Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03758/2020**

THE IMMIGRATION ACTS

Heard at Birmingham CJC	**Decision & Reasons Promulgated**
On the 28 June 2022	**On the 19 July 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ASA
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Howard of Fountain Solicitors.
For the Respondent: Mr Williams, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Parkes ('the Judge') promulgated on 21 March 2021 in which the Judge dismissed the appellant's appeal on all grounds.

2. The appellant is a citizen of Iraq born on 3 August 2002. The Judge records the basis of the appellant's claim at [8] noting "*In summary the Appellant claims that his father and brothers were involved in the KDP and Peshmerga and his father taught combat skills at university. The home area was attacked, his father and brothers were kidnapped*

and killed by militia, for his safety the Appellant's uncle arranged for him to leave Iraq'.

3. The Judge sets out his findings from [13] of the decision under challenge.

4. The appellant claimed to have left Iraq in mid-February 2018 and made his way via Turkey to the UK but the Judge notes that the appellant had been fingerprinted in Bulgaria in August and September 2017 and Germany in January and on 8 February 2018.

5. The Judge noted the appellant was a minor, as if born on 3 August 2002 he was 15 years of age when first fingerprinted in Bulgaria.

6. The appellant appears to have claimed that he returned to Iraq from Bulgaria, but the Judge finds at [20] there were other features of his claim to have done so which did not assist his credibility. The fact the appellant claims to have returned was found to undermine his claim that Iraq was so dangerous that he had to flee the country; leading the Judge to find it implied he had left Iraq for economic reasons and that if his account of his father and uncle helping him to go back to Iraq was correct, that indicates what the view of the family would have been.

7. The Judge notes at [21] that the witness statement provided by the appellant's uncle indicating the appellant had returned to Iraq and left a second time after the disappearance of his father and brother and that his CSID could not be found. The Judge however finds that the timing of the events is consistent with the appellant not returning to Iraq but taking longer to get to the UK and being fingerprinted in Germany on the way.

8. The Judges core findings are set out between [25 – 30] in the following terms:

> "25. The evidence has to be assessed in the round taking all the information available into account, bearing in mind a person may give false details in an otherwise reliable account and memories can fail for innocent reasons. In doing so I bear in mind the differences in the Appellant's accounts, the evidence in support, the Appellant's age when he was known to have left Iraq and when he was interviewed by the Home Office after his arrival in the UK allowing for the fact that he was still a minor although at the older end of the scale.
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> 26. On the evidence I do not believe the Appellant's account of events in Iraq and his claim to have left after the government had retaken Kirkuk. He had left Iraq in the August before and there is nothing in the other evidence that supports his claim to have returned and in the circumstances I do not accept that he went back to somewhere he had been sent away from. I do not accept, even to the lower standard, that the Appellant's father and brothers have gone missing as claimed or that militia were looking for the Appellant or that any such groups would have any interest in the Appellant on return
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> 27. The Appellant has family in Iraq and there is evidence that there is evidence, from the availability of his uncle's CSID, of access to relevant documentation and information that would facilitate re-documentation of the Appellant. In rejecting the Appellant's credibility in respect of the core of his account I do not accept that the Appellant would not be able

to obtain the necessary identity documentation for his return or to travel within and around Iraq. The appellant is a young man of Kurdish origin, he speaks a Kurdish language and he could relocate to the IKR in line with the country guidance.

28. The Appellant has only been in the UK for a relatively short period of time and with no expectation of being permitted to remain. There is no evidence of any private or family life that would engage article or that the Appellant could meet the provisions of the Immigration Rules, on the basis of the findings above it cannot be said that there would be very significant obstacles to his reintegration.

29 So far as the Appellant's health is concerned there is evidence that he has a heart condition which is asymptomatic, very strenuous exercise is to be avoided but the Appellant can play football and no treatment is recommended. It was considered that he could take part in a study of his condition but that would not be mandatory. The evidence does not show that his condition or any treatment, if required, would meet the threshold of article 3 in line with the guidance in AM (Zimbabwe). Given the resources available to the family there is no evidence to show that the Appellant is unable to access medical care in Iraq.

30. In summary the Appellant's account of events in Iraq and his reasons for coming to the UK is not credible and he has not shown that he is in need of international protection. The Appellant circumstances do not meet the threshold for engaging articles 3 or 8. There are no compelling circumstances that would justify the grant of leave outside the rules."

9. The appellant sought permission to appeal on two grounds, Ground 1 asserting irrational material findings of fact/inadequate reasoning/misdirection and Ground 2 asserting error pursuant to the assessment of article 8 ECHR.

10. Permission to appeal was granted by another judge of the First-tier Tribunal on 20 May 2021 in the following terms:

"3. The Grounds are not signed or dated.

4. Ground 1 contains 11 different aspects of complaint. It is wholly impossible to separate them out into what is valid and what is not valid under one heading. The nature of the drafting has created an almost impossibility in terms of the assessment of the judgement and the complaints.

5. I will grant permission on what is said to be Ground 1 Ground 2. Not because I have any real sense of their value as errors of law but by virtue of the fact that in seeking to unpick the complaints, it will involve an arduous hike through the evidence which I do not have nor is it within my remit to do so.

6. Permission is thus granted."

11. It is important that those drafting Grounds of appeal ensure they (a) as clear as possible, (b) as brief as possible, and (c) as persuasive as possible.

12. In this case Ground 1 seems on the whole to be a reasons challenge to the decision of the Judge, see paragraph 1.1, 1.5, 1.6, 1.7, 1.8, 1.9. Yet

as reader of the determination is clearly able to understand why the Judge came to the conclusions that he did.

13. In VV (grounds of appeal) Lithuania [2016] UKUT 00053 (IAC) it was held that:

> "(i) An application for permission to appeal on the grounds of inadequacy of reasoning in the decision of the First-tier Tribunal must generally demonstrate by reference to the material and arguments placed before that Tribunal that
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> (a) the matter involved a substantial issue between the parties at first instance and
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> (b) that the Tribunal either failed to deal with that matter at all, or gave reasons on that point which are so unclear that they may well conceal an error of law.
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> (ii) Given that parties are under a duty to help further the overriding objective and to co-operate with the Upper Tribunal, those drafting grounds of appeal (a) should proceed on the basis that decisions of the First-tier Tribunal are to be read fairly and as a whole and without excessive legalism; (b) should not seek to argue that a particular consideration was not taken into account by the Tribunal when it can be seen from the decision read fairly and as a whole that it was (and the real disagreement is with the Tribunal's assessment of the evidence or the merits); and (c) should not challenge the adequacy of the reasons given by the First-tier Tribunal without demonstrating how the principles in (i) above have been breached, by reference to the materials placed before that Tribunal and the important or substantial issues which it was asked to determine in that particular case."

14. It was noted in MD (Turkey) v SSHD [2017] EWCA Civ 1958 that adequacy meant no more nor less than that. It was not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons, is in part, to enable the losing party to know why she has lost and it is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case there has been an error of approach

15. The pleaded grounds fail to adopt the recommended approach to a reasons challenge and the fact the author disagrees with the Judge's conclusions does not establish that inadequate reasons have been given.

16. The grounds also raise what is said to be a failure by the Judge to acknowledge the appellant's explanation for certain issues, see paragraph 1.4 and 1.11, but such assertion has no arguable merit in establishing material legal error.

17. At paragraph 49 of MA (Somalia) [2010] UKSC 49, it was said that "Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the

factor is not explicitly referred to in the determination concerned".

18. McCombe LJ in VW (Sri Lanka) C5/2012/3037 said:

"Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact"

19. The Judge was not required to set out each and every aspect of the evidence and make findings upon the same. A reading of the determination as a whole shows that the Judge considered the evidence with the required degree of anxious scrutiny. Just because the appellant does not like the outcome and believes an alternative more positive conclusion could have been arrived at does not mean the Judge failed to consider the evidence properly.

20. Mr Howard in his submissions, to his credit, focused upon paragraph 1.2 and 1.3, with reference to 1.11. These state:

"1.2 At [14] of the FTT determination, the FTT Judge has incorrectly recorded the Appellant's evidence, as the Appellant stating that his maternal uncle had sent him his CSID. It is submitted that this was not the Appellant's evidence. The Appellant claims that his CSID was left in his house, when he had fled from his house, following the attack on his home area. The Appellant claims that his maternal uncle was unable to locate his CSID when he returned to the Appellant's house; therefore, they Appellant's CSID is lost. The Appellant's account with regard to the whereabouts of his CSID is set out in his witness statement, dated 22.02.2021 (WS2).

1.3 At [15] of the FTT determination, the FTT Judge has incorrectly recorded that the Appellant had stayed at his uncle's house, prior to fleeing from Iraq, for 2 – 3 months. It is submitted that in accordance with the Appellant's evidence, contained at [32] of his witness statement, dated 09.10.2018 (WS1), the Appellant had stated his uncle house for two – three weeks.

…

1.11 Furthermore, the Appellant and his uncle claimed that the Appellant is unable to be supported by his uncle upon return to Iraq. The Appellant's uncle has set out his reasons for being unable to support the Appellant upon return, in his witness statement, dated 23.02.2021. It is submitted that the FTT Judge has failed to consider the Appellant's uncles reasons, as to why he is unable to support the Appellant upon return. It is submitted that the Appellant would have no support network upon return to Iraq."

21. At [14] –[15] the Judge writes:

"14. In evidence the Appellant adopted his witness statements and said that he is still in contact with his maternal uncle who had sent the Appellant his CSID. He had not tried to locate his father and brothers as they had

disappeared at the hands of the militias, they had been in the market area on the day of the raid. The Appellant said he had never used his CSID and did not know the relevant entries in official records and said his uncle had looked for his without success. He could not return now as there is no one to accommodate him.

15. The Appellant went on to say that he had left Iraq the first time as there was no stability and there was Da'esh. He had returned as he had been beaten when he was in Bulgaria, he was scared so he returned home, he contacted his father and uncle to help him return to Kurdistan. He had not said it before as he was scared to mention it and have been told by the agents. The Appellant had not had problems when living at his uncle's house that had been advised to leave. He was therefore 2 to 3 months. He had not claimed asylum in Germany as he did not like the language or the country. The Appellant said that the militias knew about him and were looking for him and have been told by his uncle."

22. In his submissions Mr Howard claimed there was ambiguity in relation to the CSID and what had been said, as the appellant claimed that this had been lost. It was submitted that the possession of the document remains important even following the recent country guidance case update.

23. No transcript of evidence given has been provided and the Judges account recorded at [14] is his recollection of the oral evidence given to him during the course of the hearing. Mr Howard was not the advocate who represented the appellant at the hearing.

24. The assertion is that the Judge made an error of fact in assessing the evidence. In E and R (2004) EWCA Civ 49 the Court of Appeal said that "a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area." The Court of Appeal set out the ordinary requirements for a finding of unfairness as follows:

i) There must have been a mistake as to an existing fact including a mistake as to the availability of evidence on a particular fact;

ii) The fact or evidence must have been established, in the sense that it was uncontentious and objectively verifiable;

iii) The appellant (or his advisors) must not have been responsible for the mistake; and

iv) The mistake must have played a material (not necessarily decisive) part in the Adjudicator's reasoning.

25. In ML Nigeria [2013] EWCA Civ 844 there had been substantial errors in the recollection and record of the facts that were advanced in the case. It was held that, even though there were sound reasons for rejecting the appeal, a series of material factual errors can constitute an error of law. It is trite in not only the field of judicial review but also statutory appeals and appeals by way of case stated

that factual errors, if they are significant to the conclusion, can constitute errors of law. The essential question for the UT was whether this appellant had the fair hearing. As part of that fair hearing, the finders of fact must listen to and take into account conscientiously the arguments that are deployed in favour of a finding that the claimant is telling the truth as well as those arguments against.

26. I cannot find any procedural unfairness such as deny the appellant fair hearing made out. It is also important to note that having assessed the evidence in the round the Judge found the appellant lacked credibility. The Judge rejected the appellant's evidence regarding the CSID and did not accept he would be unable to obtain the necessary identity documents to enable him to travel within and around Iraq, [27], which is a finding within the range of those available to the Judge on the evidence.

27. I do not find that the alleged error of fact has been established per se but, even if it had, that it did not play a material part in the Judge's reasoning for why he dismissed the appeal.

28. In relation to the claim the appellant may have stayed in his uncle's house for 2 to 3 weeks rather than 2 to 3 months, [1.3], it is not made out that this makes any material difference to the decision of the challenge. The point made by the Judge is that there was no evidence that the appellant was of adverse interest to anybody during the time he was at his uncle's house. It is also important to note that in the round the Judge dismissed, as lacking credibility, the appellant's account of events in Iraq. It must be remembered the Judge was aware of the appellant's claims which were shown to lack credibility, based in part upon the evidence of his being fingerprinted in Bulgaria and Germany, at a time when he claimed to be Iraq.

29. The Judge clearly took into account what was said by the appellant and the uncle regarding support available to the appellant in Iraq. The Judge's finding that the appellant has family in Iraq is a finding open to the Judge on the evidence. As recognised in case law, the tradition of individuals being supported within their family unit in Iraq makes it unlikely the appellant would be, in effect, abandoned if he was returned to Iraq. It is not made out the Judge did not take this evidence into account.

30. In relation to the appellant's medical condition, there has been a substantial change since the hearing before the Judge in that the need arose for the appellant to have heart valve replacement surgery, which has been successfully undertaken. That arose however as a result of an emergency when the appellant collapsed running for a train. The Judge's conclusion that the evidence did not show the appellant's medical condition or any treatment of required will meet the threshold of article 3, in line with the guidance in AM (Zimbabwe), at [29] is a finding within the range of those available to the Judge on the basis of the evidence with which he was provided. No legal error arises.

31. If the appellant believes that as a result of his current situation he is entitled to remain in the United Kingdom, for example if the viability of the success of the heart valve surgery will be compromised for any reason, he will no doubt be advised upon that by Mr Howard.

32. In conclusion, I find the appellant has failed to establish legal error in the decision of the Judge sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

33. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

34. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. 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.

Signed……
Upper Tribunal Judge Hanson

Dated 5 July 2022