IN THE UPPER TRIBUNAL

IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004095
First-Tier Tribunal No: PA/54255/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

7th December 2023

Before

THE HON. MR JUSTICE HENSHAW

(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RMA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the appellant: Mr T Melvin, Senior Presenting Officer

For the respondent: Mr R Toal, Counsel, instructed by Barnes Harrild & Dyer Solicitors

Heard at Field House on 23 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, RMA is granted anonymity. No-one shall publish or reveal any information, including the name or address of RMA, 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. For the sake of continuity, we shall refer to the parties as they were before the First-tier Tribunal: the Secretary of State is once again "the respondent" and RMA is "the appellant".
2. The respondent appeals with permission against the decision of First-tier Tribunal Judge Bulpitt ("the judge"), promulgated on 24 July 2023 following a hearing on 8 June of that year. By that decision, the judge allowed the appellant's appeal against the respondent's refusal of his protection and human rights claims, which themselves had been made in the context of deportation.
3. The relevant background to the case leading up to the hearing before the judge is clearly set out at [2]-[6] and [20]-[24] of his decision and we do

not propose to rehearse that in detail here. In summary, the appellant is an Iraqi national of Kurdish ethnicity who arrived in the United Kingdom in July 2020. The method used - by "small boat", with the appellant steering for a time - resulted in him being convicted of facilitating unlawful immigration, an offence to which he pleaded guilty and for which he was sentenced to 31 months' imprisonment. This led to deportation action being initiated by the respondent, which in turn prompted the protection and human rights claims.

4. In essence, the appellant asserted that: (a) he was at risk on return to Iraq because of a family feud; (b) he had been disowned by his family and would have no means of support on return, or any access to relevant identity documentation (specifically, a CSID) and so would not be able to travel from the point of return (Baghdad) to his home area in Sulaymaniyah; and (c) he had a protected private and family life in the United Kingdom and his removal would breach Article 8.

5. The respondent rejected all aspects of the claims. A certificate was issued pursuant to section 72 of the Nationality, Immigration and Asylum Act 2002, as amended ("the 2002 Act") on the basis that the appellant had been convicted of a particularly serious crime and that he constituted a danger to the community of the United Kingdom. The family feud claim was rejected due to inconsistent evidence and it was said that the appellant maintained contact with his family and could obtain relevant identity documentation. Any interference with private and/or family life was deemed proportionate.

The judge's decision

6. It is right to say that the judge's decision is a well-structured and conscientious piece of work.

7. Four aspects of the appellant's case and the judge's conclusions thereon can be dealt with briefly. *First*, in respect of the section 72 certificate, the judge found that the appellant's involvement in the Channel crossing was

not as significant as had been first alleged and that the conviction was not for "a particularly serious crime": [42]. The judge also concluded that the appellant had demonstrated that he was not a danger to the community: [45]. Thus, the statutory presumptions had both been rebutted: [46]. *Secondly*, for reasons set out at [48]-[57], the judge disbelieved the appellant's account as to the claimed family feud and concluded that there was no risk on return. *Thirdly*, the various factors counting in the appellant's favour under the Article 8 proportionality exercise were outweighed by the strong public interest in deporting foreign criminals and maintaining effective immigration control: [67]-[72]. *Fourthly*, the judge dismissed the appeal on Humanitarian Protection grounds because the appellant's conviction excluded him from its coverage.

8. The appellant has not challenged the judge's conclusions on the family feud issue, Article 8, or Humanitarian Protection by way of cross-appeal and we need not address them further.

9. For the purposes of this appeal, the relevant section of the judge's decision falls under the sub-heading "Risk on return". It concerns the well-known issue of identity documentation in Iraqi cases and the risk of Article 3 ill-treatment attached to those who either do not possess a CSID or (in more recent times) an INID, or could not obtain one within a reasonable time after return: see SMO and KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ("SMO").

10. The judge accepted the appellant's evidence that his family had, through widespread media coverage, become aware of his conviction and the circumstances surrounding it: [60]. The judge found that the social opprobrium accorded to "people smuggling" was consistent with the appellant's claim that the male members of his family had disowned him. He accepted that the appellant had in fact been disowned, that there would be no family support on return, and, importantly, that the appellant would be unable to obtain identity documentation: [59], [62]-[64]. Ultimately, the judge concluded that the appellant was at risk of

Article 3 ill-treatment: [65] and [73]. The appeal was accordingly allowed on this narrow basis.

The grounds of appeal and grant of permission

11. In summary, the grounds of appeal take issue with the judge's reasoning in respect of his finding that the appellant had been disowned by his family. Although not clearly articulated, the implication is that the alleged lack of adequate reasons undermined the judge's conclusion on the identity documentation issue and, in turn, risk on return.

12. The final paragraph of the grounds of appeal accepted that the respondent's case before the judge had been predicated on return of the appellant to Baghdad only, although there had apparently been country information to indicate that certain individuals could be returned directly to the IKR.

13. We observe that the grounds do not assert that the appellant could have obtained an INID.

14. We will address the grounds of appeal and the status of the final paragraph just referred to when setting out our conclusions on the error of law issue, below.

15. Permission to appeal was granted by the First-tier Tribunal without limitation.

Procedural matters: the respondent's appeal bundle

16. Following the grant of permission, the Upper Tribunal issued what are, as of 25 September 2023, the standard directions to represented parties. These directions require the represented party appealing to the Tribunal to provide a composite bundle containing specified documents within a specified timeframe. Importantly, such composite bundles must comply with the Presidential Guidance on CE-File and Electronic Bundles, dated 18 September 2023. That guidance makes it very clear that the

bundle must be properly indexed and paginated, and include bookmarks to “all significant documents and all sections”.

17. In the present case, it appears as though the respondent prepared and then uploaded onto CE-File a bundle in compliance with the specified timeframe. However, the format of the bundle rendered it almost unusable and certainly non-compliant with the standard directions and applicable Guidance. Examples of this included:

(a) A failure to use the Upper Tribunal’s “UI” reference number on the index page;

(b) A failure to provide an itemised index, identifying the significant documents (such as the judge’s decision, the grounds of appeal, and grant of permission); and

(c) The failure to have put in appropriate bookmarks relating to those significant documents.

18. The importance of complying with the standard directions should not be underestimated. It concerns adherence to procedural rigour, a concept which is rooted in substance, not simply form. The standard directions are there to ensure that all relevant materials are provided to the Tribunal tasked with making the error of law decision and the other party in the appeal. Compliance will put an end to the frustrating and time-consuming situation in which the Tribunal and parties are working from different bundles at a hearing. It will also assist with the efficient and focused conduct of pre-reading and hearings.

19. At the hearing, we directed that a Senior Presenting Officer or other appropriate person would attend the Tribunal on a date to be determined in order to explain the non-compliance with the standard directions.

The hearing

20. We received oral submissions from Mr Melvin and Mr Toal. The key aspects of those submissions are addressed in our consideration of the

grounds of appeal, below. Suffice it to say at this stage that Mr Melvin relied on the grounds, without amendment, and Mr Toal submitted that the judge had been entitled to make the findings he did and for the reasons given, and to have concluded that the appellant was at risk by virtue of a lack of identity documentation.

21. We sought clarification from Mr Melvin in respect of the final paragraph of the grounds of appeal, referred to earlier in our decision. He made it clear that the question of a return directly to the IKR had not been canvassed before the judge and no point on the route of return was now being taken on appeal.

22. At the conclusion of the hearing we reserved our decision.

Conclusions

23. At the outset, we emphasise the importance of exercising appropriate restraint before interfering with a decision of the First-tier Tribunal. The judge read and heard evidence from a variety of sources, evaluated that evidence, and set out his conclusions on the various aspects of the appellant's case. It is not for us to substitute our own view of that evidence, nor to be hasty in discerning errors of law where, on analysis, the complaints made are in truth just disagreements with findings of fact. The judge's decision must be read sensibly and holistically. In support of this approach, see, for example, UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095, at [19] and AE (Iraq) v SSHD [2021] EWCA Civ 948, at [32]-[33].

24. With the above in mind, we proceed to address the grounds of appeal in order (referring to those grounds by the paragraph number in which they are contained at section C of the IAFT-4 form).

Ground 1

25. The respondent asserts that when finding the appellant's conviction to have been regarded as "abhorrent" and "heinous" by persons in Iraq, the judge erred by failing to refer to "specific objective background evidence" in support. Without expressly referring to such evidence, "[t]he SSHD cannot assess the credibility/reliability of such silent evidence to understand the reasoning."

26. We reject this aspect of the respondent's challenge. It both misunderstands what the judge was in fact saying in the relevant passages and amounts to simple disagreement with adequately reasoned findings of fact.

27. Ground 1 focuses on [59] of the decision. It is clear to us that the judge's acceptance of the opprobrium levelled against "people smugglers" was based on the appellant's evidence. The judge carefully explained why, notwithstanding other adverse credibility findings, he had deemed this particular aspect of the claim to be reliable: [58]-[60] and [62]. Accordingly, applying the lower standard of proof, he was entitled to regard the appellant's evidence as sufficient. He did not purport to base his finding that people smuggling was deemed "abhorrent" and "heinous" on what is described somewhat oddly in the grounds as "silent evidence". Nor was the judge obliged to base his finding on "specific objective background evidence" relating to society's views on such conduct. Country evidence will often play a part as a contextual backdrop to an individual's own evidence, but it is not a requirement.

28. In so far as the judge referred to country information on "family honour", there is no specific challenge to this in the grounds: the complaint made relates to "objective background evidence" on the issue of people smuggling. In any event, it does not appear as though the existence of "family honour" in Iraqi society was controversial.

29. In summary, we conclude that ground 1 discloses no error of law on the judge's part.

Ground 2

30. The second ground of appeal takes issue with two other aspects of the judge's conclusion that the appellant had been disowned by members of his family. First, it is said that the judge failed adequately to reason why this had occurred when there had been contact between the appellant and female family members. Secondly, it is said that the judge failed to consider the possibility of those female family members sending a CSID to the appellant in the United Kingdom.

31. The first of these complaints has no merit. It is plain from a fair reading of the judge's decision that he was well aware of the appellant's evidence, which was to the effect that the male family members had disowned him, but that he had maintained contact with his mother and sister: [22], [31], [61]-[62]. It cannot sensibly be said that the judge simply left out of account consideration of this evidence when making his finding that the appellant had in fact been disowned. The judge was undoubtedly cognisant of the patriarchal nature of Iraqi society, which was not controversial between the parties. Indeed, ground 2 itself acknowledges that social norm. The judge was entitled to find that the male members of the appellant's family had disowned him, despite there being a degree of contact with female family members. The fact that the judge referred to "the family" in certain passages takes the respondent's case no further; it is sufficiently clear to us that he had in mind the patriarchal context and was, in effect, simply stating that those family members with power and influence (i.e. the male members) had disowned the appellant.

32. The second complaint within ground 2 took up rather more time at the hearing. Mr Toal took us through the underlying evidence (including the appellant's witness statement and asylum interview record) at some length in order to demonstrate that the appellant's mother and sister had not been in a position to assist with identity documentation. The evidence did, to an extent, indicate that those individuals may not have been able and/or willing surreptitiously to send a CSID to the appellant. In

fact, it was less than entirely clear whether a valid CSID existed at all. We know from SMO that only male relatives can act as proxies in obtaining replacement CSIDs and therefore the appellant's mother and sister were not in a position to assist in that regard.

33. In the event, it is unnecessary for us to analyse the underlying evidence in great detail. This is because the second point raised in ground 2 did not feature in the respondent's case leading up to, and including, the hearing before the judge. It was, in truth, a new argument and one which we reject. Having considered the reasons for refusal letter and the respondent's pre-hearing review, we are satisfied that the possibility of female family members providing the appellant with a CSID, notwithstanding his rejection by male members, had not been put forward as an alternative scenario. The respondent had simply rejected the appellant's credibility wholesale; it being said that any family member could send a CSID to the United Kingdom. In addition, Mr Melvin accepted, when pressed, that the possibility of the appellant's mother or sister sending a CSID to him had not been put in cross-examination at the hearing before the judge (nor did he suggest that any oral submissions to that effect had been made). In those circumstances, it is not in our view a point that can fairly be taken on appeal.

34. Perhaps acknowledging the difficulty with this aspect of the respondent's case, Mr Melvin (in response to a question) suggested that the possibility of assistance from female family members was an "Robinson obvious" issue and that it was "reasonable to expect the judge to have considered the point". We have little hesitation in rejecting that submission. *First*, in principle it is very difficult to see how the judge can be said to have erred in failing to specifically address a matter that was not in any way raised before him. *Secondly*, hearings before the First-tier Tribunal are not a "dress rehearsal": Fage UK Ltd. v Chobani UK Ltd. [2014] EWCA Civ 5, at [114], applied in the context of an immigration case in Lowe v SSHD [2021] EWCA Civ 62, at [29]-[30]. *Thirdly*, it is well-settled that the "Robinson obvious" principle (where a judge should take a particular point in favour of a party of their own volition) operates in

favour of an individual only, except in the limited situation where the issue concerns a possible breach of the Refugee Convention: AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT (IAC), at [61]-[69]. That exception clearly does not apply in the present case.

35. Ground 2 discloses no error of law. The judge was entitled to find that the appellant had been disowned by those members of his family who held power and influence and that there would have been no assistance with the provision of identity documentation. That core finding was supported by legally adequate reasons.

Ground 3

36. The wording of ground 3 acknowledges that it adds nothing of substance over and above the first two grounds. As we have already concluded, the judge did explain why he found the offence for which the appellant was convicted to be of particular significance and the consequences of this.

Ground 4

37. The final ground of appeal is weak and we reject it. It appears to suggest that the judge was required to have based his acceptance of the appellant's claim on "reliable background/objective evidence". That assertion is plainly wrong. The judge was required to assess the credibility of the appellant's evidence, and that he did. As we have explained earlier, that adequately reasoned assessment did not necessarily require support from objective evidence.

38. Ground 4 also suggests that the "informed reader" would have difficulty understanding why the appellant's evidence had been afforded the weight it had. It is trite to say that the attribution of weight is a matter for the fact-finding tribunal, subject to a rationality challenge. No such challenge has been put forward in the present case and none would have prospered in any event.

Summary

39. The respondent has failed to identify any errors of law in the judge's decision, whether by way of a reasons challenge or otherwise. The judge dealt with the case as put forward by the parties with care. He produced a decision which was open to him on the evidence and in line with the country guidance set out in SMO.

Anonymity

40. The judge made an anonymity direction on the basis that the appeal before him involved protection issues. We considered for ourselves whether that anonymity direction should be maintained in respect of the proceedings in the Upper Tribunal. We recognise that the appellant's protection claim, in so far as it related to the claimed family feud, has been rejected and is no longer a live issue. We also took full account of the important principle of open justice and the fact that the appellant is a foreign criminal.

41. At the hearing, Mr Toal submitted that the direction should be maintained because the appellant remained what he described as an "asylum-seeker". Mr Melvin raised no objection to this.

42. Whilst an important aspect of the appellant's protection claim has indeed been rejected, it remains the case that he is a person who has sought asylum in the United Kingdom. Further, and perhaps of more significance, is the fact that he was found to be at risk of Article 3 ill-treatment in respect of the documentation issue. We have upheld the judge in this regard. In all the circumstances, it is appropriate to maintain the anonymity direction.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and that decision stands.

The appeal to the Upper Tribunal is accordingly dismissed.

H Norton-Taylor

Judge of the Upper Tribunal

Immigration and Asylum Chamber

Dated: 30 November 2023