Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2024-000482
First-tier Case Number: PA/53175/2023

THE IMMIGRATION ACTS

Decision & Reasons Promulgated

On 28th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

R.A.M.
(Anonymity order not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Ahmad, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 12 June 2024

The Appellant

1. The appellant is a citizen of Iraq born on 15 March 1999. He appeals against the decision of Judge of the First-tier Tribunal Kempton dated 12 December 2023 which dismissed the appellant's appeal against a decision of the respondent dated 18 May 2023. That decision refused the appellant's application for international protection and his application for leave to remain under Article 8.

Anonymity.

2. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials RAM. 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.

The Appellant's Case

3. The appellant fears persecution on account of being at risk of an honour crime. He helped his brother and his brother's girlfriend to leave Iraq but tragically they were both drowned in their journey to safety and now the girlfriend's family blames the appellant for what happened. As the girlfriend's family are powerful they will persecute the appellant on return. The appellant makes two other claims. Firstly, he was involved in some form of land dispute and left Iraq to go to Romania to avoid it but was deported back to Iraq from Romania. Secondly he has participated in demonstrations against the Iraqi government both in Iraq and whilst in the United Kingdom. These activities are known to the Iraqi authorities who have issued an arrest warrant against him. He has no documents of his own to assist him to return.

The Decision at First Instance

4. The judge did not accept the appellant's account of being in fear of an honour crime stating that it made no sense that the girlfriend's family would seek the death of someone else when the appellant's brother had already died. She asked rhetorically "why would another person there be required to be killed to avenge the death of the girl?".

5. The appellant had been in United Kingdom since 2019 and yet the arrest warrant said to have been issued against him was not sent to him until September 2022 some three years later. The judge said that it did not make sense that the appellant would not have the arrest warrant at the time of his interview on 26 August 2022.

6. In his screening interview the appellant had made no mention of political involvement and made no claim in relation to political opinion or refer to any issue from attending protests in Iraq. In his asylum interview the appellant had said he feared people from the PUK yet the appellant's own cousin also had PUK links. The appellant claimed to have attended at the Iraqi embassy in London to obtain new documents but said the embassy had refused to issue them. This was because the appellant could not supply reference numbers for the documents he had had when he left Iraq but which the agent had taken from him. The judge noted at [35] that the appellant had produced no evidence of

attendance at the embassy in London for this purpose. At [38] the judge said it could not be reconciled that the appellant was able to leave Iraq using his own passport if the Iraqi authorities had an outstanding arrest warrant issued prior to the appellant's departure. It was not credible that the appellant could leave the country without difficulty if he was a wanted man. The appellant had not known what the charges were against him when interviewed but now he said they related to kidnapping. The judge was not prepared to accept that the arrest warrant produced by the appellant was a genuine document, see [41].

7. The sur place activities were minor in nature, see [42] and related to attendance at demonstrations, two in the United Kingdom and one in the Kurdistan Region of Iraq (the KRI). There was no reason in this case why the appellant could not delete his Facebook account prior to return to Iraq although in any event he did not use his full name for his account. The judge quoted extensively from the CPIN dated July 2023 in relation to opposition to the government in the KRI. Arrests which had taken place mainly related to media professionals and the appellant could not be described as this or as an activist either.

8. The appellant had returned undocumented to Iraq, the judge noting that on the appellant's own case he had been able to do this when he returned to Iraq from Romania. On that occasion he was able to go to a bus station in Baghdad and board a bus to take him home to the KRI. He was able to return from Romania after his mother had copied his details to the Romanian authorities by email. The judge50] stated at [49], there was no reason why the appellant's mother or sister could not do the same again with the appellant then returning to the KRI by bus as he had done in the past. The appellant had shown that passing checkpoints was feasible provided one had funds to pay off the militias who manned the checkpoints.

9. At [50] the judge cited the October 2023 CPIN on lack of return documentation and the requirement to have a CSID or INIT for onward travel. If the original documentation still existed and was held by family members it could be provided by them meeting the appellant on arrival. At 3.5.3 of the CPIN, it was said that someone returning without identity documentation was likely to be questioned at the airport and a family member asked to attend to confirm their identity. The judge noted that the appellant on his case had managed to negotiate checkpoints with no identity documents which was contrary to what was stated in the CPIN.

10. Overall, the judge did not accept that the appellant was at risk from: (i) the girlfriend's family and (ii) the authorities either by way of sur place activities or otherwise. The arrest warrant was not a genuine document and the authorities were not interested in the appellant nor was he a potential victim of an honour crime. She dismissed the appeal.

The Onward Appeal

11. The appellant appealed against this decision on six main grounds. The first was that the judge was wrong to find against the appellant that he had not applied for asylum earlier in his journey whilst in another safe country. The appellant was under the control of the agent and would not have known whether any particular country that he was in was or was not safe.

12. The second ground took issue with a number of factual findings made by the judge. These related to (i) the existence of an individual called Abdullah Bor and whether that person had any connection to the appellant, the judge had found that there was no evidence of a link; (ii) the death of the brother and girlfriend and (iii) the ability of the appellant to leave Iraq. The judge was wrong to describe a punch the appellant had received (during a land dispute) as causing no harm. The judge had also wrongly assessed the appellant's sur place activities.

13. The third ground criticised the judge's treatment of two documents in the case, the arrest warrant and the death certificate of the appellant's brother. The fourth ground criticised the judge for pointing out omissions in the screening interview. The fifth ground returned again to the sur place activities and criticised the judge's finding that they were minor stating the judge had not looked at the documentation which showed what these activities actually consisted of.

14. The sixth ground dealt with the ability of the appellant to be re-documented, stating that the appellant could not obtain documents from the embassy in London and that the judge had not considered the country guidance authority of **SMO2 [2022] UKUT 110**. The appellant's family could not help the appellant upon return and there were checkpoints for example outside Baghdad airport which the appellant would have to pass through.

15. Permission to appeal to the Upper Tribunal was refused by the First-tier. As to ground 1 the judge was entitled to reject the appellant's claim to be controlled by an agent. As to ground 2 these were unimportant matters. As to ground 3 the grounds were wrong as the judge had considered both documents in the determination. As to ground 4 the judge could not be criticised for finding that the appellant would have mentioned an important part of his case in his screening interview if it was correct. As to ground 5 this was really more a criticism of style than an arguable error of law. As to ground 6 the judge had found the appellant could be re-documented so this ground too fell away.

16. The appellant renewed his application for permission to appeal to the Upper Tribunal where Upper Tribunal Judge Sheridan, on 15 April 2024, found there was an arguable error of law and gave permission to

appeal to the Upper Tribunal. It was arguable that the judge had failed to consider that the appellant would face a real risk of treatment contrary to article 3 in the absence of having a CSID or INIT. Secondly the judge had failed to consider whether the appellant could obtain such a document before or within a short time of arrival in Iraqi Ground 6 of the grounds was therefore arguable. The other grounds appeared weak as explained in the decision of the First-tier Tribunal to refuse permission although they were not excluded from permission.

The Hearing Before Me

17. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.

18. For the appellant Counsel relied on the grant of permission by Judge Sheridan and on the grounds for permission to appeal which I have summarised above. As to ground 1, one had to look at the case law on the issue of control of an appellant by an agent.

19. As to ground 2 the judge had erred in respect of material facts in the case. The appellant had confirmed that Abdullah Boer was a PUK party leader and was a commander of forces. It was therefore a material error to say there was no evidence as to who he was. Even if the brother had died there was still a revenge aspect from the girlfriend's family against the appellant. The judge said the appellant was punched but that was harm which the appellant had suffered.

20. As to ground 3 no findings were made as to whether the judge believed the death certificate or arrest warrant save at [41] where the arrest warrant was rejected. There was no finding at [23] or [25] of the determination about its validity. There was a copy of the arrest warrant within the determination itself. It had the appellant's name on it so it was not possible to understand why the judge said this was an example of poor quality. It was a clear copy.

21. As to ground 4 the appellant had not made comments in the screening interview because he had been told to be brief.

22. As to ground 5 the appellant had explained about his activities in the asylum interview. If one attended at the Iraqi embassy in London all one could obtain was a laissez passer so there would still be difficulties getting through the checkpoints. There was a material error of law and the determination should be remitted back to the First-tier to be reheard.

23. In response the presenting officer said that the judge was entitled to take the view she did as to whether the appellant was under the control of

the agent but even if there was an error it was not material. The judge's point was that the appellant's claim to be wanted by the police was not credible on the appellant's own account. Issues about the person in the PUK was not relevant to this case. It was on the appellant's own evidence that he managed to return to Baghdad on the occasion of his journey to Romania and he was able to get back safely to the KRI. The appellant could be returned there directly as evidenced by the CPIN which showed that returns to the KRI were now being made. If the appellant was not under threat from the authorities there was no issue he would be unable to arrive in his home area. There was no material error in what the judge had said. Even if the judge was wrong about returns to Baghdad that would not affect the issue of returns to the KRI. He could be documented there. In conclusion counsel for the appellant stated that the re-documentation point needed to be considered very carefully.

Discussion and Findings

24. The appellant took a number of issues with the determination in this case but as can be seen from the grant of permission by Judge Sheridan, the core issue in this case was whether the appellant could return to his home area in the KRI. That would be either through Baghdad or through an airport in the region itself such as Erbil. In this connection I note that the appellant's case was that he had arranged for his brother and brother's girlfriend to leave the KRI directly via the airport at Erbil indicating that the appellant was familiar with the airport. For the reasons I set out below, the other grounds raised by the appellant in this case amount to no more than a disagreement with the adverse findings of the judge.

25. The judge did not accept that the arrest warrant was a genuine document and gave her reasons for this conclusion at [41]. She scanned into her determination a copy of the arrest warrant. It was not just the appearance of the document which concerned her but as she made clear in her determination it was the circumstances in which the document came to be in the possession of the appellant three years after it was apparently issued but not sent to the appellant in time for his asylum interview. The judge was entitled to take an adverse view of this and she did. The grounds make a bad point when criticising the judge's treatment of the arrest warrant at [23] to [25] in the determination. At that point in the determination the judge was setting out the evidence before her. She drew her conclusions after that stage at [41]. As to the death certificate, the judge accepted at [52] that the deaths had occurred. What else was she required to say? The documentation was in an unsatisfactory state, see [22] where the judge set out its poor condition. Nevertheless she found in favour of the appellant on this issue at [52]. It was difficult to avoid the conclusion that much of the grounds of onward appeal were padded out to make the challenge to the determination more impressive than it really was.

26. As the respondent pointed out in oral submissions to me the question of Mr Bor was really neither here nor there. Even if the appellant could show the existence of this individual, about whom the judge had said there was no evidence, it still did not link Mr Bor with the appellant which was the important issue. The judge was entitled to take a view on what was or was not in the screening interview. Whilst it is correct that appellants are advised by the respondent to be brief in the screening interview since it is just that and not a substantive asylum interview, nevertheless where there is a particularly important issue which an appellant relies on it is reasonable to expect that appellant to mention it in the screening interview as one of the reasons for a claim. If they do not, the judge is entitled as this judge did to take note of that fact. As to the sur place claim, what was clear to the judge was that even if the appellant had engaged in three demonstrations he was not of any interest to the authorities. These activities were minor in nature and would not, she found, bring the appellant to the adverse attention of the authorities.

27. The appellant had been able to leave Iraq on his own passport which the judge found made no sense if the appellant really was being sought by the authorities. Although the grounds of appeal refer somewhat vaguely to the possibility that the appellant may have left Iraq by bribery, there appears to be no evidence in the case of that. It is mere supposition on the part of the appellant and arose at a very late stage in the proceedings. This too is simply a disagreement with the result.

28. The main ground on which the appellant seeks to overturn the decision of the First-tier, ground 6, relates to the issue of the appellant's return to Iraq. The judge was entitled to take notice of the fact that the appellant on his own case had said he had returned once already from Romania when he was given assistance by his family who provided documents to him to enable him to return. The assault on the appellant occurred in the context of a land dispute which the appellant said led him to travel to Romania. He returned to Iraq from there indicating he no longer felt under threat at that point from the fallout from the land dispute.

29. As the presenting officer submitted to me during the hearing, the appellant could be returned to the KRI directly (the CPIN confirms such returns are possible). That leaves the question of the appellant obtaining documentation to enable him to return. The judge noted that there was no supporting evidence beyond the appellant's own testimony, to show that the appellant had attended the Iraqi embassy in London when evidence of such a visit could reasonably be expected to be produced. The appellant's grounds originally stated that he would not have received any documents from the embassy but then he subsequently argued that he could obtain a laisser passer but that was insufficient (to get beyond the airport) for the reasons set out in the background evidence. **SMO 2** indicates that a laisser passer will enable an appellant to travel to Iraq but will be confiscated on arrival. What the judge appears to have had in mind was that the appellant

confirmed in his asylum interview that he was able to return to Iraq on a laisser passer. After passing through Baghdad airport he had been able to take a bus to the KRI passing through checkpoints.

30. At [49] the judge pointed out that the appellant had returned from Romania to Iraq after his mother copied his details to the Romanian authorities by email. There was no reason why this could not be done again. That was a finding that was open to the judge and was in line with the country guidance authority and consistent with the evidence of the ongoing contact between the appellant and his family in Iraq. Whilst it is correct that the judge did not mention in specific terms the case of **SMO 2,** she did cite the CPIN in relation to opposition to the government in the KRI and in relation to controls on the media. The judge's decision on return was consistent with the October 2023 CPIN which is an up-to-date document which takes into account recent changes in country conditions such as the ability of the respondent to return persons to the KRI when previously return had only been possible to Baghdad. Ultimately it was a matter for the judge to decide whether the appellant was undocumented, if he was could he contact his family for assistance (she found he could) and if he could do that could he pass either through checkpoints at Baghdad (as he had done previously). Alternatively could he be taken directly to the KRI? This too was a viable option for the reasons given. I remind myself that the judge had the benefit of seeing the appellant give evidence and was in a strong position to evaluate the evidence, including the appellant's claims of previous journeys to and from Iraq, assistance from family members and generally the credibility of the overall claim.

31. Once the judge had found that the appellant could receive documents from his family as he had before and could return safely the potential concern raised by judge Sheridan fell away. Judge Kempton had found in terms that the appellant could obtain assistance from his family. In **SMO2** it was stated at paragraph 20 of the headnote: "*An otherwise undocumented asylum seeker who cannot call on the assistance of family in Iraq is unlikely to be able to obtain the individual version of the 1957 Registration Document by the use of a proxy."* The point being that the appellant can call on the assistance of his family. As I have indicated the grounds of onward appeal in this case amount to no more than a lengthy disagreement with cogent findings of the judge which were open to her on the evidence. They do not indicate any material error of law and I therefore dismiss the onward appeal in this case.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

Signed this 19th day of June 2024

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Judge Woodcraft
Deputy Upper Tribunal Judge