IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002183

First-tier Tribunal Nos: PA/54719/2021
IA/14308/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

S M D
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms S Seehra (Counsel)
For the Respondent: Ms S Lecointe (Senior Home Office Presenting Officer)

Heard at Field House on 3 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

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1. This is an appeal against the determination of First-tier Tribunal Judge Maka, promulgated on 2nd May 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 2nd June 1994. He appealed against the decision of the Respondent dated 3rd September 2021 refusing his fresh claim for asylum and associated claims.

The Appellant's Claim

3. The essence of the Appellant's fresh claim is that he has lost contact with his family in Iraq and that he lacks any ability to get the requisite documentation to enable him to travel in the country. It was put on his behalf that if the Appellant was undocumented then this would raise an Article 3 ECHR issue given the decision in **SMO (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC)**. This is because he would be stopped at checkpoints, given that he is a Sunni Muslim and was being accused of ISIS links. With the risk of persecution arising he would then be able to draw upon the Refugee Convention which would also apply to his situation. The Appellant also had an additional aspect to his claim, namely, the risk of an honour killing, on account of his relationship with a girl in Erbil back in Iraq, which was outside the bounds of acceptability as far as tribal custom was concerned. There was, however, no separate Article 8 ECHR claim.

The Judge's Findings

4. Given that there had been a previous decision against the Appellant, the judge began as a starting point with the case of **Devaseelan [2002] UKIAT 000702 Imm AR 1**. He had already had a hearing on 26th February 2019, had been represented, and findings had been made that he was in a position to obtain a CSID document from his relatives in the IKR; his account of his relationship with a girl in Iraq was not deemed credible; and that for three months between December 2017 and March 2018 the Appellant had been in his own home where he could have been found if the girl's family wished to do him harm, thus rendering his honour killing claim to be unfounded.

5. The judge proceeded to reject the Appellant's claim that he would be an undocumented returnee (at paragraph 44 to 46) because there was nothing materially different in the present claim that justified the present judge from departing from the previous determination. The judge also did not accept that the Appellant had sent a message to the Red Cross that he had had lost contact with his family in June 2019 when he had earlier claimed that it was in December 2018 (paragraph 48). He did not accept that the Appellant had lost touch with his family or had fallen out with his brother given that there had been no issues with his family when he was in Iraq and he had gone back to his own home after the allegation that he had been beaten up by the girl's family (paragraph 49). A feature of the appeal before the present judge was the evidence of a Mr Faraj.

6. He gave evidence that he had travelled from the UK to the Appellant's village in Sulaymaniyah to find out whether the Appellant's family still lived there (paragraph 50) but the judge held that this was not corroborated in any way and so rejected this evidence. In any event, Mr Faraj's witness statement contained no statement of truth attached to it and he failed to mention the name of the local *mukhtar* whom he alleged to have met (paragraph 51). Mr Faraj also did not give the exact address that he had gone to find the Appellant's family and the judge recorded, "I am satisfied Mr Faraj did not go to the correct address he was given or speak to the correct people" (paragraph 51). The judge then went on to express himself as follows, pointing out that, "I find Mr Faraj gave evidence to me, which he believed was the truth, out of good intent to help a friend, who helped him and his family when his wife had cancer" (paragraph 52). An observation was also made by the judge that, "On a separate but pertinent note, Mr Faraj himself was an asylum seeker, who claimed he had a well-founded fear of persecution in Iraq and who travelled directly to Erbil via Austria", but that this, " begs the question, whether he was given leave on the right basis considering in 2009, the leadership in Iraq had changed anyway" (paragraph 54). Thereafter, the judge observed how, "On the issue of documentation or attempted documentation, I placed little weight on the Appellant's contact with the Iraqi Embassy" (paragraph 55). The appeal was dismissed.

Grounds of Application

7. There are three grounds of application. First, that when considering vital witness evidence from Mr Faraj, the judge's findings lacked reasoning, were inconsistent, and went into irrelevant considerations. Second, that the judge's findings lacked reasoning in relation to the Appellant's claim that he had lost contact with his family in December 2018, because in a message to the Red Cross his friend had incorrectly recorded the date as June 2019, and in his oral evidence the Appellant has explained that he had not written the message. Third, that in relation to the application of **Devaseelan** the previous determination of 25th April 2019 found that the Appellant had said himself that he had a CSID document, that he could obtain it and that it was at home, but that it was apparent from the previous judge's determination (at paragraphs 28 to 29) that the Appellant did not accept this to be the case in his oral evidence, given that this was a concession made at the hearing.

8. On 20th June 2023 permission to appeal was granted by the First-tier Tribunal on the basis that the judge appeared to have erred in his treatment of the evidence when referring to Mr Faraj. This was "In particular in the weight placed on Mr Faraj's willingness to travel back to Iraq despite him now being a British Citizen, without this being raised in cross examination and without the Judge notifying the parties this was a matter of concern". Furthermore, "It is also arguable that, given the nature and detail of the evidence of Mr Faraj, it is difficult to reconcile the finding that Mr Faraj was giving evidence which he believed to be true, although it was in fact incorrect or mistaken and so of little weight" (at paragraph 2).

Submissions

9. At the hearing before me on 3rd August 2023, Ms Seehra for the Appellant went through the three Grounds of Appeal once again. She submitted, firstly, that the witness evidence of Mr Faraj was specifically that he did go to the correct address in Sulaymaniyah of the Appellant's family and did speak to the relevant people about the whereabouts of the Appellant's family. Yet, the judge states (at

paragraph 51) that, "He fails to mention anybody by name even the name of the local *Mukhtar,* something which I find is not plausible …". On the other hand, submitted Ms Seehra, the judge also appears to be suggesting that Mr Faraj "gave evidence to me, which he believed was the truth, out of good intent to help a friend, who helped him and his family when his wife had cancer" (at paragraph 52), which appeared to imply that his evidence had been accepted by the judge. If it was not accepted, it was not clear why that would be the case as Mr Faraj was not cross-examined on his evidence. Furthermore, the judge strays into matters that are irrelevant when he states that, "On a separate but pertinent note, Mr Faraj himself was an asylum seeker, who claimed he had a well-founded fear of persecution in Iraq …", but whose evidence raised the "the question, whether he was given leave on the right basis considering in 2009 the leadership in Iraq had changed anyway" (paragraph 54).

10. Second, in relation to the Appellant's evidence that he had lost contact with his family in December 2018, the Appellant's evidence was that his friend in a message to the Red Cross had incorrectly recorded the date as June 2019. However, in his oral evidence, which the judge expressly noted (at paragraphs 26 to 27) the Appellant had explained that he had not written the message, as his English was not very good and he was illiterate. That being so, the judge failed to explain why in these circumstances, his evidence was not accepted on the basis of there having been a simple mistake by the Appellant's friend. Yet, the way in which the judge deals with this is to say that "the Appellant has not plausibly explained why a message was sent to the Red Cross he lost contact with his family in June 2019, when he claimed earlier it was December 2018" (paragraph 48). It is true that the judge goes on to say that he does "not accept his explanation of not knowing about this error or the message being written by a friend on his behalf or his lack of education" (paragraph 48), but that in itself is not a sound reason.

11. Third, the judge states that, "On the issue of documentation or attempted documentation, I place little weight on the Appellant's contact with the Iraqi Embassy", because, "it is somewhat self-inflicting that a national of Iraq (who would speak the languages of his own country) would need to go to his own Embassy with an interpreter", because the interpreter had been asked to go there by the Appellant's own legal representatives.

12. For her part, Ms Lecointe submitted that, in light of the submissions by Ms Seehra, she would have to accept that there were errors in the determination. These ranged from the judge referring to the evidence of Mr Faraj as one "which he believed was the truth" (at paragraph 52) to the judge refusing to believe that Mr Faraj had spoken to the *mukhtar* at the Appellant's village because "his evidence is lacking in detail" (paragraph 51), even though Mr Faraj had given the evidence orally on this issue and not been cross-examined on it. There was also, she submitted, the unfortunate reference to the fact that Mr Faraj was himself an asylum seeker who had managed to get leave to remain in this country in 2009 when the leadership in Iraq had changed, thus implying that he was not entitled to it (at paragraph 54).

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law, such that it falls to be set aside. My reasons are as follows. First, and most importantly, there is the evidence of Mr Faraj, upon which he was not cross-examined, that he had gone to the Appellant's family home. To

state that he "gave evidence to me, which he believed was the truth, out of good intent to help a friend" (paragraph 52) is to imply that the evidence was not necessarily reliable. This is difficult to square with the detail that Mr Faraj had gone into in giving his oral evidence. Second, the Appellant's evidence that he had lost contact with his family in December 2018 also appears to have been not fairly assessed given that the Appellant's evidence in this regard is fully set out (at paragraphs 26 to 27 of the determination), with the Appellant explaining that "he is illiterate and did not know a mistake had been made" (at paragraph 27).

Notice of Decision

14. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is remitted back to the First-tier Tribunal pursuant to paragraph 7.2(b) of the Practice Statement because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal, and to be determined by a judge other than Judge Maka. No previous findings are preserved and the appeal is to be heard *de novo.*

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th September 2023