Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2024-005054
First-tier Tribunal Number: PA/58253/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued

On 16th of January 2025

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

HA
(Anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Wood, Legal Representative
For the Respondent: Ms S Lecointe, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 6 January 2025

Order Regarding Anonymity.

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

1. The appellant is a citizen of Iraq born on 18 November 1996 in the city of Kirkuk. He appeals against a decision of Judge of the First-tier Tribunal Lemer dated 30 July 2024 which dismissed the appellant's appeal against a decision of the respondent dated 5 October 2023. That decision in turn refused the appellant's application for international protection which had been made on 30 October 2021. The appellant arrived in the United Kingdom on 7 June 2021 and claimed asylum the same day.

The Appellant's Case

2. The appellant argued that he was at risk upon return to Iran for four main reasons. First was that he had converted to Zoroastrianism on 22 August 2021. The second reason was that he feared his stepfather (who was also his uncle) who had ill treated him and his sister. He was assaulted by his stepfather on 4 September 2019 and his sister had committed suicide. The stepfather was a one star general in the PUK militia in the Kurdish Region of Iraq (KRI) and had caused an arrest warrant to be issued against the appellant because of the appellant's postings on WhatsApp. The third reason was that the appellant had engaged in refugee sur place activities in the United Kingdom since arriving in the United Kingdom having attended at least four demonstrations outside the Iraqi embassy and the KRI embassy. The fourth reason was because he did not have a CSID card which would mean that he could not get out of whichever airport he was sent to upon return.

The Decision at First Instance

3. The judge did not find the appellant to be a credible witness. Pointing to the CPIN the judge found that there was no risk per se for those who converted to Zoroastrianism. The appellant's postings on WhatsApp were mainly to do with his faith and the judge did not consider it credible that an arrest warrant would be issued as a result of that. The judge noted the warrant of arrest which had been provided to the appellant by a friend in Iraq but the judge was not impressed by the document particularly how late in the day it had been produced. As to the absence of identification documentation, the judge's view was that the appellant could seek the assistance of his family to obtain replacement documents. The judge dismissed the appeal.

The Onward Appeal

4. The appellant appealed this decision on six main grounds. Ground 1 was that whilst the judge had accepted the appellant was a vulnerable witness he had not factored that into his assessment of the appellant's credibility for example why the appellant had produced the arrest warrant at a relatively late stage. Ground 2 argued that the judge had required corroboration and had wrongly stated that there was no

explanation from where the appellant had sourced certain photographs produced. They had been obtained from Facebook but the appellant could not provide other photographs because of the threats of violence from his stepfather.

5. Ground 3 argued there had been no finding by the judge on the claim of ill-treatment by the stepfather. The judge could not therefore conclude that the appellant's family would assist the appellant with obtaining identification documentation. Ground 4 was that the judge had not considered the appellant's risk on return as a result of the appellant's sur place activities. The appellant would continue to protest upon return. Ground 5 argued that if the appellant was returned to Sulimanyeh in the KRI he would be unable to travel to his hometown of Kirkuk without identification documents, he would not be able to cross the internal border between the KRI and the area of Iraq under central government jurisdiction. Ground 6 dealt with the appellant's claim that there would be insurmountable obstacles to his return to Iraq. Permission to appeal was granted by the First-tier Tribunal who found the grounds arguable save for ground 6.

The Hearing Before Me

6. 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.

7. For the appellant reliance was placed on the grounds of onward appeal as drafted. The grant of permission was limited because permission had not been granted on ground 6 but the appellant relied upon a letter from the Upper Tribunal dated 14 November 2024 which had stated that where permission was said to be granted only in part it should be treated as a grant of permission on all grounds. This was regardless of any remarks made by a judge (when refusing permission in part) as to the merits of those grounds.

8. In respect of ground 1 there was no interface with the appellant's vulnerability when the judge came to assess credibility. This was also contrary to the respondent's own guidelines. As to ground 2 the judge had erred in requiring the appellant to provide corroboration. Possibly the judge had got this from the respondents review which had talked about corroboration. The judge had not looked at the circumstances appellant found himself in where he had been disowned by his mother because of his conversion. There was no finding that the appellant's sur place activities were not genuine. Following **HJ Iran [2009] EWCA Civ 172 t**he tribunal needed to consider how the appellant would conduct himself upon return. The respondents review had only referred to **HJ Iran** in the Upper Tribunal not the Court of Appeal.

9. As to ground 4, the respondent's CPIN document set out the categories of those persons who may be at risk upon return, particularly those individuals with higher profiles. Those who might fall into this category could be those participating in protests and demonstrations. The appellant had participated in four such demonstrations in the United Kingdom. As to ground 5, Kirkuk is not within the KRI His CSID had been taken from him. The judge appeared to proceed on the basis the appellant could re-document himself but such a document cannot be replaced or renewed. One has to be present to get an identification document. As to ground 6 the judge did acknowledge that followers of Zoroastrianism face discrimination. The appellant would have to live on the margins of society, he was thus entitled to succeed in his claim under article 8.

10. In response for the Home Office, the respondent argued that the appellant could make his own arrangements and would therefore be able to choose the route of his return. The appellant could choose to live in a different area of Iraq if he so wished. It was noteworthy that grounds 4 and 6 had not been granted permission. The judge had treated the appellant as a vulnerable person and had considered the credibility of the appellant's account. He was fit to give evidence at his appeal. There had been no request for particular treatment of the appellant during the hearing. He was legally represented.

11. The appellant would be able to practice his religion on return and the **HJ Iran** point was redundant. The judge did not accept the appellant would face any risk. The grounds were no more than a mere disagreement with the determination. The appellant was still in contact with a friend who had obtained the arrest warrant for him. Such a person could assist the appellant on return. If the basis of the appellant's account was rejected the appellant's uncle/stepfather could assist in obtaining documents.

12. Finally on behalf of the appellant it was submitted that the judge had adversely commented that the appellant produced the arrest warrant late and had not mentioned its existence at an earlier stage but this approach was in error. There was no finding of fact as to whether the appellant had suffered past mistreatment by the uncle. The **HJ Iran** point was more than the appellant's religious claim it extended to the appellant's political opinion. The family could not assist the appellant without the CSID and the appellant could get no further than the airport.

Discussion and Findings

13. This is a reasons based challenge to the First-tier's determination dismissing the appellant's asylum appeal. The first issue the judge had to decide was whether the appellant was to be treated as a vulnerable witness and if so how that should manifest itself. At [9] of the determination, the judge detailed the medical evidence on which the

finding of vulnerability was made there being a letter dated 21 May 2024 from the NHS Harrow Trust that the appellant had reported he was suffering from complex PTSD. It does not appear that any specific measures were requested by the appellant's representatives for the hearing (for example written questions only). The judge was careful to direct himself that vulnerability might cause impaired memory and the judge's findings of fact in particular those in relation to the credibility of the appellant's account need to be considered in the light of that self direction which the judge bore in mind in the determination.

14. The appellant claimed that not only had his stepfather who was also his uncle ill treated him but as a general in the militia of the KRI he had also caused an arrest warrant to be issued against the appellant because of the appellant's claimed anti government postings and conversion to Zoroastrianism. These two aspects of the appellant's claim very much relied on an acceptance of the appellant's credibility. The judge was not asking for corroboration from the appellant what he was pointing out was that if the appellant's account were true it would be reasonably possible for the appellant to produce supporting evidence. The judge did not accept the credibility of the appellant's account for the cogent reasons he gave in the determination.

15. What the appellant had done was produce a number of photographs with no clear explanation as to who they were photographs of, where and when they were taken and why the photographs were said to support the appellant's claim that his stepfather/uncle was a senior figure in the militia of the KRI. The appellant's explanation that he had obtained these pictures from Facebook entries was evidently not considered adequate since it was reasonable to expect that there would be some accompanying evidence from Facebook indicating who the persons were. The judge dealt with this point at [24] noting that the stepfather had been the appellant's uncle before marrying the appellant's mother. There should therefore have been family photographs from an earlier time to show who the uncle was. The appellant's further explanation that he had been disowned by his mother because of the religious conversion was not supported by any other evidence and suffers from the same difficulties which other aspects of the appellant's case have.

16. The second strand of the appellant's claim was that he was involved in anti-government protests and would be of adverse interest to the authorities upon return. The issue here as the judge pointed out was whether the appellant's activities would put him into a higher risk category. The judge found the appellant's anti-government activities were at a very low level and would not bring the appellant to the adverse attention of the authorities. giving his detailed reasons for this conclusion at [38]. The appellant had relied on his claim that he had made antiregime remarks on his Facebook pages but as the judge pointed out there were no posts in 2024 and only four posts in 2023. What he had posted about mostly was his Zoroastrian faith. These were the

appellant's own Facebook entries and it was reasonable to have expected him to provide such evidence (of relevant posts) if they existed. That they were not provided entitled the judge to draw an adverse inference on the appellant's claim to have been such a high level dissident that he would come to the attention of the authorities.

17. Inevitably the failure to be able to support a claim which he himself was putting forward on the basis of what he said were his actions that is making Facebook posts inevitably undermined the credibility of the appellant's overall account. The judge was entitled to come to that view.

18. If the appellant was not credible in his claim but had indeed lost his CSID at some point, it would still be possible for the appellant to obtain further documentation quickly with the assistance of relatives in the country. See the case of **SMO [2022] UKUT 110** which acknowledges that:

> "The CSID is being replaced with a new biometric Iraqi National Identity Card - the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR."

19. The headnote continues at paragraph 14 to refer to the assistance family members can provide to enable an appellant to be redocumented. This point was accepted by the appellant's representative at first instance, see [11] of the determination. At [15] the matter was put by the appellant's representative on the same basis when it was argued that if the appellant's account of ill-treatment by the stepfather was accepted the appellant could not reasonably be expected to obtain help from the family in obtaining a travel document. Although the grounds of appeal claim that this was a concession made by the representative at the hearing without instructions it was in fact an argument based on the current jurisprudence on re-documenting Iraqi citizens.

20. The appellant now argues that it is impossible for him to obtain identification documentation. No authority was provided for that submission which is contrary to the country guidance in **SMO**. The judge's conclusion that the appellant could get help from the family was based on the judge's assessment of the overall credibility of the appellant's claim and was open to the judge on that basis. That it is possible to re-document with appropriate assistance is in accordance with the country guidance and there is therefore no error of law in the judge's conclusion on this matter.

21. A further point made to me was that the appellant was of Kurdish ethnicity but was from Kirkuk which is not a city within the KRI although it does have a significant Kurdish population. The appellant's evidence to the judge was that he was born in Kirkuk and that he worked there. The claim for international protection was on the basis that the step father

was based in the KRI and was using his influence there to do harm to the appellant such as obtaining an arrest warrant against the appellant. The appellant's account is somewhat muddled at this point and it was for the judge to analyse it as best he could.

22. Sulimanyeh, where the appellant feared return by aeroplane is in the KRI. The respondent submitted to me during the hearing that the appellant had a number of choices of entry routes into Iraq. As a citizen from Kirkuk he could presumably be removed to Baghdad and travel from there. Given that the uncle is said to be a general in the KRI militia and not the Iraqi army it is not entirely clear from the appellant's account why the appellant would be at risk upon return to Kirkuk. He claims that the Iraqi government in Baghdad are adversely interested in him because of his conversion to Zoroastrianism but as the judge pointed out the background information does not indicate this is plausible. The CPIN states that the government is committed to the safety of all beliefs, it is also stated that the members of this faith no longer face physical abuse. See also paragraph 24 below as to the rejection of the claim that he was at risk for posting anti government messages. It is difficult to avoid the conclusion that the appellant had put forward an over complicated story with a number of different strands which were not altogether consistent.

23. The appellant did supply what he argued was supporting evidence of his account in the form of an arrest warrant. The judge was concerned at the failure by the appellant to mention the arrest warrant at an earlier stage. The appellant's explanation for the delay was that no one had asked him. The judge rejected this explanation at [27]. The appellant had gone to the length of obtaining an arrest warrant from Iraq, using his contacts there and could therefore be taken to have some idea in mind as to how he wanted to use the arrest warrant. That being so, he did not need to wait to be asked about the document. The judge was entitled to take this into his overall assessment of the appellant's credibility.

24. A similar point arose in relation to the claim that there was video evidence of an incident where the appellant was shot at. Having made this claim the appellant did not produce any such video evidence to support the claim. The judge concluded that this failure to supply supporting evidence undermined the appellant's credibility. Ultimately the burden was on the appellant to establish his claim. Where there was evidence that could reasonably have been obtained but was not produced to the tribunal the judge was entitled draw an adverse conclusion of the appellant's credibility.

25. The appellant also argued that he could not reasonably be expected to return to Iraq because he would want to continue his anti-government activities. These were only at a very low level. At such a low level the authorities would not be interested in them and therefore whether the appellant continued with such activities or did not the **HJ Iran** point fell away both as to the appellant's conversion to Zoroastrianism and also his

claimed sur place activities. The judge did not accept that the appellant had lost contact with his family whether they were in Kirkuk or the KRI.

26. There were no insurmountable obstacles which would prevent the appellant's return to Iraq. He can speak the language and he had worked in Iraq before travelling to the United Kingdom. He was in good health and it is difficult to see what evidence justifies the appellant's claim that he would be living at the margins of Iraqi society upon return. I agree with the respondent's categorisation of this appeal as being no more than a disagreement with the decision of the judge. The grounds do not demonstrate any material error of law in this case and I therefore dismiss the onward appeal.

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 10th day of January 2025

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Judge Woodcraft
Deputy Upper Tribunal Judge