IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002687
First-tier Tribunal No: PA/56039/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

D F
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Khan, instructed on behalf of the appellant (Kings Law Solicitors)

For the Respondent: Mr J. Thompson , Senior Presenting Officer

Heard at (IAC) on 12 August 2024

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal (Judge Hatton) (hereinafter referred to as the "FtTJ") who dismissed his appeal against the decision made to refuse his protection and human rights claim.

2. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

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3. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant MM is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant D F, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

The background:

4. The procedural background can be summarised as follows. The appellant is a national of Iraq of Kurdish ethnicity. He originates from a governorate in the IKR. He claims to have left Iraq in June 2022, travelling through Turkey and other unknown countries, before arriving in the UK on 1 August 2022, claiming asylum the following day on the 2 August 2022. His initial screening interview took place on 4 August 2022 and his substantive interview on 17 October 2022

5. The respondent refused the application in a decision taken on the 17 November 2022. The appellant lodged an out of time application on 22 December 2022 and in a decision taken on 4 January 2023, the FtT extended time for appealing the decision being satisfied that it was in the interests of justice to do so.

6. The appeal came before Judge Hatton. The FtTJ set out the core of the appellant's claim at paragraph 20; that he feared becoming a victim of an honour based killing in Iraq from his father whom he claims is a member of the PUK as a direct consequence of his father discovering that the appellant was in a clandestine relationship with his father's second wife (E), who is the appellant's stepmother.

7. In a decision promulgated on 13 June 2023 the appellant's appeal was dismissed on all grounds. The FtTJ set out the "2 key issues" to be determined at paragraph 8 of his decision. First, to determine whether the appellant's account of what happened in Iraq was credible. Second, to determine whether these events could cause anyone in Iraq to take an adverse interest in him.

8. Between paragraphs 22-72 the FtTJ set out his analysis of the evidence and findings of fact in respect of the first issue. The FtTJ made a number of adverse credibility findings in the context of the core of his claim that he feared to be a victim of an honour based killing from his father as a direct consequence of his father having discovered him in a clandestine relationship with his father's 2nd wife (his stepmother). The FtTJ concluded at paragraph 70 that he was satisfied that the appellant's written and oral evidence was unreliable as he had described them. He found the appellant's account to be internally and externally inconsistent and inherently implausible. By reason of those factual findings made, the FtTJ reached the conclusion that there was no real risk of the appellant coming to the adverse attention of any family members or the authorities in Iraq on account of him being a potential victim of an honour killing because the incidents in Iraq upon which his asylum claim had been based could not have taken place as claimed. At paragraph 74, the FtTJ found that in the absence of a genuine fear from either the authorities, his family (expressly

including his father) or anyone else in Iraq, the FtTJ was satisfied that he had not lost contact with his family members and that he could continue communicating with them as and when required. The FtTJ further found at paragraph 75 that there was no suggestion from the appellant that he would be unable to continue communicating with his family in Iraq and that to the contrary he had made explicit during cross-examination that he had their contact details and the only thing preventing him from communicating with them using those details was his claim to be in fear. Therefore given the finding made that the appellant's claim for asylum was not well-founded then the sole reason for not communicating with his family in the IKR "falls away".

9. The FtTJ set out his reasons between paragraphs 78 – 81 as to why the appellant did not qualify for humanitarian protection.

10. On the issue of Article 2 and 3 in the context of return and documentation, the FtTJ recorded that there was no suggestion that the appellant would be returned to Iraq via Baghdad (see paragraph 84) and that for the reasons he had given earlier in his decision, the judge was satisfied that the appellant could return safely to his family in the IKR.

11. On the issue of documentation, whilst accepting that the appellant was not currently in possession of his CSID, it was left at his family home. The FtTJ rejected the appellant's evidence that his CSID may no longer be at the family home because they might have thrown it away, based on the importance of that document which enables a person to live and work in Iraq. He concluded that there was no "realistic possibility they would have done so" (see paragraph 87). The FtTJ therefore concluded that the appellant's CS ID was and remains at his home address and there was no "discernible reason" why is mother and/or other members of his family could not assist him in becoming reacquainted with it on return (see paragraph 88).

12. The FtTJ therefore dismissed his appeal on all grounds.

13. The appellant sought permission to appeal, and permission was granted on 6 June 2024 by FtTJ Bibi for the following reasons:

"The appellant seeks permission to appeal, against a decision of the First-tier Tribunal Judge Hatton who, in a Decision and Reasons promulgated on 13 June 2023 refused the appellant's appeal against the Secretary of State's decision to refuse the appellant refugee status.

The application for permission to appeal was submitted in time to the court via email on 27 June 2023. The appellant was not able to obtain the 16 digit online reference number from his previous legal representatives and the court prior to the 14 day statutory period. I have considered the documents and explanation and treat this as an in time application for permission to appeal.

The grounds assert in summary that the Judge materially erred in his findings, that the Judge has not considered that the CSID is being replaced with the new biometric Iraqi National Identity Card (INID). An appellant would need one of these to documents in order to live and travel in Iraq. There is an arguable error

of law that has been identified which merits further consideration. There is a reasonable prospect that a different Tribunal would reach a different decision."

14. At the hearing before the Upper Tribunal Mr Khan appeared on behalf of the appellant and Mr Thompson appeared on behalf of the respondent.

15. There was a relevant preliminary issue as to the ambit of the grounds of challenge. The Rule 24 response filed by the respondent set out at ground 3 that the grant of permission "appeared to be limited to the issue of redocumentation". When this was canvassed with Mr Khan as to what issues were raised on behalf of the appellant he stated that they had been set out in the grounds, and that whilst Judge Bibi appeared to have limited it to the redocumentation issue, the grounds referred to credibility findings as regards the issue of polygamy.

16. In response, Mr Thompson submitted that the Rule 24 response was a summary of the grounds of permission and the grant focussed on the issue relating to redocumentation and that was the only ground in dispute.

17. Mr Khan submitted that he stood by what was set out in the grounds of permission and that whilst the grant focused on the CSID point, the application raised other issues.

18. As the ambit of the grounds was in issue the decision of Safi *and others (permission to appeal decisions) [2018]* UKUT 388 (IAC) ("Safi") was provided so that the parties could consider this.

19. When considering the ambit of the grounds, this was not a limited grant of permission in light of the decision in Safi *and others (permission to appeal decisions) [2018]* UKUT 388 (IAC).

20. In Safi the headnote to that decision states as follows:

> *(1) It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision.*
> *(2) It is likely to be only in very Exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission, regardless of what might be said in the reasons for decision section of the document.*

21. When reading the grant of permission it makes no reference to this being a limited grant of permission in the part where it is stated " permission is granted". Thus if the FtTJ granting permission intended this to be a limited grant of permission, the FtTJ has not done so in a way which complies with Safi as set out above. The FtTJ failed to incorporate his intention (if there was such an intention) to grant permission on limited grounds within the decision section of the standard document, where it is simply stated, '

permission is granted'. If a judge intends to grant permission only on limited grounds, he or she must make that fact absolutely clear. That is not the position here and there is no reference to the appeal grounds being limited in the way set out by the Upper Tribunal in Safi (see paragraph 43).

22. Mr Thompson submitted that he had prepared the appeal on the basis of the grant of permission and not the additional grounds and would require further time to consider the grounds. Time was therefore given to Mr Thompson for this to take place so that he could address the other grounds.

23. At the hearing both parties made submissions which are addressed in my analysis below.

Analysis:

24. Mr Khan relied on the written grounds of appeal and identified in his oral submissions that there were 2 issues discernible from those grounds that he relied upon. First, as regards the appellant's credibility relating to the father's 2nd marriage and second, the issue of polygamy and secondly, the issue of redocumentation.

25. Dealing with the first ground he submitted that the grounds sought to challenge paragraphs 61 – 66 and that the FtTJ erred in law when reaching his finding on the issue of the father's 2nd marriage and that the FtTJ was not entitled to make finding that he did that polygamy was illegal in the IKR.

26. In his submissions Mr Khan submitted that the FtTJ referred to the COIR report and at paragraph 65 he considered the contents of the CPIN but whilst the FtTJ noted that many people travelled out of Iraq to marry polygamously the CPIN did not say " all people".

27. Mr Khan further relied on paragraph 6 (a) of the written grounds and that the FtTJ failed to note that polygamy still existed in Iraq and that the FtTJ had not considered the Personal Status Law 1959 (Iraq). At paragraph 6 (b) the written grounds make some reference to Article 3 of the Personal Status Law, however as accepted by Mr Khan there is no document relating to that either in the bundle or attached to the grounds.

28. It is further submitted at paragraph 6 (c) that in arriving at his decision the FtTJ superimposed own views upon the appellant's father taking a 2nd wife and therefore fell into legal error in his decision.

29. Mr Thompson on behalf of the respondent submitted that there was no error of law in the decision of the FtTJ. Dealing with the first ground he submitted that the only reference to the Personal Status Law can be found in the bundle at page 186 (CE File) paragraph 8.3.1 which recited Article number 15 of the Personal Status Law and that it has never been demonstrated that the FtTJ either had Article 3 before him or that he had

been referred to it at the hearing. He submitted that it would be an error of law for the FtTJ to do his own research and that the judge was entitled to look at the documents that had been provided with on behalf of the appellant, which is what he had done.

30. Mr Thompson further submitted that in any event the FtTJ did not doubt the existence of polygamy in the IKR as set out at paragraph 63 of this decision, but that it was open to the FtTJ to query the references within the appellant's bundle as to why individuals would travel outside of the IKR to marry (see paragraph 64). He submitted that whilst Mr Khan referred to "many people" that did not change the objective material which the FtTJ had regard to at paragraph 70 of the CPIN (page 365 CE File). He submitted that the FtTJ was entitled to place weight on the inability to reconcile the evidence of the appellant who that the marriage had taken place and was registered in the IKR in contrast to the objective evidence contained in the appellant's own bundle.

31. Mr Thompson also submitted that the FtTJ provided subsequent reasons between paragraph 65 and 66 and that the findings challenged in paragraph 1 were not the only adverse credibility findings made by the FtTJ as set out in his decision relating to the appellant's father's 2nd marriage.

32. Having considered the submissions in the light of the decision of the FtTJ, it has not been demonstrated that the FtTJ erred in law in his decision on the basis of ground 1 as set out above. Whilst the grounds refer to specific paragraphs within the FtTJ's decision, there are a number of other paragraphs where the FtTJ addressed the evidence and does so expressly by reference to the appellant's own evidence and the submissions made on his behalf by his advocate at the hearing. In addressing the grounds, the factual findings made need to be read carefully and not in isolation and should be viewed in the factual context of the claim. To do otherwise can really amount to "island hopping" in the "sea of evidence".

33. The FtTJ records the appellant's evidence at paragraph 46 as to where his father's 2nd marriage had taken place which he confirmed to be in the KRI and that this was a marriage that was registered (see paragraph 47). The FtTJ did not address the evidence in isolation but considered it alongside the country objective evidence relating to the IKR which was contained in the appellant's own bundle. Firstly the Danish Immigration Service COIR was referenced by the judge, and that report set out at paragraph 70 (page 365 CE File) "even though polygamy was prohibited in the KRI in 2011, many people still travel outside the KRI to marry this way". The FtTJ recorded the appellant's response to that discrepancy and that he had never heard of this (see paragraph 50 – 51). The FtTJ also considered the objective evidence contained in the appellant's bundle in the form of the CPIN paragraph 5.4.4 where it was stated "polygamy is illegal in Iraqi Kurdistan.." (Page 150;CEFile) and having considered the source of the information the FtTJ set out that he was satisfied that it came from a "credible and reliable source" and further recorded that the appellant's representative did not seek to assert otherwise (see paragraph 53).

34. The FtTJ addressed the appellant's advocate's further submissions between paragraphs 56 and 61. The appellant's advocate sought to rely on the CPIN rather than the COIR and it is recorded that he "expressly accepted that polygamy is illegal in the IKR" despite his previous submission to the contrary but that "illegal and prohibited are 2 different things". The FtTJ rejected that submission for the reasons that he set out. Firstly, the FtTJ found no significant material distinction between the 2 concepts but also that neither was any such material distinction drawn to his attention during the hearing. He therefore concluded at paragraph 61 that on the evidence advanced on behalf of the appellant and as set out in his own bundle was that persons in the IKR are not permitted to marry whilst married to another person as set out in the CPIN and the COIR and that there was "no contradiction between the published documents in this regard."

35. As Mr Thompson highlighted, it is clear from the other findings made by the FtTJ which followed that assessment, that the FtTJ stated that he had no difficulty in accepting that polygamy was still practised in Kurdistan and that was plainly set out at paragraph 63 of his decision. What the FtTJ did not accept was the appellant's evidence that the marriage that had taken place in the IKR and was registered, was consistent with the objective evidence in the appellant's bundle. The FtTJ set out further reasoning in this regard between paragraphs 64 and 65 and that if it were possible to register polygamous marriage within the IKR this failed to explain why the objective evidence in the COIR report made it explicit that the reason people travelled outside of the IKR was to enable them to marry in this way. Therefore the conclusion reached paragraph 66 was that having considered the evidence before him, he found the appellant's claim that his father was able to marry a 2nd wife in the IKR 10 years after practice has rendered illegal in the IKR to be regarded with a "very significant degree of circumspection". It is also right to observe that following those findings the FtTJ made other adverse findings of fact relevant to the appellant's account and based on the appellant's evidence between paragraphs 67 – 69 which are not the subject of a challenge.

36. The point made by Mr Khan is set out in the written grounds at paragraph 6 (a) and (b) which is that the FtTJ in reaching his decision failed to consider the Personal Status Law 1959 Iraq Article 3. However there is no basis for that submission. There was no evidence before the FtTJ in relation to the Personal Status Law and Mr Khan could not identify in the appellant's bundle any reference to Article 3 or any submission made by reference to such a document. The only reference to Mr Thompson was able to find related to Article 15 (page 186 CEF) which referred to forced marriages.

37. It is not made out that the judge erred in law by failing to have regard to a document or evidence that was not put before him. The FtTJ set out the position of the parties at paragraph 16 and 17 of his decision and that when considering the appeal he had a hearing bundle of 1034 pages and that at the outset of the hearing "both advocates confirmed the above contained all the documents relied upon by the parties in this appeal". The

FtTJ was therefore entitled to take into account the documents that were contained in the appellant's own bundle and in the light of the appellant's factual claim concerning the marriage to his father and how he claimed to have had a clandestinely affair with his stepmother. In any event , the FtTJ did not have any difficulty in accepting that polygamy was still practised (see paragraph 63) but did not accept the appellant's factual account as to how this had occurred. The FtTJ set out his reasoning on the evidence and was entitled to reach the conclusion on the material before him and in the light of the appellant's own oral evidence as to the likelihood of the factual account being consistent with the objective material.

38. It is also right observe that the FtTJ also considered the evidence in the light of the appellant's factual account that his father was employed in an official capacity and the relevance of that evidence where the FtTJ concluded that it was not reasonably likely that a person acting in such capacity would have risked their employment and/or reputation by engaging in conduct not expressly permitted by law in the region in which he worked and lived (see factual assessment at paragraph 67 and 68). Nor did the FtTJ find it reasonably likely that the appellant's father would have reported the appellant the police after finding him with his 2nd wife because doing so he would have risked his illegal marriage coming to the attention of the authorities in the IKR.

39. Those were not the only adverse findings of fact made by the FtTJ concerning the core aspect of his claim to be at risk on return to Iraq. As Mr Thompson has submitted, the grounds make no challenge to the other findings of fact set out between paragraphs 30 – 45 where the FtTJ set out his analysis of the appellant's core claim to have been in a relationship with his father 2nd wife and having been caught with her by his father in the circumstances claimed. Between those paragraphs the FtTJ set out a number of adverse credibility findings and did so in light of the country objective material and to which he referenced (see paragraph 36). When reading those factual findings, the FtTJ was entitled to find on the evidence before him that when the appellant's "narrative" or in other words his account was analysed, the appellant had taken a very significant risk in meeting his stepmother at her home address at night when set against the appellant's evidence relating to his father (see paragraphs 29 – 31) and that the only occasion which his father would leave work early was when he was on night duty. The FtTJ also found that the "lack of discretion" by reference to the conduct of both parties was "particularly striking" (see paragraph 33) and that in light of the appellant's own evidence as to his father's health issues and being able to leave night duty for that reason, it was reasonable to expect the appellant and his stepmother to be vigilant but that on his own evidence and account, neither took any "discernible precautions". The FtTJ also found that the appellant made no attempt to ensure or safeguard his step mothers welfare by reference to the evidence set out at paragraph 35 and the credibility of his account also was not supported by the available background evidence which the judge set out at paragraph 36.

40. Consequently there were other adverse findings of fact made between paragraphs 38 and 43 which are not challenged in the grounds or the oral submissions. It has not been demonstrated that those credibility findings were not open to the FtTJ on the evidence that was before him. He had regard to the evidence and made specific reference to that evidence in his analysis of issues of credibility and was entitled to find that the appellant's account of being found by his father and having conducted an illicit relationship with his father 2nd wife was not credible, plausible or consistent with the objective material. For those reasons ground one is not made out.

41. Dealing with ground 2, Mr Khan submits that he relied on the written grounds and that the FtTJ accepted that the appellant was without a CSID that the FtTJ failed to determine that it would not be possible for the appellant to obtain a CSID or travel to a CSA terminal from the airport without a CSID or an INID.

42. It is submitted on behalf of the appellant that the FtTJ failed to adequately address the issue arising from documentation in line with the country guidance decision of SMO & KSP (Civil status documentation; Article 15) Iraq CG [2022] UKUT 00110 (IAC) ("SMO(2)")and that in order to redocument himself, the appellant could not be expected to apply for a new replacement CSID in his home area which could only be provided by his attendance personally and registering his biometrics. It is said that his point of return would be to Baghdad.

43. There is no error of law in the FtTJ's decision based on that 2nd ground. The submissions wholly fail to take into account of the factual assessment made by the FtTJ on the issue of return and in light of the issue of documentation.

44. The FtTJ addressed the issue between paragraphs 82 – 90 and did so expressly by reference to the decision in SMO(2) The FtTJ was entitled to consider the issue by reference to his earlier findings of credibility and that he had found the appellant to be at no risk of coming to the adverse attention of his family or the authorities in Iraq on account of him being a potential victim of an honour killing (see paragraph 70 and 73 of the FtTJ's decision). That being the case, the FtTJ had rejected the appellant's account that he was in fear of his family. He had also found as a fact that the appellant was in contact with his family members for the reasons set out at paragraphs 73-75 of his decision.

45. The FtTJ was therefore entitled to find at paragraph 85 that the appellant could safely return to his family in Iraq.

46. The FtTJ addressed the issue of the location of the appellant's CSID and did so by reference to the evidence given by the appellant. He accepted that the appellant did not have his CSID with him in the UK but was entitled to place weight on the appellant's evidence that he had a CSID which he had left at home. The FtTJ records that this was further clarified in oral evidence and that the appellant stated that he had lived in the family home with his mother and 3 sisters.

47. The FtTJ rejected the appellant's evidence that his CSID might not be in the family home on the basis of the explanation given that his family members might have thrown it away. The FtTJ was entitled to reach the finding that such an event was not reasonably likely in view of the importance of a person's CSID which enables a person to live and work in Iraq. This was plainly a finding open to the FtTJ to make on the evidence before him including the country guidance decision of SMO (2) which refers to the importance of the CSID in Iraqi society.

48. The FtTJ was therefore entitled to conclude at paragraph 88 that as his CSID was and remained at his home address that there was no discernible reason why his mother or one of the family members could not assist him and therefore he could obtain his original CSID from them(see paragraph 90). This is a finding which is consistent with SMO (2) as the appellant would not need to redocument because on the FtTJ's analysis of the evidence he had a CSID in Iraq which could be made available to him. Whilst it may have been better to set out how that could be done, as the FtTJ found that he had a document at the family home and that he was in contact with his family members, the document could be obtained by either sending it to him in the UK or meeting him with the document in the IKR.

49. Whilst Mr Khan submitted that the appellant would be returned to Baghdad, that was not the position reflected at the time of the hearing as set out in the decision between paragraphs 83 – 84 where it was expressly made clear that as a former resident of the IKR he would be returned directly to the IKR.

50. In summary, the FtTJ was reasonably entitled to conclude on the evidence before him that the appellant could access his documents through his family having rejected his explanation that he was in fear of his family members due to the claim of being a potential honour killing but also to reject his further claim that those documents might have been thrown away given the importance of the CSID in Iraqi society and thus he would be able to access his original CSID document.

51. For those reasons, the grounds that seek to challenge the FtTJ's decision on the issue of documentation are also not made out.

52. In summary, I remind myself of the need for appropriate restraint before interfering with the decision of the FTT, particularly where the judge below was heard and assessed a range of evidential sources relating to the reliability of an account. Not every evidential issue need be specifically addressed and there is no requirement to provide reasons for reasons. The FtTJ had regard to the evidence before him and gave adequate and sustainable evidence-based reasons for reaching the conclusion that the appellant had not demonstrated his factual claim to the lower standard of proof to be at risk of harm in Iraq based on his claim to be a potential victim of an honour killing, nor had he demonstrated that he could not be returned to Iraq as he would not be in possession of a CSID.

53. The decision of the FtTJ did not involve the making of an error on a point of law, and the decision shall stand.

Notice of decision:

The decision of the FtTJ did not involve the making of an error on a point of law; the decision of the FtTJ shall stand.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

14 August 2024