IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-003116

First-Tier Tribunal No: PA/00089/2023
PA/52524/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25th April 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

HZS
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr McGarvey, instructed by NLS Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 3 April 2024

DECISION AND REASONS

1. The appellant 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 is a national of Iraq of Kurdish ethnicity born on 20 November 1996. He arrived in the UK on 25 March 2020 and claimed asylum the same day. His claim was refused on 14 June 2022 and his appeal against that decision was heard in the First-tier Tribunal on 1 June 2023 and dismissed in a decision promulgated on 19 June 2023.

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3. The appellant claims to be at risk on return to Iraq on two bases: he fears being killed by his girlfriend's father or brothers because he shamed their family and he fears being killed by the authorities because of his sexuality. The appellant claimed to have realised when he was about 15 years of age that he was more attracted to men than women, although he had a relationship with a girl, G, whom he met at university, whose father was a major general in the PUK. His parents proposed marriage to her family three times between May 2018 and February 2019 but each time the proposal was rejected and in March 2019 he was abducted, assaulted and raped by three men who threatened to kill him if he approached any girls at university. His arms were dislocated and his nose was broken in the assault. In July 2019 G's father beat his mother and threatened to kill him because of the shame he had brought on the family. He fled Iraq with his parents. They all went to Turkey by air and he then left his parents and went to Greece and to France and then to the UK in a small boat. Since coming to the UK he had attended demonstrations and had been active politically on Facebook. He had also been involved in a same sex relationship in the UK.

4. The respondent did not accept the appellant's claim about his relationship and the threats made to him, did not accept that he was a member of the LGBT community and did not accept that he had been politically active in the UK. With regard to the issue of his sexuality, the respondent noted that the appellant claimed to have made no attempt to join any LGBT groups in the UK as he did not know anything about them, he claimed to have begun a relationship with a man, I, in London whom he met through Grindr, but only knew his partner's first name and telephone number and not his surname, and he had provided no evidence to support his claim about the relationship. The respondent did not accept that the appellant had built a political profile in the UK. It was not accepted that his parents had fled Iraq and it was therefore considered that he could access his CSID. The respondent did not accept that the appellant was at risk on return to Iraq.

5. The appellant's appeal against that decision came before First-tier Tribunal Judge Roblin on 1 June 2023. For the appeal the appellant produced a bundle of documents which included his witness statement, a letter from Micro Rainbow, an organisation which assisted LGBTQI asylum seekers and refugees in the UK, a psychiatric report from Professor Piyal Sen, a consultant forensic psychiatrist, evidence of sertraline medication, correspondence relating to a complaint about his former solicitors and the appointment of his current solicitors, Facebook posts and some WhatsApp messages and calls with I.

6. Judge Roblin heard from the appellant. She considered that the appellant's evidence about the threats from his girlfriend's family was contradictory and lacked credibility and that his account of being assaulted and sustaining injuries to his arms lacked credibility. She did not accept that his account of his departure from Iraq was credible and she did not accept his claim in regard to his sexuality and his relationship with I, noting that it was not credible that he would have such a relationship yet not know the surname of his partner. The judge did not consider that the appellant's low level *sur place* activity, which included attendance at three demonstrations and some limited Facebook activities, would put him at risk on return to Iraq and she did not accept that he had no access to his CSID. She found that the appellant was at no risk on return to Iraq and she dismissed the appeal.

7. The appellant sought permission to appeal to the Upper Tribunal on two grounds: firstly, that the judge had erred in her assessment of whether he was a member of the LGBTQIA+ community and was gay or bisexual; and secondly, that the judge made significant errors which revealed a lack of care and anxious scrutiny and seemingly

considered the appeal on the basis that he was from Iran. Permission was refused in the First-tier Tribunal but was subsequently granted upon a renewed application to the Upper Tribunal in relation to the first ground only, with particular focus on the judge's finding on the appellant's inability to provide I's surname.

8. The matter was listed for hearing and came before me. Prior to the hearing the respondent filed and served a rule 24 response. In addition, a witness statement was filed and served from counsel representing the appellant before the First-tier Tribunal exhibiting his contemporaneous notes of the appellant's evidence during cross-examination as confirmation that the appellant had provided I's surname in his oral evidence.

9. Although directions were made for the appellant's representatives to file and serve a composite electronic hearing bundle for the case in the Upper Tribunal, and a reminder was sent on 19 March 2024, there had been no compliance with the directions and the only bundle served was the bundle which had been before the First-tier Tribunal.

10. At the hearing, Mr McGarvey referred to an audio recording of the hearing before the First-tier Tribunal which had been obtained following an indication made in the grant of permission in relation to the appellant's claim to have mentioned I's surname in his oral evidence. Mr McGarvey believed that the audio file had been filed and served on the respondent and the Tribunal, but it appeared that it had not. I therefore rose for a short period of time for Ms Rushforth to hear the audio file. She confirmed that the appellant had given a surname for I in his oral evidence.

11. Both parties then made submissions before me. Mr McGarvey relied on the grounds of appeal and submitted that the judge had given inadequate reasons for finding that the appellant was not homosexual. He also added a further ground, namely that the judge had not referred to the relevant part of HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31. Ms Rushforth submitted that even though the appellant had given a surname for I at the hearing, he had not known his partner's surname when asked at his interview and had not given a surname in his witness statement, which was a matter the judge was entitled to take into account. She submitted that, whilst the grounds asserted that the judge had failed to consider the WhatsApp messages, that was not the case and the judge had found that the limited amount of messages was at odds with his claim to have been in a relationship with I. The judge had applied the correct test in HJ (Iran). The grounds were just a disagreement with the judge's findings.

Analysis

12. Mr McGarvey's submissions were brief and essentially relied upon the grounds. The grounds, in turn, challenged Judge Roblin's findings and conclusions on the appellant's sexuality and asserted that she ignored material parts of the evidence, inaccurately recorded material parts of the appellant's oral evidence, and failed to give sufficient consideration to the appellant's claim in that respect. I do not, however, accept that that is the case. At [86] to [90] of her decision the judge considered the appellant's account of his sexuality and had full regard to the supporting evidence, providing cogent reasons for rejecting his claim.

13. At [87] the judge refers to findings made in regard to a lack of consistency in the appellant's accounts. That is a matter with which the grounds take issue at [3], asserting that the judge in effect took the inconsistencies in the appellant's account

about his former girlfriend's family as an indication of inconsistencies in his account of his sexuality. However that is clearly not what the judge did. Rather, what she was saying at [87], with reference to [59] of the respondent's refusal decision, was that the fact that some aspects of the appellant's account were consistent with the country information (and therefore plausible) did not mean that she had to accept his account as credible when there were otherwise concerns about the reliability of his evidence as a whole. There was nothing erroneous in such an approach, particularly as the judge then went on to identify various specific reasons as to why the appellant's account of his sexuality was not one she considered to be credible.

14.In the findings that followed, the judge pointed out the lack of information from the appellant about his relationship. She noted his inability to provide the surname of his claimed partner, I, which she found to undermine the reliability of his account of ever having had such a relationship, she had regard to the limitations of the evidence upon which the appellant was relying and she noted that he had not even mentioned his sexuality as a relevant issue in his screening interview.

15.The grounds take issue with the judge's findings on those matters. In regard to the appellant's failure to mention his sexuality at his screening interview, the grounds at [9] assert that the judge failed to consider the appellant's explanation for that. However that is clearly not the case as the judge considered the explanation at [90], taking full account of the relevant issues raised by the consultant forensic psychiatrist in his report, and gave reasons for rejecting the appellant's explanation, as she was perfectly entitled to do. As for the criticisms of the judge's assessment of the WhatsApp messages, I agree with Ms Rushforth that that was evidence to which the judge gave specific consideration, at [89], and made appropriate findings, noting the limitations of the evidence in the context of the claimed length of the relationship.

16.As for the appellant's lack of knowledge of I's surname, that was a matter upon which the grounds focussed in particular and which formed the main basis of the grant of permission, as it was claimed that the appellant had provided I's surname at the hearing and that the judge was therefore in error in asserting that he had not. However, whether or not a surname was provided at the hearing (and it is accepted that it was), I agree with the respondent's rule 24 response at [5] and Ms Rushforth's submission, that that did not detract from the fact that the appellant had been unable to give I's surname when asked at his interview. That was a matter which the respondent specifically raised as a credibility issue in the refusal decision at [56] and it seems to me that that was what the judge was referring to at [88]. The judge was clearly entitled to draw the adverse conclusions that she did in that regard and I do not agree that any error of law arises in that respect.

17.In so far as the grounds assert, at [4], that the judge failed to engage with the appellant's evidence at his interview in regard to his sexuality, at questions 126 to 175, there is no basis for the suggestion that the judge ignored that part of his evidence. The judge recorded the submissions made for the appellant about his evidence at the interview, at [49], and confirmed at [56] that she had considered all the evidence and would refer only to those parts of the evidence which were of the most significance. Indeed, she specifically referred, at [87], to the appellant's evidence at his interview about the reaction of the Imam when he spoke to him about a hypothetical friend having homosexual feelings, and she made findings in that regard. It is clear that she had regard to all the evidence and fully engaged with it, specifically referring to those parts which were relevant to her findings. She was not required to refer to each and every part of the evidence and I fail to see what issues of any

materiality arise from those questions which had otherwise not been considered by the judge.

18. For all these reasons I do not find the grounds to be made out. Neither do I find any merit in Mr McGarvey's submission that the judge misapplied the test in HJ (Iran). The judge referred to the relevant test at [96] and properly followed the approach set out at [82] of the judgment in that case, finding for the reasons previously given that the appellant was not gay. That was a finding she was entitled to make for the reasons already discussed. The judge had regard to all the evidence and assessed the appellant's credibility in the round, giving clear and cogent reasons for concluding that his account was not a credible one and rejecting his claim based on his sexuality. The judge was entitled to make the adverse findings that she did and she reached a decision which was fully and properly open to her on the evidence before her. I accordingly uphold her decision.

Notice of Decision

19. 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

10 April 2024