IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004338
First-tier Tribunal No:
PA/51191/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

SGA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. A. Bhachu, Counsel instructed by Freedom Solicitors
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 5 December 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Freer, (the "Judge"), dated 6 February 2023, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse his protection and human rights claim. The Appellant is a national of Iraq of Kurdish ethnicity. He had previously appealed to the First-tier Tribunal against an earlier decision of the Respondent to refuse a grant of asylum, which had been dismissed. He made a

fresh claim based on his political activities, both sur place and online, which is the subject of this appeal.

2. Permission to appeal was granted by First-tier Tribunal Judge Hamilton in a decision dated 10 March 2023 as follows:

> "3. The grounds assert that the Judge erred because he:
>
> 1) Mistakenly believed that the country guidance in XX (PJAK – sur place activities – Facebook) CG [2022] UKUT 00023) required the appellant to produce an expert report regarding his Facebook posts and gave no reason for finding the appellant's evidence regarding those posts were self-serving.
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> 2) Did not give adequate reasons for finding the appellant's sur place activities were not motivated by genuine belief and when considering this issue, took into account irrelevant matters while failing to consider relevant matters.
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> 3) Applied an inappropriately high standard of proof when considering whether the appellant had shown his social media activity would have come to the attention of the authorities.
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> 4) Gave inadequate reasons for finding the appellant would be able to access his CSID through contact with his family.
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> 5) Failed to have regard to the guidance in SMO & KSP (civil status documentation; Article 15 (c);) Iraqi CG [2022] UKUT 00100, when considering whether the appellant could be re-documented.
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> 4. The Judge states (at paragraph 20) that the guidance in XX "reasonably requires a computer expert report but none has been provided". At paragraph 49, he repeats that XX suggested a detailed computer expert report was required when considering social media evidence. I accept that XX does not require or suggest expert reports are necessary. Therefore this appears to be an error.
>
> 5. I am somewhat dubious as to whether this error is material. The Judge quoted what he referred to as the "relevant" guidance in XX at length and appeared to apply it.
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> 6. Furthermore, the Judge also found that the appellant's Facebook posts would not have come to the attention of the Iraqi government in any event. He considered the points raised in the appellant's skeleton argument regarding this issue (including the establishment of a committee to monitor social media sites) and gave clear reasons for finding that there was insufficient evidence to show the appellant's Facebook posts or other activities would have come to the attention of the Iraqi authorities (paragraphs 39 to 48).
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> 7. It is a finely balanced decision but I am just about persuaded it is arguable that the Judge's belief that an expert's report was required influenced his conclusion that the appellant's Facebook account had been manufactured to support his claim, rather than because of the appellant's genuine political beliefs.
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> 8. It is therefore arguable this was a material error of law and I grant permission on that basis.
>
> 9. The remainder of the grounds that are not directly linked to this issue appear to have less merit, in particular the grounds relating to the appellant's CSID documentation. Nevertheless, I grant permission on all grounds relied on by the appellant."

3. There was no Rule 24 response.

The hearing

4. The Appellant attended the hearing.

5. Ms. Bhachu had provided a Skeleton Argument. I heard submissions from both representatives following which I reserved my decision.

Error of law

6. The grounds cover two areas, the Appellant's political activism, and his redocumentation in Iraq, and so I have considered the appeal on this basis. In relation to the first, it was submitted by Ms. Bhachu that the Judge had made a number of misdirections which meant that his findings as to the genuineness of the Appellant's political beliefs were flawed. I have carefully considered the decision as a whole. As set out at Ground 1 and in the grant of permission to appeal, the case of XX does not require a computer expert report. There was no suggestion from Mr. Lawson that such a report was required. At [20] the Judge states:

> "No bespoke report such as country reports or medico-legal reports have been supplied on behalf of this Appellant. The guidance in XX reasonably requires a computer expert report but none has been provided."

7. At [49] he states:

> "The skeleton then turns to analyse the XX case, which I have to consider with great care as it is mostly irrelevant. It is certainly not country guidance for Iraq. I have set out the actual relevant headnote points. The Appellant cannot give expert evidence on his own behalf about Facebook. What he says about Facebook as a lay person is self-serving and cannot be given much weight. We do not have the kind of detailed computer expert report suggested by XX. The account or its posts can be switched to private and its closure would not amount to persecution."

8. Ms. Bhachu submitted that he had made this misdirection at [20], early in his decision, before considering the Appellant's case and before making any findings. She submitted that the fact that the Appellant had not provided an expert report was at the forefront of the Judge's mind although the caselaw did not require one. The Judge then repeats this at [49], and at [50] he again states "There is no expert report". I find that the decision shows that the Judge started with the assumption that the Appellant had failed to provide evidence which was required, and that this has impacted on his overall consideration of the Appellant's case.

9. In relation to the lack of witnesses, the Judge states at [39]:

> "That is in the past. Looking now at the sur place issues, I note that the Appellant produced no supporting witnesses of fact. I found that very surprising since he claims to be in fear of his life, to have many friends and to attend many demonstrations. No political figures have come forward. This casts considerable doubt on the sincerity of his political activity, as does its very recent start date.

10. It is not clear here who the Judge means when he refers to "political figures", and therefore to find that doubt is cast on the sincerity of the Appellant's political activity due to the absence of such figures is without adequate reasoning. There

is no requirement on the Appellant to be a member of any political party in order to succeed on the basis of sur place political activity, and so the absence of any "political figures" should not cast doubt on his credibility. Further, as submitted by Ms. Bhachu, he had shown that he was a member of online political groups in any event.

11. The Judge also expected the Appellant to provide evidence of someone else in a similar position. At [43] he states: "Furthermore, no instance of an affected person with a similar profile to this Appellant has been advanced in the evidence." At [44] he states:

> "The relevant useful data that I would hope to see is rigorous analysis, not just a few examples, of what happens to a substantial number of low-level dissidents, who had protested online or outside the Embassy in the UK, after they return to Iraq."

12. Ms. Bhachu submitted that every asylum case had to be treated on a case-by-case basis, and that there was no required threshold. I find that this submission has merit. It is not a requirement for an appellant to show that he succeeds by reference to anyone else, only by the consideration of his particular circumstances set against the relevant background evidence and country guidance. I find that the requirement placed on the Appellant to provide evidence that someone else in his position had been at risk on return is an error of law.

13. Ms. Bhachu submitted that the Judge had considered the Appellant's claim as if he were a journalist and that he had therefore not considered his claim for what it was. The Appellant had never claimed to be a journalist. At [40] the Judge states:

> "The Appellant is manifestly not a journalist. He has no journalistic training or employment record. I therefore wholly reject his self-serving claim to be engaged in activities akin to journalism. This is embroidery on the core account."

14. Given that he had never claimed to be a journalist, to find that he has embroidered his account by so claiming is an error.

15. Following on from his earlier findings, the Judge states at [55] "I therefore make the following findings of fact:" At [56] and [57] he states:

> "The Appellant has demonstrated frequently in 2022 and it is to his credit that he knows the dates, locations and purposes of each of the demonstrations. He is either a careful person or a genuine dissident or both. He gave one example of creating a personal post rather than copy and paste social media activity. I find this is not a statistically significant example. It is not a journalistic endeavour as such and, if it were, it would be an isolated example and therefore not a description of his occupation. Overall, he is likely to be contriving a social media presence in the hope of succeeding in his legal case.
>
> Taking all the evidence into account holistically from the country, the witness and other sources, I am not persuaded that the Appellant is a genuine activist today, having regard in particular to the commencement date of all his sur place activities, which is clearly after he had failed to persuade Judge V Jones in 2019 of the merits of his first claim. There is no journalistic career shown and no formal position in any real-world grouping. Online is simply online. We had no supporting witnesses. No protests or postings occurred when he was living in Iraq. It is therefore very likely,

> taking this into account in a rounded way, that all these activities in the UK are contrived."

16. These findings are made on the basis that the Appellant was claiming to be a journalist, which was not the case. There is no requirement to have a "formal position in any real-world grouping", and it is not clear what the Judge means by this. The Judge then states "[o]nline is simply online", presumably contrasting online with "real-world", although again he has not explained this and it is unclear. Supporting witnesses are not necessary, especially given that I have found that the Judge erred when casting doubt on the Appellant's claim as there were no "political figures" giving evidence. It is not necessary for the Appellant's political activity to have started when he was living in Iraq. The fact that he was not politically active in Iraq does not mean that his activities are not genuine.

17. The Judge then finds that it is "very likely" that the Appellant's activities are contrived. I find that this is based on a series of misdirections and errors. I find that the Judge has given more weight to the evidence which was not before him rather than the evidence which the Appellant had provided. He has drawn adverse inferences from the absence of an expert report which he incorrectly stated was required by the caselaw, from the absence of any "political figures" coming forward, from the absence of evidence of membership of a "real-world" political group, from the absence of evidence of journalistic activities, and from the absence of evidence of political activism in Iraq. None of these are pre-requisites to the Appellant showing that he is at risk. While they may be factors to consider, to attach more weight to their absence rather than to adequately assess the evidence provided is a material error of law.

18. Further, it was submitted by Ms. Bhachu that, even if the Judge had found that the Appellant was not a genuine activist, he was bound to consider the risk on return on account of his activities. I find that he has not done so.

19. In relation to the Appellant's lack of identity documents, this is addressed at grounds 2 and 6. At [38] the Judge states:

> "The Appellant was found in 2019 to have been funded by his employer (not his father) for the trip to the UK. He was also found to have a number of aunts and uncles in Kalar. I find that so little time has elapsed that in all probability he can find them again and that they can redocument him in Iraq even if he cannot locate his birth family."

20. It is not clear what process the Judge is referring to here when he finds that the Appellant's family "can redocument him" given that the Appellant will require an INID which he has to obtain in person. The Judge later finds at [58] and [59]:

> "On documentation, his passport will not assist with internal travel. He has previously acknowledged that his CSID is with family in Iraq. I find it hard to believe that he is not in communication with them, given the general credibility findings. The Red Cross are of course wholly reliant on the information supplied to them by this Appellant. It has not been proven that he lost contact.
>
> His relatives may very well still have his CSID and his uncles may well be able to locate his birth family if that is necessary. He will need to apply for an INID when the CSID expires, given that his home area has switched from CSID. I find that he has many relatives who can support his application and deliver him to the correct office to make this happen. There are people including his uncles who may vouch for him."

21. There is no clear finding as to whether the Appellant will be able to obtain his CSID. The Judge states that his relatives "may" have his CSID, and his uncles "may" be able to locate his birth family "if that is necessary". Ms. Bhachu submitted that it was equally likely on this finding that his relatives "may not" have his CSID. Mr. Lawson submitted that, given the overall credibility findings, it was likely that the Appellant's family still had his CSID. However, this is not what the Judge found. He made no clear finding on a material issue. A clear finding of fact on this issue is vital given that, if the Appellant cannot obtain his CSID prior to arrival in Iraq or by someone bringing it to him at the airport, following SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) he could face an Article 3 risk, and will not be able to redocument himself. I find that this failure to make a clear finding of fact is a material error of law.

22. I have taken into account the case of Begum [2023] UKUT 46 (IAC) when considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. At headnote (1) and (2) it states:

> *"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*
>
> *(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."*

23. I carefully considered the exceptions in 7(2)(a) and 7(2)(b) when deciding whether to remit this appeal. I have found that the decision involves the making of material errors of law in the consideration of the evidence, and in relation to risk on return. There are no findings which can be preserved. Given the extent of fact finding necessary, I therefore consider that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

24. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.

25. The appeal is remitted to the First-tier Tribunal to be reheard.

26. The appeal is not to be listed before Judge Freer or Judge V. Jones.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
11 December 2023