Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/06354/2021
PA/52206/2021 (UI-2022-000126)

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On : 4 April 2022	**On : 7 June 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AQA
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Wood of Immigration Advice Service
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of Iraq of Kurdish ethnicity from Khanaqin, born on 1 March 1990. He claims to have left Iraq in May/June 2015 and to have then travelled through Turkey and various other countries before entering the UK clandestinely on 2 December 2017. He claimed asylum the same day and was

subsequently interviewed about his claim. On 27 April 2021 a decision was made by the respondent refusing his claim and he appealed against that decision.

3. The appellant's asylum claim was made on the basis that he was at risk on return to Iraq from the family of J with whom he had a relationship against their wishes. The appellant claimed that after initially refusing J's request to start a relationship, he began a relationship with her in December 2014 and wanted to marry her. However her father did not agree with the relationship and felt that the appellant had brought shame on his family and had dishonoured them. J's father's bodyguards beat him up and threatened to kill him and the same night members of her family came to his home looking for him and threatened his family. A week later the family home was burned down.

4. The respondent, in refusing the appellant's claim, accepted that being a victim or potential victim of an honour crime in Iraq fell within the Refugee Convention as a member of a particular social group and accepted that the appellant was Kurdish. However the respondent did not accept the appellant's account of his relationship with J, finding the details he gave about how the relationship started to be vague and considering it unclear why he would endanger both himself and J by agreeing to a relationship without the consent of her family and why he did not attempt to take any precautions so as to prevent the relationship being discovered. The respondent also identified inconsistencies in the appellant's account and rejected his explanation for the inconsistencies, namely that he forgot things easily. The respondent did not find the appellant's account of J's family coming to look for him at his home to be credible and noted that the vague nature of his claim in regard to the power and links that J's father had with the Iraqi forces and government undermined the credibility of his account. The respondent did not, therefore, accept that the appellant was at risk on return to Iraq on that basis. As to the feasibility of the appellant being able to return to Iraq, the respondent noted his claim that his CSID card and passport were taken from him by a smuggler in Turkey and thrown into the water. The respondent did not accept the appellant's claim to have lost contact with his family and considered that he could avail himself with the help of his family members in Iraq in obtaining a replacement CSID or a registration document with which he could apply for an INID upon return to his local Civil Status Affairs (CSA) office in Iraq. The respondent considered that the appellant's removal to Iraq would not breach his human rights. Whilst he claimed to suffer from depression he would be able to access treatment in Iraq and there would be no breach of Article 3 in that regard or on the basis of a risk of suicide.

5. The appellant's appeal against the respondent's decision was heard by First-tier Tribunal Judge Handler on 10 January 2022. The appellant had submitted a psychiatric report from Dr Nikhil Khisty for the appeal and the judge accepted, on the basis of that report, that the appellant was to be treated as a vulnerable witness. Both the appellant and his brother G gave oral evidence before the judge. The judge did not accept the appellant's account of his relationship with J, finding it lacking in credibility that he would have pursued a relationship in

such circumstances and knowing the risks involved. The judge did not find the evidence of the appellant's brother G to be helpful as the details of their family history were vague and inconsistent. G was claiming to have had no contact with the family since leaving Iraq in 2001 until his mother called him in 2017 asking him to help the appellant who had arrived in the UK. The appellant claimed to have had no contact with his family since December 2019 when he was told that he had brought shame on the family and that his mother and sister had had to leave Iraq. He had not heard from them since and believed that they may have drowned during a boat crossing from Turkey to Greece. He had contacted the Red Cross to try to find them but with no success. The judge found the appellant's evidence about contact with his family to be inconsistent and did not accept as credible his account of not being told about his brother G being in the UK before 2017. The judge considered that the appellant had not given a credible account in that respect and did not accept that he had lost contact with his family, finding that he remained in contact with his mother, sister and uncles in Iraq. The judge found the matters undermining the appellant's credibility to be so significant and pervasive that she had to conclude that he had fabricated his case. The judge did not accept that the appellant's mental health issues were at a level that would entitle him to protection under Article 15(c) of the Directive and considered that treatment was available for him in Iraq.

6. As for the question of documentation and ability to return to Iraq, the judge rejected the appellant's claim that his documents had been thrown into the water on his journey to the UK and found that he had not shown that he was not in possession of his CSID or that his family could not send his CSID to him. The judge went on to consider the matter in the alternative, on the basis that the appellant's CSID had been thrown into the water. She found that, based on the respondent's CPIN report, the appellant could not obtain a CSID via the Iraqi Embassy in the UK, but she considered that he could obtain one using a proxy in Iraq, with the help of his family. The judge rejected the argument made on behalf of the appellant that there was an INID terminal in Khanaqin which meant that the appellant had to get there to apply for an INID himself but would be unable to do so without a CSID. The judge found that the appellant could return to Iraq and that his removal would not breach his Article 3 rights on the basis of his health or other concerns and that neither would there be a breach of Article 8. She accordingly dismissed the appeal.

7. The appellant sought permission to appeal the decision to the Upper Tribunal on the following grounds: that the judge had failed to apply the guidance in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123 and to consider the appellant's vulnerability and mental health issues when considering the inconsistencies in his account and assessing his credibility; that the judge had materially misdirected herself in law regarding her assessment of the plausibility of the appellant's account, contrary to the guidance in Gheisari v Secretary of State for the Home Department [2004] EWCA Civ 1854 and had erred by adopting the respondent's plausibility findings without making her own assessment; and that there had been procedural unfairness in the judge taking points against the

appellant which had not been raised by the respondent nor put to him at the hearing, such as whether he was registered at his local CSA office and where that office was, and the judge had not directed herself to the relevant part of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 in relation to the status of the INID system in the appellant's home area.

8. Permission was granted in the First-tier Tribunal on all grounds, but with specific reference to the last ground. The matter came before me. Both parties made submissions and I shall address those in my discussion below.

Discussion

9. As Mr Bates pointed out, Judge Handler's initial finding at [65] was that the appellant had retained his original CSID and she rejected his claim that the document had been thrown into the water by the smuggler on his journey to the UK. Her findings at [67] to [73] in regard to him obtaining a replacement CSID were made in the alternative and it was only those latter findings which were the subject of challenge in the grounds of appeal. The initial finding, that the appellant had his original CSID, was based upon previous adverse credibility findings made by the judge, and if those findings were found to have been properly made, Mr Bates quite properly submitted that the findings made in the alternative and any challenge to those findings, were immaterial. Mr Wood accepted that that was the case.

10. Accordingly I turn to the grounds challenging Judge Handler's findings on credibility.

11. The first ground is that the judge, when making her adverse credibility findings, failed to have regard to the impact of the appellant's mental health on his ability to give a detailed and consistent account. Mr Wood relied upon parts of Dr Khisty's psychiatric report in that regard, in particular paragraph 7.9 where Dr Khisty referred to the appellant reporting 'easy forgetfulness' and paragraph 7.18 where he referred to the appellant presenting with a moderate depressive episode and thus having difficulty in continuing with ordinary activities. His submission was that the judge had only had regard to the medical report when considering the appellant's vulnerability as a witness and the appropriate adjustments to be made when he was giving his evidence, but failed to take it into account when considering the approach to any inconsistencies in his evidence. However I do not accept that that is the case. The judge's consideration at [9] as to whether the appellant had had any difficulties in understanding and answering questions put to him arose from the issues raised in the psychiatric report and it is clear that she therefore took it into account when assessing his evidence. Likewise, at [44], the judge's express confirmation that she was assessing the evidence and the credibility of the appellant's account in the round together with the medical evidence demonstrates that his mental health issues were firmly in her mind when she was considering his evidence. The judge went on, at [45] to [49], to undertake a detailed assessment of the medical evidence and, at [53], considered that evidence in the context of the appellant's account of family contact and his

knowledge of his brother's presence in the UK. At [57] and [59] the judge drew together her conclusions on the evidence, considering all matters including the medical evidence and the appellant's mental health issues in the round. I therefore reject the suggestion that the judge failed to consider the appellant's vulnerability and mental health issues when assessing his evidence and his credibility. Plainly that formed an integral part of her assessment.

12. In any event, I see nothing in the medical evidence which the judge failed to consider or which ought to have led her to question the appellant's ability give a consistent account. I note that the reference to 'easy forgetfulness' at paragraph 7.9 of the psychiatric report, as specifically relied upon by Mr Wood, was the appellant's own description of himself, whereas Dr Khisty at paragraphs 7.22 and 7.23 made it clear that the appellant had no deficit in comprehension, gave coherent answers and was able to understand questions put to him, retain and weigh information and give a meaningful response. Although Dr Khisty referred to symptoms arising from depression (in particular at paragraph 7.17) in general terms, he did not voice any specific concerns in his report about the appellant's ability to give a consistent and detailed account of events. Accordingly I find no merit in the first ground.

13. Likewise, I reject the challenge made to the judge's decision in the second ground asserting that the judge misdirected herself by adopting the respondent's views on the plausibility of the appellant's account without undertaking her own assessment. On the contrary, the judge provided detailed reasons as to why she found the appellant's account to be lacking in plausibility and, in rejecting his claim to be a fabrication, she identified various concerns aside from plausibility issues in concluding that his account of events in Iraq was not a credible one. At [30] the judge referred to internal and external inconsistencies in the appellant's account which undermined his credibility and she proceeded to give full details in the following paragraphs, assessing the appellant's account against the background country information. The judge noted that the appellant's account of the way in which the relationship was conducted was inconsistent with the background information; at [38] she noted that the appellant had given an inconsistent account of whether J's father approved of the relationship; at [40] she referred to inconsistencies in his account of an incident when it was claimed that J's father's bodyguards attacked him; and at [50] to [52] the judge referred to specific inconsistencies in the evidence about the family contacts. The suggestion in the grounds that the judge merely rubber-stamped the respondent's findings without undertaking her own assessment is therefore without any merit and is also undermined by the fact that, at [41], she specifically rejected part of the respondent's case.

14. Accordingly it seems to me that the judge was perfectly entitled to find the appellant's account to be lacking in credibility. It was entirely open to the judge to conclude, for the reasons fully and cogently given, that the appellant had not left Iraq for the reasons claimed and that his family circumstances were not as claimed. It was, further, entirely open to the judge to reject the appellant's claim to no longer have his CSID and to conclude that he was able

to return to Iraq and travel to his home area without problems. For all of these reasons I uphold the judge's decision.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede Dated: 7 April 2022
Upper Tribunal Judge Kebede