IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005205

First-tier Tribunal Nos: PA/54346/2022
IA/10672/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

B.H.H.
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M Mohzam (Counsel)
For the Respondent: Mr C Bates (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 15 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. This is an appeal against the decision of First-tier Tribunal Judge Joshi, promulgated on 7th November 2023, following a hearing at Birmingham Priory Courts on 10th August 2023. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, born in Sulaymaniyah in 1982, and a citizen of Iraq. He arrived in the UK on 2nd April 2019 and applied for asylum on the same day claiming to fear persecution on account of a blood feud.

The Appellant's Claim

3. The essence of the Appellant's claim is that he was involved in a car accident in 2018, where the son of a prominent personality in the PUK, Rebwar, died. Although it was not the Appellant's fault, he was arrested, and then released after two weeks because his father-in-law paid bail money. Rebwar's family then attacked the Appellant's home and threatened him and his family. They threatened to kill him or to make his daughter marry Rebwar as a means of retribution. The Appellant went into hiding and then he fled. He now fears returning to Iraq because he will be killed or his daughters will be forced to marry into the victim's family in order to resolve the blood feud.

The Judge's Findings

4. The judge did not accept that the Appellant was at risk of ill-treatment from a person by the name of Rebwar, who it was claimed was a powerful and influential member of the PUK. There are inconsistencies in the Appellant's claim. The Appellant's claim is that the son of Rebwar, a powerful and influential member of the PUK, was killed in a car accident and that he was arrested and not released until his father-in-law had paid bail money (paragraph 48). The judge heard evidence that the Appellant claimed that two armed men came to his house and threatened him and requested that he allows Rebwar to marry one of his two daughters. The Appellant then claims that his house was burnt down in 2018 and his family's documents were in the house and were destroyed (paragraph 50). He maintains that this happened during the two week period that he was in hiding. However, the evidence prior to the making of this statement contradicts this claim. This is because in response to questions 24 and 25 in his asylum interview he had stated that he and his family lost their CSID cards but made no mention of them being burnt or destroyed in the fire. He stated the same in his screening interview at question 1.8 in respect of his passport. Indeed, in his asylum interview he went on to say (at question 128 that his house was burnt down after he had left Iraq and not before as he stated in his statement) (paragraph 50). Although a video of Rebwar had allegedly been put forward in oral evidence the judge could not identify Rebwar by name in the video and his name was not recorded at all (at paragraph 51). The claim that the Appellant was on police bail was not backed by a police report, evidence of investigations, or confirmation of bail and there were no court documents either. The judge did not find this evidence to be credible (paragraph 53). The appeal was dismissed.

The Grant of Permission

5. Permission to appeal was granted by the First-tier Tribunal on 8th December 2023. This is because the judge had, in the course of his determination, referred to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 when he began consideration of the credibility of the Appellant (at paragraph 43). This was erroneous because the refusal had made it clear that it was not based upon Section 8 at all. Second, the judge arguably also erred in the way that he referred to the absence of documents with regard to the police detention.

Submissions

6. At the hearing before me on 15th March 2024, Mr Mohzam submitted that the judge had made a material mistake of fact in referring to Section 8 of the 2004 Act (at paragraph 7). Yet, the refusal letter of 23rd September 2022, after referring to how the Appellant had travelled to the UK via Italy, had gone on to say that, "it is therefore concluded that your behaviour is one to which section 8(4) does not apply". The judge had clearly therefore erred.

7. Second, Mr Mohzam submitted that he would place greater reliance on the fact that there were inadequate reasons given by the judge in arriving at the conclusions that he did. The Appellant's claim was that he had fled Kurdistan on 25th March 2018 while he was still on bail, but the judge had stated (at paragraph 53) that the Appellant had not provided any police report, evidence of investigations, or confirmation of bail or other documents. However, there is no requirement that an Applicant provide corroborating evidence (see **MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216**). Furthermore, there was no discrepancy as to the loss of the Appellant's documents because in his screening interview (at 1.8) he had said that he had lost his passport in Iraq and later he had said that he had lost his documents in a fire, and the two answers were not discordant with each other.

8. Third, the judge failed to properly assess the documentation in line with the country guidance case of **SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110**. Indeed, submitted Mr Mohzam, the determination is difficult to follow as a whole. The judge had to make a finding about whether the son of Rebwar was killed in a road traffic accident. Without a clear finding on that fact, what was said in the remainder of the determination in relation to the absence of documentation was entirely relevant.

9. For his part, Mr Bates submitted that the judge did not make a mistake in referring to Section 8 because in his reasons for the refusal he does not place any reliance upon Section 8. It could therefore not be a material error. Second, as far as the ground about inadequate reasons is concerned, and the lack of documentation that the judge refers to, these are good reason which are entirely sustainable on the evidence before the judge. The submissions from the Respondent's side before the judge were that if the son of a high-ranking PUK member was killed then it would have appeared in the newspapers and on Instagram and on Facebook (paragraph 20). It was submitted that the Appellant could not be believed because he did not provide Rebwar's name in the screening interview and his wife's screening interview stated that her husband

and daughter had a problem with no mention being made of a high-ranking official at all (paragraph 21). If the Appellant was on bail and had then breached the bail terms by escaping, it stood to reason that he should be required to produce a police report, charges, or court documents (paragraph 22) as argued on behalf of the Respondent.

10. In giving his reasons, the judge, referring expressly to the Respondent's submissions, makes it clear that, "I agree with the oral submission made by Mr Swaby as set out above – not all repeated here" (paragraph 47). That shows that the judge had made a clear finding that the Appellant's claim in its entirety was not credible with respect to the core issue. The judge then sets out in the following paragraph (paragraph 48) the core of the Appellant's claim, which the judge has disbelieved. Indeed, the judge does not hold against the Appellant the fact that he does not mention Rebwar (at paragraph 49).

11. For him, "there are other credibility concerns" (at paragraph 49). Although a video is produced, which purports to show Rebwar, the judge is rightly sceptical because he states that "his name is not recorded at all" and that "There is no evidence to confirm that the individual in the video is Rebwar" (paragraph 51). There are also concerns that the judge had in relation to the loss of the Appellant's documents. There is a discrepancy as to whether these were destroyed when the houses burnt down or whether they were lost during the two week period when he was in hiding (paragraph 50). The judge ends by stating that, "I do not accept the Appellant's claim as credible" (paragraph 53).

12. In reply, Mr Mohzam submitted that the judge had actually not made any findings of fact himself. The fact that there was no report of the death of Rebwar's son in an accident should not be surprising because not everyone publicises such events on Facebook. The Appellant had always been clear that he does not know the surname of the man who threatened him but he does produce subsequent information which was wrongly rejected by the judge.

No Error of Law

13. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law. First, the discrepancy that the judge found regarding the loss of the Appellant's documents was one that the judge was entitled to find (at paragraph 50). This is because if the house was burnt down after the Appellant had fled then it is not enough to say, as Mr Mohzam has maintained, that the Appellant's reference to having lost his documentation in Iraq would cover a loss, whether that loss was during the two week period that he was in hiding or when the house was burnt down. The judge gives ample reasons (at paragraph 50) for why the evidence of the Appellant is not believed in this regard.

14. Second, although the judge refers to Section 8 of the 2004 Act at the beginning, it is clear that this is only by way of a formulaic recitation of the provision that is sometimes applicable but which in the actual making of his findings the judge does not rely upon at all. It is therefore not a material error.

15. Third, the judge was entitled to reject the claim of a threat from a man by the name of Rebwar. Not only is the case that "he Appellant did not provide Rebwar's name in his screening interview" but his wife "did not mention he was high-ranking or influential at all" (paragraph 21) and when the judge came to

making his findings, he noted that “the translation of the video does not identify Rebwar by name in the video” (paragraph 51) and “a PUK document issued to Rebwar in the name ‘Rebwar Abdulrahman Rashid’” is not only in a different name but that the judge observe that “it is unclear how the Appellant obtained this document” especially as “the name used is different to how Rebwar’s name has appeared elsewhere” (paragraph 52).

16. Furthermore, Rebwar’s Instagram page refers to his name as “Rebwar Nawroli” and also to “Rebwar Salaah”, which adds further to the confusion. The judge was accordingly entitled to conclude that, “I am unable to find that this is an official Instagram page of an influential member of the PUK let alone someone who is targeting the Appellant and his family” (paragraph 52).

Notice of Decision

17. There is no material error of law in the judge’s decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

13th May 2024