**Upper Tribunal**
**(Immigration and Asylum Chamber)**

Appeal Numbers: UI-2021-001606
PA/52372/2021 [IA/06978/2021]

**THE IMMIGRATION ACTS**

**Heard at: Manchester Civil Justice Centre**
**On: 24th June 2022**

**Decision & Reasons Promulgated**
**On: 6th September 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**AHM + 5**
**(anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**For the Appellant: Mr Mohzam of CB Solicitors**
**For the Respondent: Mr McVeety, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Iraq born in 1983. His dependents are his wife and children. He appeals with permission against the decision of the First-tier Tribunal (Judge Handler) to dismiss his protection appeal.

**Background and Matters in Issue**

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2. The Appellant arrived in the UK and claimed asylum on the 16th August 2018. He told officers that he feared persecution in Iraq, or more specifically the IKR, because he had spoken out against the PUK, or more specifically the leader of their security division, Mahmood Sangawi. He had been working as a police officer in the traffic division, and had refused to participate in corrupt and politically motivated practices at the behest of the PUK. Furthermore he had spoken out about political issues, including featuring on a news segment broadcast on Kurdish TV channels KNN and NRT.

3. Protection was refused and the Appellant appealed to the First-tier Tribunal. The matter came before Judge Buckley, who by his decision dated the 30th April 2019 dismissed the appeal. Judge Buckley did not find the Appellant's evidence sufficiently persuasive to discharge the burden of proof. He noted, *inter alia*, that the Appellant had not provided a copy of the film of him speaking on the news channel, and had simply provided a still image showing him speaking into a microphone.

4. The Appellant did not appeal against that decision. Instead he went away and got the evidence that Judge Buckley had considered to be omitted. He submitted further representations to the Respondent, including the video showing him speaking on Kurdish television. He also submitted further evidence of his political activity in the United Kingdom, from where, he claims, he has continued to campaign against corruption and human rights abuses in the IKR. On the 27th April 2021 the Respondent agreed to accept this new evidence as a 'fresh claim' for asylum, but nevertheless refused protection. The matter duly returned to the First-tier Tribunal, this time coming before Judge Handler.

5. The issues before Judge Handler were fairly narrow. The Respondent's own Country Policy Information Note *Iraq: Opposition to the government in the Kurdistan Region of Iraq* (KRI) stated that the security forces there had instigated a widespread campaign of arrests against those who spoke out against them. There was no question of internal flight should the Appellant establish that he was at risk in the IKR, since he, his wife and children are all Kurdish. The only issue before Judge Handler was whether that risk was in fact made out.

6. Judge Handler begins her decision by properly directing herself to the principles in Devaseelan v SSHD [2002] UKIAT 00702, and summarises, in brief terms, the decision of Judge Buckley.

7. In respect of the television news interview the Tribunal notes that the video was not produced before Judge Buckley, and no good reason why has been provided for that failure. The Judge notes that although it was apparently provided to the Home Office as part of the fresh claim, no application had been made for it to be shown in court; the Judge declined the offer, "repeatedly made" at the hearing, to

watch it on the Appellant's mobile telephone. The decision then says this [at 26]:

> I accept on the lower standard that the appellant does have a video which appears to show him being interviewed by KNN whilst he was at a demonstration for the following reasons. He has provided a two still images and transcript of that interview. The Further Submissions letter indicates that a DVD of the interview was included and I find that there is a reasonable likelihood that a DVD was enclosed with that letter. The appellant said at the hearing that he could show the video on his phone and I find he would not have said that if he could not show the video. I do not accept that the appellant has shown on the lower standard that the video is a genuine video of him being interviewed by KNN when he was at a demonstration in Iraq because I find that if this was the position, he would have provided that video and transcript at the hearing before Judge Buckley or at the hearing before me (i.e. it would have been provided in a manner other than the appellant attempting to show it on his phone during the hearing). Further, I note that the two still images said to be of parts of this video in CB include one poor image and one image of a TV presented but which does not show the appellant. Even if the appellant had shown that he was interviewed by KNN when at a demonstration in Iraq, I find that this would be of limited assistance to the appellant for the following reasons. The appellant has not shown whether, when or where that video has been broadcast or could be accessed by the public or the authorities. Further, the transcript of the interview indicates that the appellant was articulating why he was demonstrating. However, it does not refer to MS and I find that it does not serve to strengthen his claims regarding what he says happened which led him to be at risk from MS.

8. The Tribunal discounts the evidence of threats made to the Appellant on Facebook on the grounds that there is no evidence that the source is genuinely a supporter or agent for Mahmood Sangawi [25]. It accepts that the Appellant has been broadly consistent about having attended demonstrations in the UK in November 2019 and December 2020 but rejects as inherently incredible that he helped to organise another one, of some 300-400 people in Manchester's Piccadilly Gardens, by using Facebook and his mobile telephone [27]. He has not provided a transcript or video evidence of his claimed appearance on NRT (a Kurdish television channel) in December 2020 [28]. The Tribunal could not discern from the Facebook evidence when, whether and what the Appellant had posted material adverse to the Kurdish government. The Tribunal rejected as not credible the Appellant's evidence that he has lost contact with his family in Iraq [29]. His evidence that he had been referred to a memory clinic by his GP was dealt with as follows:

> 31. I have taken into account the appellant's reference to his diabetes causing him to have problems remembering things. He has not provided medical evidence that diabetes would be a

reason for his failure to remember key aspects of his narrative. I noted that the letter from his GP said he had been referred to the memory clinic. The appellant said that he had still not been to the memory clinic because of covid. If the appellant, whose date of birth is in 1983, had problems with his memory that would be significant. He has reported the issue to his GP. I find that if his GP was concerned about the appellant's memory, he would have escalated the referral by now because for a man of the appellant's age to be having significant problems with his memory is something that would be pursued. I find the appellant's claims that his health issues provide any reasonable explanation for the problems with his evidence to be without any foundation in fact.

9. The appeal was thereby dismissed.

10. The Appellant now has permission to appeal on all of the following grounds:

(i) The Tribunal erred in its approach to the video evidence, in its misapplication of the Devaseelan principles, in acting unfairly in refusing to view the video and in making unclear findings;

(ii) The finding that the Appellant could not have organised a protest using Facebook and his mobile phone is perverse and unreasoned;

(iii) In finding that the Appellant had failed to demonstrate that he had posted material critical of the IKR authorities the Tribunal failed to have regard to pages 15, 17, 18, 25, 27, 35, 39 of the Appellant's bundle, which consisted of screenshots of obviously relevant material with operative links;

(iv) The reasoning in respect of the GP is perverse.

**Discussion and Findings**

11. In respect of ground (i) Mr McVeety is quite right to point out that the video was not produced in a proper format before the First-tier Tribunal; Mr Mohzam was unable to explain why. Nor was Mr Mohzam able to explain why it *still* hasn't been produced in the Upper Tribunal. I agree that this was an unfortunate omission on the part of the Appellant's representatives. Although it might be thought that it would be reproduced as part of the Respondent's bundle, they should really have taken steps to ensure that it would be available for the court to view, given its centrality to their client's case. That said I am satisfied that the Tribunal has erred in the manner identified in the grounds. The reasoning requires some unpacking.

12. The overall import of the First-tier Tribunal's paragraph 26 (set out above) is that the Judge is prepared to accept that there is a

video, but not that it is a *genuine* video. The finding "I accept on the lower standard that the appellant does have a video which **appears** to show him being interviewed by KNN whilst he was at a demonstration" (my emphasis) is followed later in the paragraph by this: "I do not accept that the appellant has shown on the lower standard that the video is a **genuine** video of him being interviewed by KNN when he was at a demonstration in Iraq".

13. The Tribunal finds that this cannot be a "genuine video" of him being interviewed by KNN because if it was, he would have provided the video and transcript before Judge Buckley. The logic apparently employed here is derived from the guidance in Devaseelan that where new evidence is produced which could have been before the first tribunal, and no good reason for that failure is given, that evidence should ordinarily be viewed with the greatest circumspection. The difficulty is that this was not entirely new evidence. The still from the video had been obtained from a friend, and had been produced before Judge Buckley. When Judge Buckley indicated that only limited weight could be given to the still image, the entire video was obtained and sent to the Respondent, in January 2020, with the further submissions that formed the basis of the fresh claim. It is therefore difficult to understand why the Judge did not think it appropriate to view this material. It is even harder to understand how all of this led the Tribunal to the case theory apparent at paragraph 26, which is that the Appellant has somehow faked a television appearance prior to the hearing before Judge Buckley, was reluctant to reveal the whole film (presumably in case of discovery) and so just relied on a still before both Tribunals. This case theory is entirely at odds with the fact that the Appellant then took the chance of submitting this 'faked' footage to the Home Office, and repeatedly asked Judge Handler to watch it in court. As for how the PUK authorities in the IKR might have "accessed this footage", it is presumably the Appellant's case that they watched it on television with everyone else. Ground (i) is made out.

14. I need not address ground (ii) in any detail save to say that I, and Mr McVeety, accepted it is perverse to suggest that it is somehow inherently incredible that someone could organise a protest march on Facebook. As counsel who drafted the grounds notes, this is probably how most demonstrations are organised these days. I bear in mind Mr McVeety's point that there was no corroborative evidence about this protest, for instance photos or statements from anyone who attended: another surprising omission in the preparation of this case. That is true, and if it remains the position, it may well be that the Appellant fails to discharge the burden of proof on him to show that this event took place. It is nevertheless an enquiry that needs to be undertaken again.

15. Ground (iv) is also made out. The Tribunal's reasoning appears to be that having made the referral – and written to the Tribunal to confirm the same – the Appellant's GP declined to chase it up because

he was not that worried about the Appellant. Even absent an intervening pandemic this reasoning is incomprehensible.

16. It follows that I need not address ground (iv) which is fortunate, since I have not been provided with the bundle that was before the First-tier Tribunal.

**Decisions**

17. The decision of the First-tier Tribunal is set aside. No findings are preserved.

18. The decision in the appeal will be remade in the First-tier Tribunal by a judge other than Judge Handler.

19. The Appellant's representatives will no doubt wish to make an application to the First-tier Tribunal to ensure that video facilities are available at the final hearing. They may also wish to update their bundle to ensure that all relevant evidence is provided.

20. Having had regard to the new Presidential guidance on anonymity orders *Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private* I bear in mind the importance to be attached to the principle of open justice. I have nevertheless decided to make an anonymity order in this matter, in light of the fact that the Appellant continues to seek protection: see paragraph 28 of the Guidance Note. Accordingly I make an order for anonymity under Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Upper Tribunal Judge Bruce
8th July 2022