Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: LP/00140/2020**

THE IMMIGRATION ACTS

Heard at Field House by (MS Teams)
On the 11th October 2021

Decision & Reasons Promulgated:
On the 13th October 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

A S O (IRAQ)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Craig Holmes of Counsel, instructed by Parker Rhodes Hickmotts solicitors
For the respondent: Mr Andy McVeety, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of A S O who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.
Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 20 February 2020 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Iraq.

2. **Mode of hearing.** The hearing today took place remotely by Microsoft Teams. There were no technical difficulties. I am satisfied that all parties were in a quiet and private place and that the hearing was completed fairly, with the cooperation of both representatives.

Background

3. The appellant claims to be at risk in the Independent Kurdish Region of Iraq (the IKR) from the PUK, who are power sharing there with the KDP. He said that while at school in 2011, he was arrested, detained, questioned and ill-treated by the Asayish, who also seized all the school computers. His uncle paid a bribe. The appellant was released and remained in Iraq for a further 4 years after that. He did approach the KDP for help but they would not get involved unless he joined them, which he was not prepared to do.

4. While in Iraq, the appellant claims to have had an undisclosed relationship with a former partner to whom he proposed marriage, but who was expected to marry an older cousin by her family. He said that her family were connected to the PUK and he feared that they would know he was the one who had arranged for her to go to a women's refuge centre in a secret location to escape the unwanted marriage.

5. The appellant did not take her there himself but a close friend did it for him. He had been in touch with his friend, at least twice, since coming to the United Kingdom, but had not attempted to speak to his former partner, although he had memorised her mobile phone number while still in Iraq. He had not asked her, or his friend, or indeed any of his family members, whether his partner had in fact married the older cousin, or what had become of her.

6. The appellant left Iraq in August 2015, travelling to Turkey with an agent he met in Erbil. It seems that at this stage, he had both a CSID and an INID card, as well as an Iraqi passport on which to travel. The appellant says that the agent kept his passport, his INID card, and his mobile phone. He hid the CSID in his clothes to prevent the agent finding it, but did not memorise the number 'as he did not think he would lose it'.

7. After 15 days, the appellant left Turkey for Sweden, where he claimed asylum. The Swedish Migrationsverket decision has not been made available in these proceedings. His asylum claim was not successful. It is the appellant's case that the Swedish authorities still have his Iraqi CSID card. No evidence was produced to the

First-tier Judge of any efforts made by the appellant to confirm this, or to recover his card.

8. The appellant then travelled on via Denmark, Germany and eventually to the Netherlands, where he handed himself in to the police, and was fingerprinted. He was not interviewed in the Netherlands. The Dutch authorities indicated that he would be removed to Sweden, presumably under the Dublin III Convention.

9. The appellant did not wait for that but left by train for France, where he stayed in 'the jungle forest' (presumably the Calais Jungle camp) before travelling on to the United Kingdom. He arrived in the United Kingdom clandestinely on 20 December 2017, and claimed asylum on 27 December 2017.

10. The appellant has a Facebook account, which is not in his full name and omits his family name. It contains some anti-PUK posts, but his evidence to the First-tier Judge was that the account settings were set at 'Private' not 'Public' and it was not available for anyone to read. He had not received any messages on that account from people still in Iraq, and in particular, nothing from anyone who wanted to do him harm: they might not have access to his Facebook account, because of the settings.

11. The appellant relied on a letter from the KRG, dated 21 May 2015, purporting to have been written by a Major General who was Director of Security in Raparin, and another from the Human Rights Committee of the Kurdistan Parliament – Iraq. He was unable to provide a credible or *Tanveer Ahmed* reliable explanation for how he obtained these letters, the terms of which are self-serving: see D7 and D10 of the respondent's bundle for English translations of these letters.

First-tier Tribunal decision

12. The First-tier Judge accepted that the appellant was an Iraqi Kurd, a Sunni Muslim with no family or connections in Baghdad, with no work experience and only a little Arabic.

13. For the respondent, Mr Mullarkey conceded that internal relocation to Baghdad was not an option for the appellant. The First-tier Judge went further and found that the appellant could not remain safely in Baghdad City and would face destitution there. Save for those findings, the First-tier Judge made a comprehensive negative credibility finding and in particular, he found the letters to be unreliable documents intended to bolster a weak claim.

14. The appellant accepted that his claims under the Refugee Convention and Articles 2 and 3 ECHR should stand or fall together.

15. The First-tier Judge found that there was no Article 15(c) risk to this appellant. He rejected the appellant's private life claim under Article 8 ECHR. He considered that the appellant could return to his family home in Sulaimaniyah Governorate, where

his family could assist in resettling him and help him find employment. Returning from Baghdad City to Sulaimaniyah would not be unduly harsh.

16. The appellant appealed to the Upper Tribunal.

Permission to appeal

17. Permission to appeal was granted on the following basis:

> "2. The grounds submit [that] the judge arguably erred in law by failing to make findings on the issues raised before him (and set out in the appellant's skeleton argument) including whether the appellant would continue his political activities on return to Iraq, inaccurate/inappropriate reliance on passages from the background material, a failure to give adequate reasons in relation to the marriage proposal and a failure to deal with a material submission, namely whether the Swedish authorities hold the appellant's CSID.
>
> 3. Although there is more force in ground 1 than the other grounds of appeal, in that the judge arguably erred in law in failing to make any findings on whether the appellant will continue his political activities on return, and whether they will put him at risk, permission is granted on all grounds."

Rule 24 Reply

18. There was no Rule 24 Reply from the respondent.

19. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

20. At the hearing, Mr Holmes took me through the grounds of appeal. He contended that there should have been a clear finding as to whether the appellant's political activity would continue in Iraq.

21. Mr Holmes reconfigured his argument under grounds (ii)-(iv). He argued, in effect, that certain findings of fact were not open to the First-tier Judge, or had not been reasoned adequately or at all:

(1) The risk accruing from the appellant's student political activities and his later Facebook posts while in the United Kingdom;
(2) Whether his friend or his mother would have known the whereabouts of his former partner, and whether she was still in hiding for her own protection;
(3) The relevance of country evidence cited in the decision regarding honour killings and the status of women in Iraqi Kurdistan;
(4) The lack of any harm to other members of the appellant's family since he left Iraq;
(5) The *Tanveer Ahmed* reliability of the documents, in particular the document from the Human Rights Committee of the Kurdistan Parliament, which is addressed 'to whom it may concern';

(6) The asserted inconsistency between the age of the appellant and his partner at the time of his flight (they were 18) and country evidence as to the date when Kurdish women marry in the IKR; and
(7) The respondent's failure to confirm whether the Swedish authorities still had the appellant's CSID or not.

Analysis

22. I remind myself of the narrow circumstances in which it is appropriate to interfere with a finding of fact by a First-tier Judge who has heard the parties give oral evidence: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 and *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982 at [90] in the judgment of Lord Justice Brooke, with whom Lord Justice Chadwick and Lord Justice Maurice Kay agreed. I therefore consider each of the challenged findings.

23. Dealing with the two letters, and their *Tanveer Ahmed* reliability, I have considered the translated documents myself. They are, as the judge found, rather improbable documents and the appellant has not been able to explain how he got hold of an internal document within the KRG, or why in 2015 he was considered to be 'saying too much nonsense, criticising the acts of the government and our departments' such that he should be monitored and not allowed to disappear. The appellant's case has always been that in 2011, 4 years earlier, he criticised the PUK, not the KRG itself.

24. The letter from the Kurdistan Parliament, dated 15 March 2017, is so brief that it is worth quoting in full:

> "**To respected/whom it may concern**
> **Subject: support**
>
> The citizen [name given] who was born in 1997 has got special needs and at the moment he is being monitored by the security departments; his life is at risk, we are aware of his situation and we support him.
>
> Signature: Soran Omar, Head of Committee of Human Rights "

The appellant was already in either Sweden or the Netherlands in March 2017, rather than being at home and monitored by the security departments. It is not clear what is meant by 'special needs'. The First-tier Judge did not err in finding this document unreliable to the *Tanveer Ahmed* standard.

25. As regards the CSID, the appellant made no effort between 2017 and 2020 to seek to obtain it from the Swedish authorities. It is said on his behalf that his solicitors made such efforts after the grant of permission, but no evidence is before me to that effect and in any event, it cannot render irrational the First-tier Judge's conclusion that no such attempt had been made when he considered the appeal. Nor is there any evidence that the appellant asked the respondent to assist him in recovering the

CSID: the burden of proof in asylum appeals is always on the appellant and he did not discharge it. The First-tier Judge did not err in so concluding.

26. The First-tier Judge found the appellant's claimed political activities to be disjunctive and very low level. The appellant had no difficulty after the incident when he was a schoolboy in 2011, and the Facebook entries in the United Kingdom were not publicly available and had not drawn any attention to him. The judge was entitled to reach that conclusion on the evidence and there is no want of reasoning thereon.

27. Equally, the judge did not err at the level of perversity and/or *Wednesbury* unreasonableness in having regard to the lack of any enquiry for the appellant, or harm to his family members, by the PUK. That was a reasonable indicator to weigh when considering the risk on return.

28. The appellant's lack of concern for, or contact with, his former partner is strange and the judge was entitled so to find. Either the young woman was discovered, and forced to marry her older cousin, or she was not. His friend took her to the women's refuge and the appellant has had at least two conversations with his friend since coming to the United Kingdom. The judge did not err in expressing surprise that the question of the safety of the young woman was not discussed.

29. The country evidence extracts at [36]-[37] and [40] of the decision do not add significantly to the judge's reasoning but nor do they detract from it. They are simply superfluous and no arguably material error of law can be drawn therefrom.

30. For all of the above reasons, these grounds of appeal are unarguable and I uphold the First-tier Judge's decision.

DECISION

31. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed *Judith AJC Gleeson* Date: 11 October 2021
Upper Tribunal Judge Gleeson