IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006735
First-tier Tribunal No:
PA/50293/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 09 October 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

OJM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:
For the Appellant: Ms Camille Warren of counsel
For the Respondent: Ms R Arif a Home Office Presenting Officer

Heard at Field House on 13 September 2024

DECISION AND REASONS

Introduction

1. The appellant appeals to the Upper Tribunal (UT) with permission of First-tier Tribunal Judge Gumsley on 15th September 2022.

Background

2. The appellant is a citizen of Iraq (Kurdish) who was born on 1st of January 1993. He made a protection claim on 11th October 2018 but on 19th January 2022 that application was refused by the respondent in a letter at page 162 of the UT bundle (the bundle). On 27th of January 2022 the appellant appealed that refusal. Following a hearing on 15 July 2022 FTT Judge O'Hanlon (the judge) dismissed his appeal. Judge Gumsley considered that the judge ought to have considered and made clear findings on the genuineness of the appellant's political beliefs and future risk on return to Iraq in the light of his findings

3. Following Judge Gumsley's grant of permission to appeal, on 27th of August 2024 the respondent submitted a response under rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (2008 Rules) (the rule 24 response).

4. The appellant submitted a response to the respondent's rules 24 response under rule 25 of the 2008 Rules (the rule 25 reply), which allows an appellant to reply to the respondent's response to the notice of appeal.

The hearing

5. At the hearing I heard submissions by both representatives which were made remotely via CVP. I understand this was for the parties' convenience.

6. There were initial problems with the bundle as the bundle received by the Tribunal did not match the bundle in possession of the representatives. Eventually, a copy of the bundle was transmitted to me. As I indicated to Ms Warren, the bundle was of excessive length (2000 pages). The bundle referred to in paragraph 2 above contains only 150 pages. I will refer to the additional bundles by their numbers 1, 3 and 4 – there being no bundle 2.

7. Ms Warren said that Mr Judge Gumsley had given permission because he considered it to be arguable that the judge's finding that her client had both engaged in political activities but had not yet been of a sufficiently high profile to come to the attention of the authorities to

be, arguably, wrong. In addition, her client continued to engage in political activities including via social media since arriving in the UK. She said that her client's grounds of appeal included raising his fear on return as a result of those political activities. In her submission there was no real doubt that her client had attended demonstrations but she accepted that there was an issue in the case as to whether he had come to the attention of the authorities on those demonstrations. She said that no proper consideration had been given by the judge to the future risk on return. She said that the there was a wealth of evidence that those who engaged in political activities, including via social media, would be at risk on return to the Kurdish Autonomous Region (KAR) or the Kurdistan Region of Iraq (KR –I). She said that the judge's conclusions were flawed and relied on **HJ Iran [2010] UKSC 31**. Ms Warren submitted that the judge was largely silent on the question of her client's risk on return. She was referred to the judge's decision at a number of points including paragraph 53, where the judge commented on the fact that it may have been that other people had posted information onto Facebook, rather than being original postings of his own. Insofar as they were anti-KR-I, however, they would not necessarily have a lesser degree of impact on the appellant.

8. She then turned to consider the CPIN, which I understood to be a reference to the Internal Relocation Report dated February 2019 (the CPIN)). I note that at paragraph 48 of his decision the judge also took account of the CPIN "Opposition to the government in the KR-I" published on unspecified date. That is said to give rise to the evidence that a person would not in general be at risk simply from being an opponent of the KR-I government. This analysis was flawed, Miss Warren argued. She said it had been submitted before the FTT that the appellant's attendance at demonstrations both in Iraq and in the UK plus his Facebook account put him at risk on return and referred to paragraph 8 of her client's skeleton argument before the FTT (at page 84 of the consolidated bundle known as "part 1 index" containing 801 pages). There it is asserted that and that the individual risk was supported by the objective material supplied, including the CPIN. I was asked to look at the following pages of the objective material, namely:

    - Page 94 of the 801-page bundle, part of a report by Human Rights Watch called "Kurdistan Region of Iraq: Protesters Beaten, Journalists Detained", which deals with the security forces suppression of demonstrations in 2018;

    - Page 135 of the same bundle called "Freedom House, Freedom on the Net 2021 - Iraq, 21 September 2021 [EXCERPTS]" which deals with the latest developments including from 2020 to 2021;

- Page 153 of the same bundle from a report called “Gulf Centre for Human Rights (GCHR), Who Will be Left to Defend Human Rights? Persecution of Online Expression in the Gulf and Neighbouring Countries [Iraq excerpt], 09 November 2021 [EXCERPTS]” which deals with incommunicado detention, enforced disappearance and other issues.

9. She went on to say that there was a major risk to her client and the judge had reached his conclusion without demonstrating he had properly taken into account the risk. He had to justify reaching the “bold” conclusion he had reached but had been unable to demonstrate this. There were, she submitted, no proper foundations to his decision.

10. Miss Arif relied on the respondent’s rule 24 response. She said that the judge and considered all the evidence and had demonstrated this at paragraph 33 of the decision. The fact that the judge had only referred to some of the evidence did not mean that he had not considered the other evidence in the case. He had given all the evidence appropriate weight, reminded himself of the country of return – namely Iraqi and specifically the KR- I- but concluded it was safe for the appellant to return there. He considered it necessary to take into account in full the context of the area he was dealing with. In the circumstances it was submitted that this was no more than a disagreement with the judge’s conclusion. The judge reached the conclusion he had reached after considering all the background evidence as well as the oral evidence presented. He clearly highlighted the appellant’s own political activities, which were relatively minor. The judge had fully addressed the appellant’s political beliefs, such as they were. The so-called *sur place* activities had also been fully considered (see for example paragraph 49). Paragraph 43 makes reference to the postings on Facebook and the judge had borne these fully in mind also. The judge’s decision ought to stand, therefore.

11. Ms Warren had no response but wished to remind the UT of the possibility of leaving part of the decision in place and hearing/considering fresh evidence as to the risk on return – particularly objective evidence.

Discussion

12. Unfortunately, the typescript of the FTT’s decision has become distorted, I assume, by the process of making it fully searchable for the OCR purposes by which such electronic documents are edited as PDFs. It is likely that this arose in the process of preparing the bundle and not in preparing the decision itself. Therefore, there should be no criticism of the judge in relation to any typing errors in the decision.

13. Ms Warren's criticisms of the decision go much wider and echo those referred to in Judge Gumsley's grant of permission to appeal. In essence, it is contended that the judge did not make sufficiently clear findings as to the appellant's political beliefs and failed to make sufficiently cogent and robust findings as to his risk on return. These do, of course, overlap to a significant degree.

14. I note that the judge took account of the submissions made including, as recorded at paragraph 32 (h), that the appellant held political views opposed to the government of the KR-I and took part in activities in Iraq and the UK which, he claimed, were genuine and credible. However, the judge rejected the appellant's account indicating at paragraph 33 that even if he had not specifically mentioned a particular document, piece of evidence or submission this did not necessarily mean that he had not considered it or given it appropriate weight. The judge had reminded himself of the conditions in the country of return – Kurdish Iraq and specifically the KR-I. He considered the appellant's account in the context of the KR-I.

15. The appellant's account was that he was at risk by virtue of his political views as expressed in Iraq and in the UK. The judge questioned whether the appellant would be at risk because of the issues he had with the group working for Mahmoud Sangawi (see paragraph 41).

16. The judge took full account of the appellant's evidence including his asylum interview record (AIR) at question 136 where he had he had indicated that there were social reasons and wider developments in society in Iraq which caused the demonstrations – such as a decline in living standards. The judge found (at paragraph 45) that the appellant had attended demonstrations on a limited number of occasions, that he was not a member of those organisations or groups and that he had not been involved in the arguing for change in governance.

17. The judge was not satisfied that the appellant had come into contact with or to the attention of the authorities in Iraq is as a result of those limited political activities that were established. He fully considered the case to the low standard of proof which applied (at paragraph 47). He did not find that the appellant had directly taken part in demonstrations and noted that the appellant had conceded in interview that he was not politically "active". The judge characterised the appellant's evidence as vague and speculative. The judge dismissed the appellant's Facebook pages as mere re-posts of other (more active) people's posts. That was a relevant factor when deciding the possible reaction of the authorities to them. He found the appellant had no significant profile in Iraq or in relation to the demonstrations

the appellant had attended. For example paragraph 54 the judge took account of the appellant's Facebook posts, noting the appellant was not personally targeted by Mahmood Sangali (see paragraph 53).

18. The judge was careful to bring together the various strands at paragraph 64 et seq explaining that the appellant was not a credible witness, had his own CSID and would not be at risk on return. A summary of his conclusions appears at paragraph 48 et seq of the decision.

19. Furthermore, the judge took account of all relevant case law including **BA (Demonstrators in Britain – risk on return) [2011] UKUT 36**, referred to at paragraph 39 of the decision. That case involved the Iranian government and is now more than ten years ago. It was also necessary to consider **SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 00037 (IAC.**). In that case Upper Tribunal Judge Blundell pointed out (at paragraph 32 et seq) that fact that the appellant had himself been responsible for disposing of his CSID card or otherwise deliberately made himself at greater risk on return did not exclude him from protection. Such behaviour did not alter the statutory framework within which the decision had to be taken by a tribunal. It appears that the fact that the appellant had acted voluntarily in the manner in which he behaved did not prevent the UT applying the relevant law and coming to appropriate conclusions. The judge in the present appeal had concluded that the appellant did have a CSID card (see paragraphs 65 – 66).

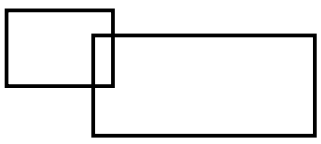
Conclusion

20. The judge applied the correct burden and standard of proof to the evidence. Given his lack of participation in demonstrations and relatively low profile he was not thought to be at risk on return. Accordingly, the judge reached a conclusion he was entitled to come to on the evidence before him and there was no material error of law.

Notice of Decision

21. The decision of the FTT did not contain an error or law and the appeal to the UT is dismissed.

22. The UT continues the anonymity direction made by the FTT.

Signed  Date 8th October 2024

Deputy Upper Tribunal Judge Hanbury