into Kurdistan or were returned to Iran. The respondent considered that the appellant's claim that the three businessmen were behind the shooting incident was based upon speculation, particularly given the fact that a year had passed. The respondent did not accept the appellant's account of his brother being thrown off a building as the account was inconsistent. The respondent

considered further that the appellant would not be at risk from NM's husband as it was not reasonably likely that his personal details or his travel into Iraq would be traceable and it was not likely that he could be identified by him. The respondent rejected the appellant's claim and concluded that he was at no risk on return to Iraq. The respondent considered that the appellant was able to obtain documentation to return to the IKR, that he was not entitled to humanitarian protection on that or any other basis and that his return to Iraq would not be in breach of his human rights.

7. The appellant appealed against that decision to the First-tier Tribunal. His appeal was heard by First-tier Tribunal Judge Hands on 20 March 2023. The judge heard oral evidence from the appellant and considered the documentation before her. She did not find anything in the documents produced by the appellant to link him to the reports of the analysis of the petrol in the tankers and accordingly she did not consider the appellant's claim, that the Ninkas bosses had looked to him to meet their financial loss, to be truthful. The judge viewed a video of a news article produced by the appellant showing the number plate of a lorry carrying petrol which matched one of the lorries on the list presented by the appellant and which was said to support his claim, but she considered that the information therein was not consistent with the appellant's own account. She found, therefore, that the video and transcript were of little evidential value. The judge concluded that there was insufficient evidence within the documentation to show that the petrol tankers belonged to a company called Ninkas or to show that the appellant was himself involved in the tankers being returned to Iran. She also found that there was no evidence from the appellant linking Qubad Talabani to Ninkas, other than his own suspicion, and noted that there was no reference to the company recorded on the paperwork as owning the tankers, Petrolestan, being punished. With regard to the appellant's account of his brother being pushed off the eleventh floor of a building, the judge did not consider that account to be consistent with the medical report which detailed the injuries suffered. She accordingly rejected the appellant's account of the incident involving the petrol tankers and his account of being threatened and shot at.

8. The judge also rejected the appellant's claim to be at risk from his partner's husband, noting the lack of evidence to support his claim that his partner's husband had seen photographs of them together on her Facebook account. The judge considered that the appellant had failed to demonstrate that NM's husband had any knowledge of their relationship or that he was looking for him and intended to do him harm and considered, in any event, that he would not be able to locate him if he moved to a different city in the IKR. The judge found that the appellant could be returned to the IKR without the necessity of travelling via Baghdad and that he could travel from the airport to his home area and obtain an INID in person at the relevant CSA office. She found that his return to the IKR would not be in breach of Article 3 and that Article 15(c) was not engaged on humanitarian protection grounds. The judge noted that the appellant did not argue at the hearing that his return to Iraq would be in breach of his Article 8 rights and she considered in any event that his removal would not be disproportionate. The judge accordingly dismissed the appeal on all grounds.

9. The appellant sought, and was granted, permission to appeal against the judge's decision. The respondent filed a rule 24 response opposing the appeal.

10. The matter then came before us for a hearing. Both parties made submissions and those are addressed in our discussion below.

Discussion

11.The appellant's first ground was that the judge had made an irrational finding in relation to his account of his brother being pushed off the eleventh floor of a building, going behind medical evidence and holding herself out as a medical expert. Contrary to Mr Wood's submission, however, we find nothing inconsistent with the medical report in the judge's rejection of the account. The judge had full regard to the medical evidence and, quite properly, found that it did not provide support for the account of how the appellant's brother had come to fall from the building, namely being deliberately pushed from the eleventh floor, but simply confirmed that he had injuries consistent with a fall from a building. We agree with Mr Tufan in his submission that there was nothing irrational in the judge, applying a common sense approach, considering that the appellant's brother would have sustained more injuries than he did had he been pushed from the eleventh floor of a building and we find nothing inconsistent with the medical evidence in such a view. In the circumstances, we find no merit in the first ground.

12.The appellant's second ground challenges the judge's findings at [15], whereby she referred to the appellant's failure to mention important matters in his claim and his failure to provide documentation which was available to him. The grounds assert that the judge did not explain what important matters or documents the appellant had failed to explain/provide and that the appellant was therefore unable to understand the case against him. As the respondent acknowledges in her rule 24, the judge could perhaps have better expressed herself at that point. However it is nevertheless clear to us that the judge was merely laying the basis for what followed in the ensuing paragraphs and that the relevant findings of fact were then made in those subsequent paragraphs. At [17] to [22] and [26] the judge provided details of the documents which the appellant had produced and went on to explain the evidential limitations of those documents and what further supporting evidence could reasonably have been expected from him but had simply not been produced. At [17], [19] and [20] the judge essentially found that there was an absence of evidence linking the appellant to the reports of the analysis of the petrol being imported in the tankers so as to support his claim to have been held responsible for the petrol being returned to Iran. At [21] the judge found there to be an absence of evidence linking the PUK, and in particular Qubani Talabani, to the Ninkas company. At [22] ad [23] the judge referred to the limitations of the medical evidence and at [26] she referred to the lack of evidence to support the appellant's claim that his partner's husband would be aware of their relationship. What is apparent to us from these observations made by the judge is that she undertook a detailed and careful assessment of the documents provided by the appellant and provided cogent reasons for according them the weight that she did. It seems to us that the judge was perfectly entitled to draw the adverse conclusions that she did from these omissions in the evidence and to conclude that the documents produced by the appellant did not support his claim.

13.Mr Wood's next submission was in regard to the judge's findings on the appellant's relationship with NM, whereby he asserted that it was not clear whether or not she accepted the relationship and that her failure to make a clear finding on the matter was a material omission. However we agree with Mr Tufan that the judge's findings at [25] to [27] clearly indicate that she accepted the relationship. In any event, it is plain that she proceeded on the basis that that was not a matter of dispute and went on to make cogent findings as to why she believed that the appellant's account of any risk arising from the relationship had not been credibly demonstrated. At [26] and [27] the judge rejected the appellant's claim that NM's husband would be aware of the relationship because of photographs posted on NM's Facebook account showing them together, considering that if such photographs had been posted the appellant ought reasonably to be expected to produce such evidence. The judge rejected the

appellant's explanation for not being able to produce that evidence. Although there may have been some misunderstanding by the judge when she referred, at [26], to the photographs having been posted in NM's son's Facebook account, it is nevertheless the evidence that her son had a Facebook account, as referred to in the appellant's own grounds at [18], and the judge therefore reasonably concluded that the relevant evidence could be obtained through his account.

14.The other submission made by Mr Wood in regard to the appellant's relationship with NM was that the judge had failed to consider the implications, with respect to the appellant's ability safely to relocate to another part of Iraq, of NM's husband being employed by a governmental department, namely the Ministry of Health. Mr Wood, in his grounds at [18], relied upon a document at page 87 of the appellant's bundle in that regard. However when I pointed out to Mr Wood that that document appeared to be a Ministry of Health card held by NM's husband, but did not indicate that he was employed by the Ministry of Health, he agreed that that had been his own assumption rather than it being part of the instructions from the appellant. Indeed, at no point in any of the appellant's statements or the evidence submitted, was there any suggestion that NM's husband was employed by the Ministry of Health. The appellant's evidence had always been that NM's husband was a policeman employed in the Suleymaniyah area. That was the case considered by the judge who found, for reasons properly given at [27], that there was no evidence of him having any power outside that area or indeed that he was aware of the appellant or intended to do him harm. In the circumstances there was no error in the judge's assessment of risk to the appellant on that basis.

15.For all these reasons the challenges made in the grounds are not made out. The judge considered all relevant matters, had full regard to the evidence and made clear and cogently reasoned findings. She was fully and properly entitled to conclude that the appellant's account of his problems arising from his work and from his relationship was not a credible one and she reached a decision which was fully and properly open to her on the evidence before her. We accordingly uphold her decision.

Notice of Decision

16.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 September 2023