IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006702

First-tier Tribunal No: PA/54317/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of July 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

WSG
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Alban, of Seren Legal Practice
For the Respondent: Ms Newton, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 15 July 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal which dismissed his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant was born on 25 March 1993 and is a national of Iraq of Kurdish ethnicity, from Suleymaniyah. He arrived in the UK on 1 December 2019, having travelled through Turkey and then overland by lorry and van to Calais and by lorry to

the UK. He was served with illegal entry papers on 1 December 2019 and claimed asylum the same day. His claim was refused on 23 August 2021 and he appealed against that decision.

3. The appellant's claim was made on the basis of problems arising through his work as a security guard for 'the Berlin company'. On 10 October 2019 he was on duty with his nephew M and two other security guards at a factory producing wires when there was a fire inside the factory and he and his nephew managed to get inside and put the fire out. After they did so, they noticed that there were weapons and illegal drugs stored in boxes. He called the company owner, HI, who was angry with him and told him to wait in the factory until he arrived. When HI got there, together with six other people, they started beating him and his nephew and locked them up. He was locked in a portable toilet and managed to escape, but he was unable to help his nephew escape as he was locked in a room. He fled the factory. He called his uncle for advice and was told that the drugs and weapons belonged to Lahour Sheikh Jangi, who was a joint owner of the company with HI and was a very powerful man in the PUK. His uncle told him that it was not safe for him to remain in Iraq and so he fled the country with the assistance of an agent arranged by his uncle. The appellant claimed that his nephew's sister messaged him on Facebook informing him that his nephew had been severely beaten up and left for dead and warned him not to return to Iraq.

4. The respondent, in refusing the appellant's claim, did not accept his account as credible. The respondent noted various inconsistencies in the appellant's account and did not accept his claim to have come to the adverse attention of the PUK or Lahour Sheikh Jangi in particular. It was not accepted that he was at risk on return to Iraq on that or any other basis. The respondent considered that the appellant could obtain his identity documents from his family in Iraq.

5. The appellant's appeal was heard by First-tier Tribunal Judge Austin on 20 July 2022. Judge Austin found that some of the discrepancies relied upon in the refusal decision were not as significant as the respondent made out, but he nevertheless did not find the appellant's account to be a credible or plausible one. The judge referred to photographs produced by the appellant which were said to show his nephew after he had been beaten and which he claimed had been sent to him through his Facebook account by M's sister. The judge rejected that account in light of the appellant's evidence that he did not have access to his Facebook account and in any event noted the lack of other evidence in relation to his nephew. The judge found that the appellant was not at risk on return to Iraq and that he could obtain his identity documents from his family with whom he retained contact. He dismissed the appellant's appeal in a decision issued on 22 September 2022.

6. The appellant sought permission to appeal to the Upper Tribunal against Judge Austin's decision on three grounds. Firstly, that the judge's decision that the appellant could access his CSID document was contrary to the guidance in SMO and KSP (Civil status documentation, article 15) (CG)) Iraq [2022] UKUT 110; secondly, that the judge applied a higher standard of proof, namely a balance of probabilities, to parts of the appellant's claim; and thirdly, that the judge made errors of fact and findings on matters not put to the appellant, and that he based his findings on assumptions and speculation.

7. Permission was granted in the First-tier Tribunal on all grounds, although with particular focus on the third ground. The respondent did not file a rule 24 response.

8. The matter then came before me for a hearing. Both parties made submissions and those are addressed in my analysis below.

Analysis

9. Although permission was granted on all grounds, the grant of permission made clear that it was the third ground which was considered to be arguable, with the first two grounds having less merit. Indeed, Ms Alban accepted herself that the third ground was the strongest. In the circumstances I shall address the first two grounds in more concise terms, given my own view that they lack merit.

10. With regard to the first ground, I reject the assertion made by the appellant that the judge failed to have regard to the guidance in SMO or made findings which were inconsistent with that guidance in relation to the appellant's ability to obtain his identity documents. The judge's findings on documentation at [52] were entirely consistent with the guidance in SMO, with the judge addressing the appellant's ability to access his original documentation in order to enable him to travel back to his home area. The appellant's own evidence in his asylum interview and his asylum statement was that his family remained living in Iraq at that time and that he had left his original CSID and nationality card at home. Although by the time of the hearing he was claiming to have lost contact with his family, the judge provided cogent reasons at [48] to [50] for rejecting that account. Those were findings which were fully open to the judge and he was accordingly entitled to conclude that the appellant could access his original identity documentation.

11. Likewise, I reject the assertion in the second ground that the judge erred in his application of the standard of proof. The judge properly directed himself on the burden and standard of proof at [7] to [11] and reminded himself at [38] that the standard of proof was a low one when assessing the credibility of the appellant's account. It is clear that the judge applied that lower standard of proof to the appellant's evidence. The reliance upon the judge's use of the term "more likely than not" at [47] and [50] in asserting that he applied the higher standard of proof is in fact misconceived: in fact it implies the converse in the circumstances in which it is applied in those paragraphs. In any event nothing material arises from the judge's use of that term in the context that he did and I find no merit in the second ground.

12. As for the third ground, that is a challenge to the judge's adverse credibility findings on what seems to me to be based for the most part on a disagreement with the judge's findings and an attempt to expand upon the evidence. I do accept that there was a mistake of fact made by the judge in his findings at [40], as asserted at [4.2] of the grounds, in relation to his reference to the men accompanying HI not being armed. However I do not consider that to be fatal to the judge's overall credibility assessment given that there were various other, cogent, reasons provided for finding the appellant's account to be lacking in credibility. The judge had the benefit of hearing from the appellant and assessing his evidence as against the accounts he had previously provided in his interview and statements and was best placed to make an overall credibility assessment. He made it clear that he did not give weight to some of the discrepancies relied upon by the respondent, but he went on to set out his own concerns, providing full and proper reasons for having those concerns.

13. In so far as the grounds take issue with the judge's findings on the boxes containing drugs, I reject the suggestion in the grounds at [4.3] to [4.6] that the judge was required to elicit specific information from the appellant which had not already been set out in the evidence. The appellant had ample opportunity to explain his case

in detail. The judge drew perfectly reasonable inferences from the appellant's evidence and it was entirely open to him to make the observations that he did at [41] about the items concealed in the factory. Likewise with regard to the assertions made at [4.7] and [4.8] about the judge's findings at [42] and [43], it seems to me that, for the reasons given, the judge was perfectly entitled to have concerns about the truthfulness of the appellant's account of what happened to him and his nephew once threatened with death by HI and his men. As for the point made at [4.9] of the grounds about the appellant's evidence of his nephew being 'left for dead', it is relevant to note that the appellant's own evidence in his asylum statement at [24] clearly suggested a mistake on the part of his attackers in assuming him to be dead. The judge was entitled to draw what he did from that evidence. Likewise, the judge was perfectly entitled to draw the adverse conclusions that he did, at [45], from the limited evidence about his nephew's fate and, at [46], about Lahour Sheikh Jangi. With regard to the latter, the grounds rely at [4.11] on evidence which it is not clear was brought to the judge's attention, but in any event does not specifically refer to Lahour Sheikh Jangi, as Ms Alban confirmed, and does not address the point made by the respondent at [45] of the refusal decision and by the judge at [46].

14. In the circumstances I find nothing of merit in the appellant's assertions about the judge lapsing into speculation and I reject such assertions. The judge made his decision on a full and careful assessment of the evidence. He provided detailed and cogent reasons for making the adverse findings that he did. The grounds are little more than a quarrel with his findings and conclusions and they do not disclose any errors of law in his decision.

15. For all these reasons I do not find the grounds to be made out. The judge reached a decision which was fully and properly open to him on the evidence before him. His decision is accordingly upheld.

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.

Anonymity Order

The Anonymity Order previously made is continued.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 July 2024