Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-001952
(PA/51421/2021); IA/03388/2021

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On : 21 November 2022	**On : 31 January 2023**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

IBRAHIM SAEED
(No anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Sadiq of Adam Solicitors
For the Respondent: Mr A Tan, 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, born on 14 March 1986. He was encountered by police on 5 September 2016 after being suspected of entering the UK clandestinely by lorry and he claimed asylum immediately. His claim was refused on 6 January 2018 and his appeal against that decision was

dismissed on 28 February 2018. He was refused permission to appeal to the Upper Tribunal and became appeal rights exhausted on 1 May 2019. On 11 May 2020 he made further submissions which were treated by the respondent as a fresh claim which was, in turn, refused on 9 March 2021.

3. The basis of the appellant's claim was that he feared being the subject of an honour killing at the hands of his brother-in-law who disapproved of his marriage to his sister, because the appellant was Arab and his sister was Kurdish. The appellant claimed that he and his wife married in 2006 with the blessing of his father-in-law who had no issue with the marriage. His brother-in-law was in prison at the time but was released in late 2015 when his father died, and found out about the marriage. That was when the problems began, as his brother-in-law had a hatred towards Arabs and wanted to restore the family honour. He sent people to kidnap the appellant's wife and their children with the idea of keeping them hostage as ransom to get the appellant to leave the marriage so that his sister could then marry her cousin who was in the military. They therefore fled Iraq and came to the UK. The respondent did not accept the appellant's claim to be credible and did not consider that he was at risk on return to Iraq.

4. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Shergill on 21 February 2018. The appellant's marriage to his wife was accepted, as was his claim to be Arab, to have moved with his family some years prior to his marriage to Ranya in the IKR, and to have been in an interethnic marriage. However, Judge Shergill otherwise rejected the appellant's claim as lacking in plausibility and credibility. He did not accept that the appellant's brother-in-law would have been unaware of the marriage until his release from prison. He considered that if the account were true, and the family was as powerful as claimed, there was no adequate explanation why the brother-in-law did not agitate events from prison and why the cousin whom the appellant's wife was due to marry did not raise any objection to her marriage to the appellant at the time of the wedding. He noted various inconsistencies in the account and considered that the appellant was simply recounting a rehearsed story. Judge Shergill found that the appellant and his family would be at no risk on return to his home area and concluded that they could obtain new identity documents within a reasonable time and return there. He accordingly dismissed the appeal.

5. In his further submissions dated 7 May 2020, the appellant referred to two new pieces of evidence which were submitted in support of his claim. The first was a letter dated 7 October 2019 from the local Mukhtar who was the equivalent of a local councillor and was therefore an important person, who was confirming that the appellant had to flee Iraq because of social problems at the hands of his in-laws. The second was an arrest warrant issued in 2019 after the appellant had left Iraq, which was believed to have been engineered by his brother-in-law in an attempt to locate him. The appellant also relied, in his submissions, upon the Home Office CPIN report for August 2017 referring to Kurdish honour crimes.

6. In a statement dated 7 May 2020 accompanying the submissions, the appellant explained the two documents and stated that the arrest warrant had been given to his sister's family by his brother-in-law, his sister's husband's brother, Ibrahim, who was a police officer with Asayish who became aware of the warrant through his work and passed a copy to his sister Fatima's family. His sister's husband Sardar then went to the Mukhtar to obtain a letter explaining his situation. The documents were sent to the UK by Fedex, by a friend of his brother-in-law.

7. The respondent treated the submissions as a fresh claim but refused that claim, having regard to the adverse credibility findings of the previous tribunal and concluding that the new documents were of little weight. The respondent noted that the arrest warrant referred to law article 432 of the Penal Code, which related to threats by words or actions, and considered that it was unclear how that related to the appellant's claim as it did not detail a claim based on family honour. The respondent noted the delay by the appellant in submitting the document to the Home Office and considered that there was no evidence to support the claim that the document came from a valid source. As for the letter from the Mukhtar, the respondent considered that the letter was vague and did not identify the social problems which it said led the appellant to leave Iraq. The respondent considered that for those reasons, and for other reasons given, that the documents carried little weight, and that the appellant had failed to demonstrate that he would be at any risk on return to Iraq.

8. The appellant appealed that decision and his appeal was heard by First-tier Tribunal Judge Ficklin on 28 March 2022. For the appeal the appellant produced a further statement from himself dated 10 June 2021, a short statement from his brother-in-law Sardar confirming that he requested the letter from the Mukhtar and a short statement from his sister confirming that he left Iraq due to problems with his wife's brother who threatened to kill him and attacked him and beat his wife. The judge noted that the respondent took issue with the arrest warrant as it included the name "Hussain" but was satisfied with the appellant's explanation that that was his grandfather's name which was included in official documents. The judge was also satisfied that the delay relied upon the respondent in submitting the documents to the Home Office was justifiable given the pandemic. However the judge found that the documents did not relate to the appellant's claim or explain discrepancies in his claim. He noted that there was no explanation why the document included an apparently random article of the Penal Code or why it was issued so long after the appellant had left and considered that it needed further evidence about its genuineness and provenance in order for it to be accepted. Likewise, the letter from the Mukhtar needed more detail, or more support from other sources. The judge also noted the lack of evidence of the appellant's sister's husband's job as a police officer. He did not consider that the documents reached the lower standard of proof, given the adverse credibility findings of the previous tribunal, and he found no basis to depart from the previous tribunal's findings. He accordingly dismissed the appeal, in a decision dated 12 April 2022.

9. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the judge had erred in his approach to the documentary evidence; that he had failed to take into account the appellant's evidence in his statement about the provenance of the arrest warrant and his explanation about the article of the Penal Code; that he had made a mistake of fact and had considered the wrong person as being the provider of the arrest warrant when relying on an absence of corroborative evidence, referring to the appellant's sister's husband rather than her husband's brother; and that he had failed to give consideration to the appellant's evidence in court.

10. Permission was granted by the Upper Tribunal on 5 February 2022.

11. The matter then came before me for a hearing and both parties made submissions. The submissions are summarised below as part of the discussion.

Discussion

12. The first ground of challenge related to [36] of the judge's decision, where he took issue with the arrest warrant for three reasons: firstly, because it included an apparently random article of the Penal Code; secondly, because it was issued so long after the appellant left Iraq; and thirdly because there was no evidence about its genuineness or provenance. Mr Sadiq submitted that the judge was wrong to find there to be no evidence to explain the random article of the Penal Code or the provenance of the document, when there was evidence before him from the appellant in his witness statements, whereby he explained in his statement of 10 June 2021 at [4] about the article of the Penal Code and in his statement of 7 May 2020 at [7] he explained about the warrant being obtained by his sister's husband's brother. It was submitted by Mr Sadiq that the judge therefore failed to take account of relevant factual evidence available to the tribunal.

13. However I find no merit in the assertion that the judge failed to consider the appellant's evidence and explanations. It was not necessary for the judge to cite the relevant paragraphs of the appellant's statements. He clearly had regard to all the fresh evidence which he referred to at [19]. At [31] he made it clear that he had considered all the evidence in the bundles even if not referring to it specifically. He recorded the appellant's explanation about the Penal Code and the provenance of the documents at [20]. Plainly, what he was referring to at [36] was a lack of a satisfactory explanation and, indeed, he was entitled to reject the appellant's explanation as unsatisfactory. As Mr Tan submitted, the explanation provided by the appellant at [4] of his statement of 10 June 2021 did not explain the reference to an irrelevant article of the Penal Code but merely guessed that it was a ruse by which his wife's brother could draw him out. It did not explain why, if the appellant's wife's brother was as powerful as claimed, did he have to resort to a ruse on unrelated trumped up charges just to locate the appellant, as Mr Tan submitted. Neither does it explain why the appellant's wife's brother waited so long after his departure from Iraq to issue the arrest warrant. As to the appellant's explanation for the provenance of the arrest warrant at [7] and [8] of his statement of 7 May 2020, that was considered by the judge at [38], where he drew adverse conclusions

from the absence of evidence to support the claim that it was obtained by a relative who was a police officer. It seems to me that it was entirely reasonable for the judge to draw the adverse conclusions that he did in that regard, particularly as that was a matter specifically raised in the respondent's refusal letter at [21]. As Mr Tan properly submitted, the appellant's assertion that that would put his sister's husband's brother at risk, was not a reason for failing simply to provide evidence of that person's role as a police officer.

14. Turning to the second ground, namely the question of an error of fact in relation to the person who obtained the arrest warrant, I agree entirely with Mr Tan that that was not a material error, if an error at all. Mr Sadiq argued that it was a material error as it went to the matter of ease with which corroborative evidence could be sought, since it would have been more easy to expect the appellant to obtain corroborative evidence from his sister's husband than her husband's brother. However I reject such a suggestion. In any event, as Mr Tan said, the evidence before the judge was not sufficiently clear to show that he was in error by referring to the police officer as the appellant's sister's husband rather than her husband's brother. As he pointed out, the appellant's statement of 10 June 2021 referred at [6] to the person obtaining the documentation, namely the appellant's sister's husband's brother, as Mahmood, but at [7] of the statement of 7 May 2020 he referred to the person initially as his brother-in-law and said that his name was Ibrahim, before then referring to Ibrahim as his sister's husband's brother.

15. With regard to the third matter, the judge's approach to the letter from the Mukhtar at [37], Mr Sadiq relied on his written grounds and added little more, other than to say that that was a letter from someone in public office and should therefore be accepted as weighty evidence and that the judge had initially dealt with the letter favourably. That challenge was, in my view, nothing more than a disagreement with the weight the judge attached to the document, whereas weight was a matter for the judge who properly assessed the document in the light of the evidence as a whole. The letter was entitled 'certificate of residency' and provided scant details, stating simply that the appellant had had to leave Kurdistan in 2015 due to "social problems with his in-laws". As Mr Tan properly submitted, the judge was perfectly entitled to require more details if the document was to be of assistance, such as an explanation of what the social problems were. As it stood the judge was entitled to find that the document added little to the appellant's claim.

16. Accordingly, for all of these reasons I find no merit in the grounds of appeal. It is clear that the judge gave full consideration to the new evidence and had regard to the appellant's response to the concerns about the documents and their provenance. The judge was fully and properly entitled to accord the limited weight that he did to the documents and there was nothing unlawful about his approach to the evidence. He was entitled to conclude that the further evidence did not provide any basis to depart from the adverse findings made by the previous Tribunal and it was entirely open to him to dismiss the appeal on the basis that he did.

DECISION

17. 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.

Signed: S Kebede Dated: 24 November 2022
Upper Tribunal Judge Kebede