



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-  
002632

First-tier Tribunal No: PA/51101/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

21<sup>st</sup> November 2023

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**SFA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr K Wood of Counsel, instructed by IAS

For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

**Heard remotely at Field House on 15 November 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.**

**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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. By the decision of the First-tier Tribunal dated 13.7.23, the appellant, an Iraqi national of Kurdish ethnicity from the IKR, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Fisher) promulgated 16.6.23 dismissing his appeal against the respondent's decision of 31.1.23 to refuse his claim for international protection. In essence, the appeal turned on the credibility of his claim to fear the family of his girlfriend who became pregnant, asserting that the family was associated with the KDP.
2. The Upper Tribunal has received the respondent's Rule 24 reply to the grounds, dated 31.7.23, which I have taken into account together with the oral submissions and the documents and evidence before the First-tier Tribunal, including the appellant's skeleton argument. Neither Mr Wood nor Ms McKenzie had seen the Rule 24 reply, which I then read out and summarised. There was no request to adjourn for a copy to be supplied.
3. Following the helpful submissions of both legal representatives, I reserved my decision to be provided in writing, which I now do.
4. In summary, the grounds assert that the First-tier Tribunal (i) failed to apply anxious scrutiny to material background evidence and (ii) made a material misdirection in applying the judge's own perception when assessing the plausibility of parts of the appellant's evidence. The grounds relate to the specific findings at [8] and [9] of the decision.
5. The first ground relates to the judge's finding at [8] as to the girlfriend's family's links to the KDP. The appellant asserted that her father was the KDP village leader in Piramagroon (Piramagrun) but in the refusal decision the respondent asserted that the country background information states that this area, the Sulaymaniyah Governorate, is under the control of the PUK. In evidence, the appellant stated that both parties controlled the area, although it was mainly the PUK with a KDP presence. The judge concluded that the appellant "was simply tailoring his evidence in an attempt to render it consistent with the background evidence, and that did nothing to enhance his credibility."
6. In this regard, I do not see any material difference between the description of the girlfriend's father as a village KDP leader, or Mr Wood's correction that he was a tribal leader and involved with the KDP. However, I accept Mr Wood's submissions on this issue as to the accuracy of what the judge stated. Having carefully considered both the news reports at 78-80 of the appellant's bundle and the referenced citation in the respondent's refusal decision, I am satisfied that the respondent's background information makes clear that whilst PUK is the predominant party in the Sulaymaniyah Governorate, other political parties are active in the area. Evidently, there has been a considerable degree of power sharing between the PUK and the KDP, and the KDP has had offices in the area since 2001.
7. I am satisfied that what the appellant stated in oral evidence as to both PUK and KDP being present in the area was reasonably accurate. It follows that the assertion on this point in the refusal decision was inaccurate and that the judge was in factual error and therefore erred in considering the appellant's evidence on this issue to be 'tailored' and to undermine his credibility. However, that is not the end of the matter. First, I am satisfied that in the context of the findings as a whole, this particular finding is marginal to the overall adverse credibility conclusion. There were other and more cogent reasons provided for finding not credible the claim of the girlfriend's family's power and influence through their KDP association. As the judge stated at [9] of the decision, "There were even more fundamental issues with the Appellant's credibility." These include that the

appellant was extremely vague when asked to explain the role of his girlfriend's father and brothers in the KDP. He also admitted that he had never been threatened by the KDP, despite the father's alleged power and influence.

8. In relation to the second ground, complaint is made by the judge's findings at [9] of the decision that, "I do not find it credible that his girlfriend did not alert him to the possibility that she might be pregnant before she went for tests, given the potential consequences for both of them. He admitted, in cross examination, that they were in regular contact, and so I am satisfied that they would have been conversing about their lives at those times."
9. The complaint in this second ground is that the judge "stepped into the shoes of the Appellant and his girlfriend pronouncing on what they would have spoken about," effectively rejecting the account as not plausible by applying the judge's own standards of what he would have expected the girlfriend to do. Reliance is placed on HK [2006] EWCA Civ1037, where it was said that "In assessing the general human rights information, decision-makers must constantly be on guard to avoid implicitly recharacterizing the nature of the risk based on their own perceptions of reasonability." However, a finding of inherent plausibility is not of itself unlawful, provided it is based on reasonably drawn inferences and not simply on conjecture or speculation. I am satisfied that Mr Wood's submission on this specific issue has merit. It is not the case that the girlfriend would necessarily discuss her fears that she might be pregnant with the appellant before seeking confirmation by testing. I am satisfied that it would be very difficult to assert that such a discussion would undoubtedly take place if she did believe she might be pregnant, particularly given an entirely different cultural context. I also take into account Mr Wood's point that in the refusal decision the respondent did not specifically challenge the pregnancy. In the circumstances, I am satisfied that there was a error on the part of the First-tier Tribunal in relation to the second ground.
10. Mr Wood submitted that these were fundamental findings, without which the decision cannot stand. However, errors in relation to these very precise complaints in both grounds to the outcome of the appeal do not necessarily require the decision to be set aside when there are other important adverse findings on credibility. The materiality to the overall conclusion on credibility cannot be assessed without regard to these other findings in relation to the appellant's account. As mentioned above, the judge stated that there were (other) fundamental issues with the appellant's credibility.
11. In particular, and most significantly, at [10] of the decision the judge highlighted the clear inconsistency between the appellant's claim that his girlfriend had been killed rather than forced to abort the pregnancy as he stated at [32] of his substantive interview. The appellant was unable to reconcile the differences between the accounts and the judge concluded that on this issue alone the appellant's credibility was fatally undermined, stating, "I consider such a fundamental discrepancy to be fatal to his credibility. It is the clearest evidence that he has advanced a fabricated account and that he has been unable to recall its detail when asked about it at varying points of the process." It is important to note, as the Rule 24 reply pointed out, that there has been no challenge to this or other important adverse credibility findings. I cannot see how the appeal can succeed with this important finding left unchallenged.
12. The decision also reveals other important adverse credibility findings which have not been challenged, as highlighted in the Rule 24 reply and Ms McKenzie's oral submissions, and as can be seen by a simple reading of the decision. However, I agree with Mr Woods that the adverse finding on the appellant having

access to his CSID is marginal to the overall credibility assessment. Nevertheless, having carefully considered the other important adverse findings and the decision in the round, as a whole, I am satisfied that notwithstanding the two errors pleaded in the grounds, the judge was entitled to reach the overall conclusion that the appellant's factual account was not credible. In this regard, as stated above, I find it most significant that neither the findings on the crucial killing/abortion inconsistency nor the other adverse findings within the decision have been challenged.

13. It follows from the above that whatever the errors in relation the KDP presence in Sulaymaniyah and whether or not his girlfriend would have told him of her suspicion that she may be pregnant before seeking confirmation by testing, the remaining adverse and unchallenged credibility findings are so significant that I am satisfied that they would themselves have been fatal to the appeal. The impugned decision can stand independently of those two minor errors highlighted in the grounds of appeal. It follows that the challenged findings and errors as I have found are not in fact material to the outcome of the appeal.
14. For the reasons explained above, the grounds disclose no material error in the making of the decision of the First-tier Tribunal.

### **Notice of Decision**

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**15 November 2023**

