Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003721
(PA/01121/2021)

THE IMMIGRATION ACTS

At: Bradford **Decision & Reasons Promulgated**
On: 25th November 2022 **On: 28th November 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

And

MHR
(anonymity direction made)

Respondent

For the Appellant: Ms Young, Senior Home Office Presenting Officer (by video link)
For the Respondent: Mr Ghulamhussein, Kalsi Solicitors

DECISION AND REASONS

1. The Respondent MHR is a national of Iraq born in 1995. On the 8th July 2022 the First-tier Tribunal (Judge Nazir) allowed his appeal against a refusal of protection and leave to remain on human rights grounds. The Secretary of State was granted permission to appeal against that decision on the 22nd July 2022.

2. There were two matters in issue before Judge Nazir. First, did MHR, an appellant before him, require protection on the grounds that he had a well-founded fear of persecution for reasons of his political opinion, namely opposition to the political establishment in the Iraqi Kurdish Region. Second, was there a real risk that his removal to Iraq would place the United Kingdom in breach of its international obligations under Article 3 of the ECHR and/or Article 15(b) of the Qualification Directive. Judge Nazir found in MHR's favour in respect of both matters; the Secretary of State now challenges those decisions. It is therefore convenient that I deal with the grounds thematically.

Political Opinion

3. When MHR arrived in the UK in March 2018 he was 22 years old. He claimed asylum and told officers that was homosexual. That claim was rejected and he appealed. When he appeared before First-tier Tribunal Judge Turnock some two years later he candidly acknowledged that the Secretary of State had been right to reject that aspect of his claim:

> 35. However, when asked about his claimed homosexuality, the Appellant said that aspect of his claim was 'made-up' and that he was not a homosexual. When asked why he had 'made-up' the claim of homosexuality he said that he had left Iraq with his friend Y and that Y had a friend who had told him that you must have a 'fear' or else you would not be allowed to stay. The Appellant said that he was very uncomfortable with telling lies but Y said that he had left the Country because of the Appellant and so the Appellant had to listen to what he said.
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> 36. I asked the Appellant what the main reason was for him leaving Iraq and he said that it was because he was not "feeling comfortable". He said that he is a young person and he did not have any hope for the future and that when he grew up, he would not be able to do what he wanted to do. He said that he came to the UK to build his life here.
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> 37. The Appellant confirmed that he was not persecuted in Iraq but said that, in that country, " it is not possible to express your feelings and you cannot say what you want to say." He said that he had taken part in demonstrations in Iraq, relating to payment of wages, but had never been arrested and was not involved in any political party. He said that he had not received any threats about his participation on those demonstrations.

4. Judge Turnock concluded that MHR was a candid, open and straightforward witness, but on the evidence before him did not consider him to be at risk in Iraq. That appeal was therefore dismissed in April 2020.

5. MHR subsequently made further submissions to the Home Office in which he asserted that he was now at risk of persecution in the Iraqi Kurdish region from which he comes because he has in the UK been campaigning against the government there. He has expressed political views on Facebook and attended demonstrations, and asserted that if returned to the IKR would wish to continue doing so.

6. The Secretary for State accepted these submissions as a 'fresh claim' but refused protection. This is how the matter came to be before Judge Nazir.

7. Judge Nazir had regard to the earlier findings of Judge Turnock. He directs himself to the relevance of those *Devaseelan* findings to his own decision. He notes the evidence given by MHR that he had in Iraq felt no hope, he had been worried about his future and had attended protests against the IKR government. Judge Turnock had not rejected any of that. On the contrary, he had found MHR to be an open, candid and straightforward witness. This was his starting point when evaluating the 'fresh claim'. Concurring with Judge Turnock's conclusions that MHR had not suffered any past persecution in Iraq, Judge Nazir properly directed himself to consider whether there was nevertheless a real risk of such persecution occurring in the future.

> "I have to consider whether the Appellant would seek to partake in demonstrations again on his return, and if not, the reasons for this. It is the Appellant's case that he has a genuinely held political belief in relation to the current ruling parties in Kurdistan. In support of this, he relies on his evidence of social media activities and his attendance at demonstrations in the UK. In my judgement, whilst there may be scepticism about an asylum seeker's intentions when attending demonstrations in the UK and posting on a Facebook account, this is not always the case. In the present appeal, I find that there is an underlying and consistent theme of disillusionment and rejection of the politics in Kurdistan and the Appellant has sought to express this at various opportunities, both whilst in Iraq and in the UK. He did this in Iraq, by attending demonstrations despite the violent crackdown. He has done this in the UK by attendance at demonstrations and social media activity. When considered against the lower standard of proof applicable in asylum appeals, I find that the Appellant has a genuinely held political belief and his expression of the same has been consistent, and is genuine.
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> 31. The Appellant currently voices his political opinion openly and without hindrance. He does so by attending demonstrations, inviting others to attend, sharing messages and posting on his social media account. I find that the Appellant would wish to continue voicing his views against the ruling parties in Kurdistan, given my findings above that they are his genuinely held beliefs and that he has a history of seeking to express those through attendance at protests and through social media. The only thing that would deter him from doing so is the potential risk of him being arrested and punished. For that reason, and in accordance

> with the principles discussed in HJ (Iran), I find that the Appellant would be denied his basic and fundamental freedoms".

8. The Secretary of State now challenges that conclusion on two grounds. The first is that the Judge misdirected himself by proceeding on the basis that the wish to attend demonstrations or express oneself on social media is a matter of fact that engages the Refugee Convention. Reference is made to the decision in XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC). With respect to the author of the grounds, he or she appears to have misunderstand the point made in XX. There the Presidential panel of the Upper Tribunal expressly recognise that the right to express one's political opinion is a right protected by the Convention, but reject the contention that there is a particular right to do so on Facebook. That legal conclusion in no way impacts on Judge Nazir's decision, which is based on a finding that MHR is ideologically opposed to the political settlement in the IKR and that he would wish to continue to express that opposition there, *inter alia* by attending demonstrations and participating in online discourse, just as he has already done in the past. Applying the *HJ* principle, the Judge was quite right to find that this was a matter capable of engaging the Convention. It was a finding plainly open to Judge Nazir on the evidence. This ground therefore has no merit.

9. The Secretary of State's central point, however, was that there was no evidential basis for the Judge's decision that MHR would in fact face a real risk of persecution in the IKR if he continued to express his political views there. I quote directly from the grounds:

> "It is noted that the Judge refers to 'potential risk of him [the Appellant] being arrested and punished', that is a risk many demonstrators face in many countries and is often a legitimate response of the authorities".

10. In her submissions Ms Young, perhaps wisely, did not emphasise that point. Instead she submitted that the Judge simply did not explain why he had concluded that the expression of his political opinion would give rise to MHR facing serious harm in the IKR.

11. In response to this Mr Ghulamhussein submitted that it was not open to raise this matter on appeal. The Secretary of State had at no point challenged the objective evidence provided by MHR about human rights abuses in the IKR, which included the Secretary of State's own CPIN; nor had she submitted any evidence to the contrary. It was in those circumstances little wonder that Judge Nazir had not gone into any great detail about the country background material, since it was simply not in issue.

12. I have considered those submissions carefully. It is certainly true that the First-tier Tribunal does not go into any significant detail about the country background situation in the IKR. At paragraph 29 it notes

"the evidence in the Appellant's bundle, which shows a significant and violent crackdown against protestors in Kurdistan, often leading to casualties and significantly, to fatalities". The Tribunal proceeds from there to accept a risk made out to this man, who on its own findings would wish to attend such demonstrations. The Secretary of State now complains that this was inadequate reasoning, but as Mr Ghulamhussein points out, the decision must be read in the context of what was in issue before the parties. The refusal letter is dated the 12th July 2021. It nowhere asserts that MHR would be free to express his political opinion unhindered. It says absolutely nothing at all about the situation faced by political opponents of the government in the IKR. The decision to refuse is rather premised on the Secretary of State's belief that MHR is fabricating his political commitment. Furthermore, it is apparent from the First-tier Tribunal decision, paragraphs 8-15, that the HOPO on the day did not make the case that a political opponent such as this would face no real risk of harm. Again the submissions focused solely on his credibility. In those circumstances I do not regard it as fair or appropriate for the Secretary of State to complain that the Judge concluded as he did. The violent crackdowns on protestors that the judge refers to are reflected in all of the background material, including the CPIN. Whilst I accept that it may have been preferable for the Judge to go into more detail, I am not satisfied that it was, in the circumstances where he regarded the matter as uncontested, an error of law for him not to do so. The conclusion he reaches was open to him on the evidence that was before him.

Re-Documentation

13. It follows that I need only be brief in respect of the issue of MHR's identity document.

14. Judge Nazir's reasoning was as follows:

> 32. In then turn my mind to the issue of documentation. Once again, I start by referring to the findings of Judge Turnock. The Appellant's evidence in that hearing was that he did not bring any documents with him to the UK (paragraph 41). As already indicated, Judge Turnock found that the Appellant's evidence in that hearing was 'true', 'candid', 'open' and 'straightforward'. It is reasonable to assume that Judge Turnock, when finding the Appellant as truthful, was referring to his evidence as a whole. Were this not the case, he would have specified which evidence was and was not accepted. It therefore follows that the Appellant's evidence with regards to lack of documents in the UK was also accepted. Therefore, and by virtue of Devalseelan, I take this as my starting point.
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> 33. In assessing any issues arising from documentation, or the lack of it, I confirm that I have taken into account the guidance in

> SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC). 34. The Appellant states that he does not have his CSID and that it has been lost. In the circumstances, in order to re-document, the Appellant would be expected to apply for a new or replacement CSID in his home area. I have considered whether the Appellant is able to obtain his CSID by the use of a proxy. The Appellant argues that this is not possible or feasible because a replacement CSID would only be issued following his personal attendance due to the introduction of the new INID system requiring personal attendance and biometrics before a CSID is issued. The CSID is being replaced by a new biometric identity card (the INID). This has reduced the likelihood in general of using a proxy. I consider it reasonably likely in the circumstances that the Appellant's local CSA has the INID system, given the move towards INID and the evidence in the Appellant's bundle relating to the CSA office in Suleimaniyah. As a result, I find that the Appellant is unable to obtain a CSID by proxy, either whilst he is in the UK or on return to Iraq.
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> 35. In summary, I have found that the Appellant is not in possession of his original CSID, nor is it reasonably likely that he could obtain one, within a reasonable period of time.
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> 36. I therefore find in line with the findings made in SMO there is a real risk that the Appellant would be exposed to conditions that would breach his rights, contrary to Article 3 of the ECHR [SMO paragraph 317].

15. The Secretary of State contends that these passages reveal inadequate reasoning, in particular they do not identify the basis upon which the *Devaseelan* findings of Judge Turnock can be departed from. The grounds contend that at his asylum interview (Q30-31) MHR said that he left his passport and ID card at his family home, and this is not dealt with by the Tribunal's decision.

16. Starting with the starting point, I observe that Judge Turnock nowhere made the point now made by the Secretary of State, that MHR had claimed that his CSID card was in his family home in Sulaymaniyah. It is in fact little wonder that neither Judge Turnock, or Judge Nazir, addressed that evidence, since that is not what MHR said. What he says at Q31 of the asylum interview is this:

> "When I fled from home in a vehicle, when we reached Dukok, I left my driving licence in the vehicle along with my CSID, the other documents are at home".

17. It follows that both judges were perfectly entitled to find that this credible witness did not have his CSID either in the UK or in Iraq, since he left it in a car in Dohuk over four years ago. The difference that makes to this appeal is however negligible.

Anonymity

18. MHR seeks protection in the United Kingdom. Having had regard to paragraph 28 of the Presidential Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private[1] I consider it appropriate to make an order 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"

Decisions

19. The decision of the First-tier Tribunal is upheld, and the Secretary of State's onward appeal is dismissed.

20. There is an order for anonymity.

Upper Tribunal Judge Bruce
25th November 2022

[1] Paragraph 28 of the Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private reads: In deciding whether to make an anonymity order where there has been an asylum claim, a judge should bear in mind that the information and documents in such a claim were supplied to the Home Office on a confidential basis. Whether or not information should be disclosed, requires a balancing exercise in which the confidential nature of the material submitted in support of an claim, and the public interest in maintaining public confidence in the asylum system by ensuring vulnerable people are willing to provide candid and complete information in support of their applications, will attract significant weight. Feared harm to an applicant or third parties and "harm to the public interest in the operational integrity of the asylum system more widely as the result of the disclosure of material that is confidential to that system, such confidentiality being the very foundation of the system's efficacy" are factors which militate against disclosure. See R v G [2019] EWHC Fam 3147 as approved by the Court of Appeal in SSHD & G v R & Anor [2020] EWCA Civ 1001