IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-005104
First-tier Tribunal No: PA/50104/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

HAA (IRAQ)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Andrew Eaton, Counsel instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Mrs Amrika Nolan, Senior Home Office Presenting Officer

Heard at Field House and via Teams on 13 March 2024

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.

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Sweet promulgated on 5 November 2023. ("the Decision"). By the Decision, Judge Sweet dismissed the appellant's appeal against the decision of the respondent made on 25 October 2022 to refuse to

recognise him as a refugee, as the respondent did not accept that he had a genuine or well-founded fear of persecution on return to Iraq as the victim of a blood feud.

Relevant Background

2. The appellant's claim for asylum arose out of a claimed relationship that his brother Harem had had with a woman in Iraqi Kurdistan. The relationship started before she was married. Her family found out about the relationship and assaulted Harem, and during the attack his nose was broken. Harem renewed his relationship with this woman after she became married to someone else. Both the woman's husband's family and her own family belonged to powerful Kurdistan tribes. The renewed relationship was discovered by the woman's husband who came to the appellant's home with a gun and threatened to kill his brother. The woman's father and brother also came and threatened to kill the appellant's brother. The situation did not become more serious, because the woman's husband, father and brother would not come into the appellant's family home.

3. Harem fled to another area of Kurdistan, and later fled the country. After he left the area, the appellant's life was threatened via social media messages, phone calls and in person when appellant was outside the house in public (AIR 87-90. 98-100). The appellant lived in self-confinement until he was able to arrange to leave Iraq.

4. In the refusal decision, the respondent did not accept that the appellant was the target of a blood feud as there were both internal and external inconsistencies in his account. He claimed that he had been told on multiple occasions that he would be killed if his brother was not found, but by his own account his brother relocated after the first incident on 11.02.21 and by his own admission he had never been physically harmed despite living in the same house for nine months before he left Iraq in November 2021. He was asked why he had not been harmed in this period, and he replied that it was because he did not react to their messages, their staring in the market place or anything they did. He said they wanted him to react to their threats so they would have an excuse to kill him (AIR 116-117). His explanation that they were attempting to goad him to react to threats so they had an excuse to kill him was inconsistent with his claim that they planned to kill him in revenge for his brother's relationship. His account was also inconsistent with external information on blood feuds. It was considered that the threats he received had not been serious enough to amount to a threat to his life.

5. The Facebook messages he relied on appeared to show threatening messages from four different Facebook accounts. They were all marked as new, and it was not possible to tell who had registered the accounts, written and sent the messages, or indeed whose account had received the messages.

The Hearing Before, and the Decision of, the First-Tier Tribunal

6. The appellant's appeal came before Judge Sweet sitting at Taylor House on 2 November 2023. The appellant was represented by Mr Eaton of Counsel, and the respondent was represented by a Home Office Presenting Officer. The appellant gave oral evidence in accordance with his signed witness statement dated 13 April 2023, speaking through a Kurdish Sorani Interpreter. He was cross-examined by the Presenting Officer.

7. The Judge's findings of fact were brief. At para [10], the Judge addressed the appellant's oral evidence about the fate of his brother Harem. The appellant stated in oral evidence that Harem was in a French prison, where the French police took him after 3-4 weeks in a UK hotel, on an unknown charge. It was put to him that in his witness statement he stated that his brother had been in a London prison, and was accused of smuggling. The Judge continued:

> "As he is not in contact with his brother, he did not say how he would know of his whereabouts, whether in the UK or in France. No statement from any family members, whether parents and/or either brother, was provided. I find that the appellant's account lacks credibility on all issues."

8. At para [11], the Judge said that the threats made by the families were on a limited basis, whether face-to-face, at home, in the market-place, or on Facebook, and no one was harmed, although the spouse threatened them with a gun - and the appellant claimed that he, together with his parents with whom he remained in contact, had made a complaint to the police, though there was no documentation confirming any report.

9. At para [12], the Judge said that the appellant confirmed that neither he nor his family were harmed by the families, and that his brother Harem had remained in Iraq for a further three months after he had left Iraq, eventually leaving for the UK in February 2022 and then for France. The appellant was still in contact with family members, including his parents, in Iraq, and he had left his CSID/INID documents them.

10. At para [13], the Judge said that the appellant also relied on the alleged threats on the Facebook account, referencing four screen shots in the respondent's bundle. But the Judge held that these were not genuine threats because the sender was not known; the appellant's own profile was not provided; and it appeared that there may also have been an issue as to an unpaid debt which was not raised in the oral evidence.

11. The Judge concluded at para [14] that he did not accept that the appellant was a victim of a blood feud, and, if he was, there was sufficiency of protection, referencing the CPIN on blood feuds 2020 and the CPIN on internal relocation dated July 2022.

The Grounds of Appeal to the Upper Tribunal

12. The grounds of appeal to the Upper Tribunal were settled by Mr Eaton.

13. Ground 1 was that the Judge's finding at para [10] - that the appellant's account lacked credibility on all issues - was a conclusion that was reached without reasons, or at least adequate reasons, contrary to *MK (Duty to give reasons) Pakistan* [2013] UKUT 641 (IAC).

14. Ground 2 was that the Judge had erred in law in failing to give any reasons to support the assertion that there would be sufficiency of protection, beyond referencing the respondent's CPIN on blood feuds of February 2020. Any reading of this report did not support the contention that there was sufficiency of protection for a person who was involved in a tribal blood feud. On the contrary, the evidence cited in the report supported the contention that police in Iraq were unwilling and unable actively to intervene to stop a tribal blood feud. For example, at para 2.5.6 it was said that there were reports of law enforcement personnel being reluctant to get involved with tribal conflicts, as they feared that they were exacerbate the situation. Law enforcement officials had also been known to take sides in line with their own tribal affiliations. At other times, law enforcement officials were reported to be powerless to intervene in tribal disputes and, without sufficient military backup, feared reprisals.

The Reasons for the Eventual Grant of Permission to Appeal

15. On 28 November 2023 Judge SJP Buchanan granted the appellant permission to appeal on both grounds. It was particularly arguable that the Judge had failed to give adequate reasons as his statement that the appellant's account lacked credibility on all issues preceded the assessment of the evidence which followed at paras [11] to [14]. It was also arguable that the Judge had failed to give adequate reasons for finding sufficiency of protection, as there was no engagement with the specifics or the background information cited.

The Hearing in the Upper Tribunal

16. The hearing before me at Field House was a hybrid one, with both legal representatives appearing remotely via Teams.

17. Mr Eaton developed the grounds of appeal, directing my attention to some of the documentary material that was before the First-tier Tribunal, including the Facebook posts.

18. On behalf of the respondent, Mrs Nolan submitted that the Judge's reasons were brief, but he had done enough. He had given adequate reasons for finding the appellant not credible, including in relation to the threats that he said had been posted on Facebook. She submitted that the appellant had not shown that the Facebook threats were genuine, as distinct from being contrived. So, she invited me to find that Ground 1 was not made out.

19. As to Ground 2, she submitted that the Judge had not materially erred as submitted by Mr Eaton, because the Judge had already found that the appellant was not the victim of a blood feud.

Discussion and Conclusions

20. In the light of the case put forward by Mr Eaton, I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration…A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

21. I will address the grounds in ascending order of difficulty. Ground 2 is the most straightforward, as Mrs Nolan has not sought to persuade me that the CPIN on blood feuds referenced by the Judge supports, rather than contradicts, the finding by the Judge that there is sufficiency of protection in Iraqi Kurdistan for victims of blood feuds.

22. I note that the Judge also referenced the CPIN on internal relocation. In the Respondent's Review, the respondent referenced both CPINs in the context of addressing the question whether, if the appellant was found credible in whole or in part, there was sufficiency of protection [or] internal relocation? The answer given by the respondent to this question was: *"The appellant is not a person of high profile."* The implication of this answer is that the respondent's case was that internal relocation was a viable option for the appellant, as it had been (arguably) for his brother.

23. As the Judge only relied on the proposition that there would be sufficiency of protection, and did not give any reason at all as to why this would be so, the Judge's finding on sufficiency of protection is not sustainable.

24. As to Ground 1, the position is less straightforward, as it is not the case that the Judge's adverse finding on credibility is bereft of reasoning. On the contrary, while the Judge invited an error of law challenge by prematurely stating his conclusion on credibility at the end of para [10], it is apparent that his conclusion is supported by (a) the finding on the oral

evidence that immediately preceded it and (b) the findings which follow in paras [11] to [13].

25. Mr Eaton submits that the only purported discrepancy in the evidence identified by the Judge is an alleged discrepancy raised in para [10], which is that in his statement of 13 April 2013 the appellant said his brother was in prison in London, whereas in his oral evidence he said his brother was now in France, having been extradited to France in the interim. Thus, Mr Eaton submits, it was not a discrepancy that was reasonably capable of undermining the appellant's credibility.

26. However, the sequence of events described by the Judge at para [10] implies that Harem would already have been extradited to France before the appellant made his witness statement. So, I consider it was reasonably open to the Judge to find that the discrepancy damaged the appellant's general credibility.

27. In addition, the Judge identified another discrepancy, which was that, as he was not in contact with his brother, *"he did not say how he [knew] of his whereabouts, whether in the UK or France."* Mr Eaton does not challenge this finding as being unsustainable, and I consider it was open to the Judge to find that this discrepancy also damaged his general credibility.

28. Mr Eaton accepts that in para [11] the Judge supplied a reason for finding the core claim to be incredible, but he submits that the reason given is perverse. Mr Eaton submits it was perverse of the Judge to find that the threats were on a limited basis as the appellant's evidence was that on two occasions armed men came to his home; and it was also his evidence that he and his brother were in self-confinement until they left Iraq.

29. I consider that Mr Eaton's error of law challenge is merely argumentative. The appellant admitted that he did not stay in self-confinement all the time. He admitted both in in his asylum interview and in his appeal statement that he had not been harmed when encountered in public outside the home. In the refusal decision, the respondent said that the alleged behaviour of the aggrieved male relatives was not internally or externally consistent with an alleged blood feud, and that their threats were not serious enough to amount to a threat to his life. Against this background, it was not perverse for the Judge to characterise their threats as being limited.

30. When para [11] is read alongside para [12], as to which there is no error of law of challenge, it is tolerably clear that the Judge finds the core claim to be incredible for the same reason as that given in the refusal decision, which is that the appellant's account of how matters unfolded is not consistent with him being a genuine victim of a blood feud.

31. Mr Eaton accepts that in para [13] the Judge supplied a reason for rejecting the Facebook posts, but he submits it was perverse of the Judge

to find the threats were not genuine because the sender's identity was not known.

32. It was for the appellant to prove that the four screenshots of anonymous Facebook posts were reliable. The Judge's reason for finding the threats were not genuine was not only because the sender's identity was not known, but also because the appellant's own profile had not been provided. The Judge thereby echoed the respondent's case in the refusal decision. which he had earlier set out at para [5]: *"The threats he has allegedly received on Facebook did not show who had sent the threats, nor whose account received the messages."* In short, it was reasonably open to the Judge to find that the threats in the posts were not shown to be genuine as the posts themselves were not shown to be reliable.

Conclusion

33. Although an error of law is made out on the issue of sufficiency of protection, the error is not material, as the Judge gave adequate reasons for finding that the appellant was not credible in his account of being a victim of a blood feud.

Notice of Decision

The decision of First-tier Tribunal is not vitiated by a material error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
26 March 2024