IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002841

First-tier Tribunal No: PA/55618/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of September 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HADI MOHAMMED AHMAD
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Malik, instructed by Hanson Law, Solicitors.
For the Respondent: Mr Thompson, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 4 September 2024

DECISION AND REASONS

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Curtis ('the Judge') promulgated on 21 March 2023, in which he dismissed the Appellant's appeal against the refusal of his claim for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The Appellant is a citizen of Iraq born on 16 May 1999 who entered the UK on 20 April 2016. His initial claim for asylum, made on the day of arrival, was refused by the Secretary of State and his appeal against that decision dismissed by First-tier Tribunal Judge Khan ('Judge Khan') on 26 July 2017. On 14 February 2020 the Appellant made further submissions which were refused on 5 October 2021. The Appellant lodged an appeal on 26 November 2021 which came before the Judge.
3. Having considered the documentary and oral evidence the Judge sets out his findings from [19] of the decision under challenge.
4. The Judge took as his starting point an earlier decision of Judge Khan promulgated on 26 July 2017, a summary of which is to be found at [21 (i) – (vi)] of the decision under challenge. The Judge's own findings in relation to the core

issues are set out at [39] – [40] of the decision under challenge in which he writes:

> 39. I take a step back now to consider the totality of the evidence. The Appellant was not considered credible by Judge Khan and that status has not improved before me. The Appellant's account is littered with inconsistencies and matters which are simply not believable, even to the lower standard. The narrative of events in Iraq does not have the ring of truth to it. He was unable to decide whether he had ever had a CSID or whether he had one but could not remember whether he brought it with him. Even accounting for the Appellant's age when he left, he ought reasonably to be able to recall whether he was ever issued with a CSID by the authorities (particularly given what the country guidance jurisprudence tells us about the importance of such a document). His inability to confirm that basic matter, and his vague responses to that line of questioning, further affects his credibility. He has produced no documentary evidence that supports his contention that, for a number of years, he has been in communication with the Red Cross about their family tracing service. There was no letter to confirm that the Appellant had registered with them to trace his family. There were no letters to confirm that such a request had proved fruitful. On his own admission, he is in contact with the Red Cross on a weekly basis. Accordingly, whilst I recognise that an asylum seeker is under no duty to provide corroborative evidence, documentation about this aspect of his claim ought to have been readily available and the fact that none was provided, in those circumstances, affects the Appellant's credibility.
>
> 40. The Appellant is not a truthful witness. I am unwilling to accept that he is not in contact with his family in Iraq. Given his evidence about his CSID, he is unable to demonstrate that it is not with his family in Iraq. He has not demonstrated, then, that he cannot obtain it from his family and, in possession of it, he will avoid the types of treatment envisaged by the Upper Tribunal to befall an Iraqi national who is not in possession of a CSID or INID. That is, the Appellant has not established it is reasonably likely that his removal from the UK would expose him to treatment prohibited by article 3 ECHR. Mr Ahmed made no argument that the Appellant's removal would breach his rights under article 8 ECHR (for completeness I recalled here that there is no evidence of a family life and his private life, formed since April 2016 whilst his immigration status was precarious, would not carry significant weight to defeat the public interest in maintaining effective immigration controls). Finally, the Appellant is not demonstrated that it is reasonably likely that he will be persecuted by, or suffer serious harm from, ISIS, militia groups or any other person in Iraq. His appeal falls to be dismissed on all grounds.

5. Permission to appeal was granted by First-tier Tribunal Judge Chowdhury on 12 June 2024, the operative part of the grant being in the following terms:

> 1. The application is in time.
>
> 2. The Appellant is from Jalawla in the Diyala Governate (see paragraph 23 of the decision). The Appellant argues that in SMO1 it was noted by the country expert that Jalawla was unstable and saw ISIL and other attacks in the area (see paragraph 5 of the grounds).
>
> 3. SMO1 post-dated the earlier decision of the First Tier Tribunal and it is arguable that the Judge had misunderstood that the findings of SMO1 stood with regard to Article 15© of the Qualification Directive and that SMO2 mainly addressed the issues of CSIDs and redocumentation. The issue of the returnability and consequent effects on re-documentation therefore, arguably, are flawed.
>
> 4. I observe here that this position was expressly not argued before the Judge (see paragraph 37) and instead the Judge was hindered by a 400-page bundle and heard submissions on reredocumentation only. The Appellant's current representatives

are reminded of their duty to assist the Tribunal and their grounds at paragraph 11 are wholly without merit. The burden is on the Appellant to prove their account, not the Judge's.

5. Permission is granted on the basis of paragraph 3 above only.

6. Although the text of the grant is set out above, suggesting an intention to grant permission on a limited basis only, the actual section of the grant in relation to where permission to appeal is granted does not contain any reference to any such restriction. It was therefore agreed that Mr Malik may argue all of the pleaded grounds.

7. The Appellant sought permission to appeal on eight grounds being, in summary, (1) that the Judge erred in his assessment of the country guidance caselaw as to the ISIS threat, (2) the Judge erred in disputing past factors as implausible (3) the Judge erred in his assessment of the country guidance caselaw, (4) the Judge erred in considering the head note of SMO 2 without considering the body of the decision as a whole, (5) the Judge failed to consider the objective evidence, (6) the Judge failed to consider section 8 AICTA 2004 properly, (7) the Judge's assessment of the Red Cross evidence is flawed, and, (8) the Judge's assessment of the CSID is flawed. For the reasons set out in full detail in the pleadings dated 4 April 2023.

8. There is no Rule 24 response from the Secretary of State.

Discussion and analysis.

9. Guidance has been provided to appellate judges by the Court of Appeal in a number of cases as I stated during the hearing. A person challenging a decision of a judge of the First-tier Tribunal must have regard to the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462 (see below).

This approach has been repeated in the more recent decision of the Court of Appeal in Hafiz Aman Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 in which Lord Justice Green in giving the lead judgement, with which the other members of the Court agreed, wrote:

UT's jurisdiction and errors of law

26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:

(i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];

(ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 at paragraph [45];

(iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 at paragraph [25];

(iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see UT (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 1095 at paragraph [27];

(v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see AA (Nigeria) v Secretary of State for the Home Department [2020] EWCA Civ 1296 at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see MM (Lebanon) v Secretary of State for the Home Department [2017] UKSC 10 at paragraph [107].

Also of considerable relevance is the more recent decision of the Court of Appeal in Alexander Isaac Hamilton v Mark Colin Barrow (1), Claire Michelle Barrow (2) and Matin Welsh (3) [2024] EWCA Civ 888 in which Lade Justice Falk, who gave the lead judgment with which the other members of the Court agreed, wrote at [30]-[31]:

Approach to the appeal

30. Mr Hamilton rightly referred us to case law reiterating the approach of this court to appeals on questions of fact. Lewison LJ's summary in *Volpi v Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2] bears repeating:

> "The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:
>
> (i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> (ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> (iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> (iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> (v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

31. The appeal court's reluctance to interfere applies not only to findings of primary fact but to their evaluation and the inferences to be drawn from them: *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 at [114]. Absent an error of legal principle, this court will interfere with such findings only in limited circumstances: see for example *Walter Lilly & Co. Ltd v Clin*. [2021] EWCA Civ 136, [2021] 1 WLR 2753 at [85], where Carr LJ said:

"In essence the finding of fact must be plainly wrong if it is to be overturned. A simple distillation of the circumstances in which appellate interference may be justified, so far as material for present purposes, can be set out uncontroversially as follows:

(i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support.

(ii) Where the finding is infected by some identifiable error, such as a material error of law.

(iii) Where the finding lies outside the bounds within which reasonable disagreement is possible."

10. When the case was called on at 10 o'clock the Appellant had attended but there was no attendance from his legal representative. Eventually Mr Malik arrived at the hearing centre indicated he was in some difficulty as he had been instructed by the Appellant's solicitors only half an hour before the time the case was called on at 11:24 AM. Mr Malik indicated that he would need time to read the bundle, claiming at least two hours will be needed, but was advised that one hour will be allowed as it was only an error of law hearing and that was ample time to read those documents relevant to the submissions he needed to make. He was advised the tribunal would reconvene at 12:30PM. The appeal was called on again at 12:34 PM and Mr Malik was asked whether he had been able to read the decision all relevant documents, which he confirmed he had, and that he is ready to proceed.

11. When he was asked why the situation had developed in relation to the lack of a representative ready to proceed by 10.00AM, Mr Malik indicated that those instructing him had been in some difficulty as Mr Ahmed had not responded to attempts by the solicitors to contact him on a number of occasions and, being without instructions, did not feel they were able to book Counsel until they heard from Mr Ahmed and were able to confirm they were still instructed.

12. In his submissions Mr Malik referred to all the Grounds as pleaded. He referred to the Judge taking the earlier decision of Judge Khan as his starting point in accordance with the Devaseelan principle and submitted that was a decision made in 2017 and since that date there had been a lot of changes in the case law, including relevant country guidance caselaw, which it was submitted to Judge had not looked at or applied properly, sufficient to amount to material legal error.

13. In relation to Ground 1, this asserts the Judge erred in assessment of the country guidance caselaw as to ISIS threat. Mr Malik submitted the Judge failed to properly consider the decision of the Upper Tribunal in SMO & KSP (Civil status documentation; article 15(c)) Iraq CG [2022] UKUT 00110 ('SMO2'). It was submitted the appellant is from Diyala and the Judge was required to go through a checkpoint return to Baghdad which would require documents. It was submitted

there are a lot of “ifs” in the Judge’s findings and that if the Judge was rejecting the evidence some reasoning for the same needed to be set out. It was submitted to Judge had failed to consider all the evidence.

14. This ground specifically refers to [23] of the determination in which the Judge writes:

> 23. I have considered the Appellant’s witness statement of 20 January 2022. In para.1 he asserts it is fear of ISIS remains and, yet, only two paragraphs later he concedes that “*ISIS as it is known is not there”.* It is therefore difficult to understand how a fear of ISIS can be put forward is genuinely subjectively held when it is accepted that the organisation is no longer present “as it is known”. That concession is not consistent with SMO & KSP (Civil status documentation; article 15 (c)) Iraq CG [2022]UKUT 00110 (IAC) (“SMO (No.2)”) in which it was confirmed that the only area of Iraq in which ISIS continued to exert doctrinally control is a small mountainous area north of Baiji in Salah as-Din. The Appellant is from Jalawla in Diyala governorate.

15. The grounds seeking permission to appeal are very poorly drafted, legally incorrect, and at points appear disingenuous, attempting to wheedle out arguments that the author thinks warrant further time and cost being involved rather than bearing any relationship to the guidance provided by the Court of Appeal above.

16. The claim at [4] that the Judge erred in referring to SMO 2 as in that case there is no reference to ISIS or Jalawla, as the case only pertains to the prospect of re-documentation, is wrong. One only has to read the first paragraph of the headnote to see reference is made to the question of indiscriminate violence in Iraq, the military defeat of ISIL (another means of referring to the group otherwise known as ISIS) and a specific finding made by the Judge at [23] in relation to the limited area of influence of ISIS at headnote [2], and to the Appellant’s home area at [3].

17. The Judge was aware that Judge Khan’s decision was promulgated in 2017 and even though that may have been the date of earlier country guidance the Judge properly considered current country guidance relation to the merits of this appeal.

18. At [5] of the grounds seeking permission to appeal is reference to [24] of the decision in which the Judge writes:

> 24. The Appellant was not targeted by ISIS when he was in Iraq and I am satisfied he was of no interest to them when he left Iraq. Judge Khan found the Appellant to be of no interest to ISIS on return. I have heard or read nothing that would justify my reaching a different view. He now claims to fear other militia groups but offers nothing close to a cogent reason why such groups (aside from his documentation position) would be at all interested in him if he returned to his home area. Similarly to the position with ISIS he was of no interest to any militia group when he left.

19. The grounds assert that finding is flawed as the country guidance case applicable in 2017 hearing was AA (Iraq) and now it is SMO 1 and SMO 2. There is then a quote from SMO 1 at [98] setting out extracts from the evidence of Dr Fatah, and [112] again setting out an extract from other parts of the evidence. The assertion that material was not considered by the Judge is without arguable merit. Whatever AA (Iraq) and SMO 1 may have said, there is only one country guidance case now, SMO 2, which was properly taken into account by the Judge. The Judge undertook account of the evidence in relation to risk at the date of the hearing and examined country conditions, irrespective of what may have been the previous situation, and set out the findings at [23] and [24] that are clearly

within the range of those reasonably open to the Judge on both the subjective and objective material.

20. No legal error, material or otherwise, is made out in relation to Ground 1.

21. Ground 2 asserts the Judge is disputing a past fact as implausible in which the Judges said to have found "*cannot discern any logic*" in taking the Appellant's mother to hospital and leaving the Appellant with a dangerous and powerful man. The grounds assert the Judge is implicitly relying on implausibility as to the scenario the Appellant was in and the finding referring to the "*logical conclusion*" is drawing on how the Judge perceived somebody else would have acted differently in the scenario the Appellant had described, which was then used to conclude that the Appellant was not credible. The grounds assert there was no background evidence to support an allegation of implausibility which the author of the grounds believed led to it being assumed that this finding is based on what the Judge would do in a situation and how he believed a reasonable father should have acted.

22. The first thing to note is that there are a number of paragraphs in this detailed determination which have not been criticised by the author of the grounds seeking permission to appeal or challenged by Mr Malik. There is also a clear example of "cherry picking" parts of the determination that the author of the grounds believes will allows him to build his argument upon, rather than considering the whole of the evidence and the matters in context.

23. Ground 2 is a challenge to the Judge's findings at [31 – 32] of the determination. In those paragraphs the Judge writes:

> 31. Furthermore, she Appellant's claim before judge Khan is not entirely consistent with his further submissions witness statement (dated 14 February 2020) in which he states that ISIS had threatened his brother and that they would attack the Appellant's family and that his "*mother fainted when she heard this and my siblings had taken my mother to the hospital"* (para. 2). Judge Khan makes no reference to the Appellant's mother's fainting being linked to specific threats made by ISIS. In that statement to the Appellant also says that his neighbour (so, Muhi) took him to his father in law's house for safety but there is no mention of this important event in Judge Khan's decision. Finally, the Appellant refers to the Appellant's neighbour speaking to the Appellant's father on the phone whilst he was staying in that different village for a month. I consider that difficult to reconcile with the Appellants elsewhere made claim that he had not spoken to his father since he went off to hospital. If his father had been phoning the person to whom the Appellant had been placed for his apparent safety, it is inconceivable that he would not have spoken to his son at the very least about the arrangements that would been made in respect of the life changing decision to leave Iraq.
>
> 32. The Appellant also appears to have submitted to Judge Khan that his parents were aware that his neighbour would send him abroad and that he thinks it was his father who paid for the journey to the UK to have a safe and good life. In my view the narrative is implausible and is not capable of belief. I cannot discern any logic in the Appellant's father taking the Appellant's mother to hospital because she had fainted, deciding that the Appellant ought to be left with a dangerous and powerful neighbour whom they knew would send him abroad and then, if the Appellant's belief is correct, that his father would pay for that journey. The Appellant offers no logical causative link between those key events. The logical conclusion, which is the one drawn by Judge Khan, is that the Appellant's father would pay for his journey from Iraq, independent of the existing any well-founded fear of serious harm or persecution, in order to provide the Appellant was a better life.

24. If one looks at the Judge's findings as a whole there is clearly far more in what the Judge writes than the six words extracted in Ground 2. The key point appears at the end of [32] in which the Judge finds on the evidence there was nothing to

warrant departing from the findings of Judge Khan and that, in light of that, the Appellant's claim lacked credibility. That is a proper application of the Devaseelan principle on the basis of an approach open to the Judge on the evidence. The Judge clearly considered what was being claimed with the required degree of anxious scrutiny but did not find any merit in the same, as Judge Khan did not on the earlier occasion. I do not find the Appellant has established that the Judge's approach was not one reasonably open to him on the basis of implausibility, speculation, or otherwise.

25. Ground 3 asserts the Judge erred in his assessment of the country guidance caselaw in relation to finding at [35], in which the Judge states SMO 2 had replaced all of the country guidance which the author of the grounds claims is incorrect by reference to [62] of SMO 2 where reference is made to AAH, and that SMO 2 only replaces findings of SMO 1 in respect of redocumentation and whether an individual can remember the volume and page reference number of the family book.

26. At [35] the Judge writes:

> 35. However, on 16 March 2022 the Tribunal promulgated its decision in SMO (No.2) and the opening line of the footnote is that "*this decision replaces all existing country guidance on Iraq".* Therefore, it is to SMO (No.2) that I must refer.

27. The Judge was well aware of earlier country guidance such as AAH (Iraqi Kurds - internal relocation) [2018] UKUT 212 and SMO 1 [2019] UKUT 00400 as these are specifically referred to at [34] of the determination.

28. The Judge's findings in [35] are self-explanatory. SMO 2 had to be followed as the Upper Tribunal in the opening line of the footnote confirmed that replaced all existing country guidance. Whilst there is a reference to AAH at [62] of SMO 2 that is where the Tribunal refer to an earlier finding which they say they do not need to disturb. The effect of that is that those findings are incorporated into the findings of SMO 2. It is not a finding that AAH remains country guidance which will be in direct contradiction to the specific findings made by the Tribunal, referred to the Judge at [35], that it does not.

29. This ground is totally without merit, should not have been pleaded, and is clearly disingenuous or demonstrates wholesale failure to consider exactly what the Tribunal was stating in SMO 2, which is surprising as the author of the grounds is an experienced practitioner in the field of immigration and asylum law.

30. Ground 4 refers to the Judge at [36] allegedly considering the headnote of SMO 1 and finding there is no Article 15C risk but then sites headnote 4 which it is alleged shows risk regarding ISIL. The grounds refer to PO (Nigeria) [2011] EWCA Civ 132 in which the Court of Appeal worn tribunal judges about overreliance on the headnote in preference to the actual guidance contained in a country guidance case.

31. At [36] the Judge refers to the headnote of SMO 2. Following the decision of the Court of Appeal in PO (Nigeria) great care is taken in any reported determination, but particularly a country guidance case, to ensure the headnote accurately reflects findings made within the body of the determination. The decision in PO (Nigeria) was an exception in which the Court of Appeal were concerned the relationship between the headnote and the findings within the determination was of concern. There is nothing in the grounds that shows the headnote in a SMO2 does not reflect findings made by the tribunal in the body of that decision.

32. In any event, what the Judge was finding at [36] is that the headnote confirms there is internal armed conflict in certain parts of Iraq and refers to the structure of the headnote in relation to Article 15C, although that was not an issue the Judge was required to determine. The Judge refers to headnote 4 and the risk of harm being enhanced for those with an actual or perceived association with ISIL

or those with the current personal association with local or national government or the security apparatus in those areas in which ISIL retains an active presence, but finds that does not assist the Appellant as he does not fall within any of those categories. That is the finding made by the Judge to which there is no specific reference in the grounds seeking permission to appeal, which has not been shown to be outside the range of findings reasonably open to the Judge on the evidence in any event.

33. Ground 5 asserts the Judge failed to consider the objective evidence at [37]. It is asserted that in the absence of not being referred to objective evidence the Judge was required to consider it for himself.

34. A number of points arise from this challenge one of which is that proceedings within the immigration tribunals are adversarial in nature and a party is expected to place before the judge all the evidence being relied upon in support of, but also against, his or her case. It is also important to note what the Judge actually wrote at [37] which is as follows:

> 37. As Mr Ahmed had foretold, his oral submissions almost exclusively about documentation and he did not advance any case that I ought to allow the appeal on asylum grounds because of the Appellants imputed political opinion and his fear from ISIL/ISIS and other militia groups. Other than referring to country guidance cases which have now been superseded, nor did the skeleton argument. There is a background material bundle that runs to more than 400 pages and a key passage index that ran to 18 pages and yet, aside from AAH and SMO (No.1), there was not a single reference to any of that background material and ease of the skeleton or Mr Ahmed's oral submissions. How that background material assisted the Appellant's appeal was, in very large part, not made clear.

35. The reality is the Judge considered the matters he was asked to consider. It is disingenuous for an advocate to advance a case on one basis before the Judge but then to seek to challenge a negative decision on the basis the Judge should have considered something which he or she was not asked to do. The author of the grounds, Mr Ahmed, appears to be suggesting the Judge should have waded through 400 pages of evidence, or those in the key passage index, to somehow dig out those points the Judge may think could assist the Appellant when his qualified representative made no reference to them. Modern litigation in the tribunal is issue-based. A Judge is entitled to expect that those passages that are deemed relevant will be referred to in submissions at the very least. In this case was no reference to the objective material other than that recorded at [37] and the Judge cannot be criticised for proceeding on the basis he was asked to in relation to assessing the merits. In any event, the Judge does assess the question of any ongoing risk to the Appellant and makes a finding that no such risk is made out on the evidence. That is a finding within the range of those reasonably open to the Judge.

36. Ground 6 assert the Judge failed to consider section 8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 properly at [38], referring to Professor Hathaway and UNHCR's position in relation to the need to claim asylum in the first country to which a person arrives. At [14] the author of the grounds also makes a comment based upon his own view rather than the evidence.

37. I find no merit in the claim at [15] that the Judge did not consider the Appellant's explanation for not having claimed asylum earlier. The Judge clearly considered all the evidence with the required degree of anxious scrutiny. The finding at [38] that the Appellant had a reasonable opportunity to claim asylum in France prior to coming to the UK, as he was fingerprinted twice by the authorities there, is a factual finding within the range of those reasonably open to the Judge on the evidence. The finding that his failure to take that reasonable opportunity

engages section 8 of the 2004 Act and affected his general credibility flows from that factual finding and is a finding reasonably open to the Judge on the evidence.

38. Ground 7 asserts the Judge's assessment of the Red Cross evidence is flawed, but that is a claim without arguable merit. The Judge is criticised earlier for what the author of the grounds interprets as speculation, which it was not, but this Ground is clearly an example of the author of the grounds doing precisely that. The statement "*the finding (at [39]) shows the Judge considers it mandating that the Appellant should have provided the Red Cross documents*" is merely speculative and a misplaced interpretation of the decision by the author of the grounds. The Judge was not finding it was a mandatory requirement for the Red Cross documents to be produced. At [39] the Judge makes a factual finding that the Appellant produced no documentary evidence to support his contention that, for a number of years, he had been in communication with the Red Cross about their family tracing service. The Judge notes there were no letters to confirm that the Appellant had even registered with them to trace his family, and no letters to confirm any requested proved fruitful. That is not the Judge finding without the documents the Appellant's credibility was fatally undermined, as the Judge recognises in the final sentence of that paragraph an asylum seeker is under no duty to provide corroborative evidence. Tribunal's regularly see letters from the Red Cross where an individual has asked them to trace a relative for them and it was not outside the range of findings open to the Judge to have found that something should have been available from the Red Cross. That is, in any event, not the determinative finding of the Judge which is perhaps demonstrated by the earlier sentences of [39] which is set out at [4] above.

39. The adverse credibility findings are within the range of those available to the Judge on the evidence and have not been shown to be affected by material legal error.

40. Ground 8 asserts the Judge's assessment of the CSID is flawed at [40] claiming there is no consideration of the country guidance caselaw nor re-documentation and "*simply to say that the Appellant is not a truthful witness and then state you can obtain family help and his CSID card is frankly placing the cart before the horse*".

41. That ground is totally without merit and is a further example of the unprofessional approach that has been adopted to some aspects of these pleadings, which bear no relationship to the findings actually made by the Judge. The Appellant claimed he did not have access to his CSID which was considered by the Judge, but such a claim was found to be undermined as the Appellant had not been found to be a truthful witness and is clearly somebody willing to lie to serve his own ends of trying to stay in the UK.

42. At [40] the Judge gives adequate reasons for why the Appellant's claim in relation to his CSID was not believed where he finds the Appellant is not a truthful witness. See above.

43. I find no arguable merit in any of the pleaded grounds. First-tier Tribunal Judge Chowdhury was correct when considering whether to grant permission to appeal to find there was little arguable merit in most of the grounds. Although Judge Chowdhury granted permission on one ground, as shown above, it is unfortunate that the structure of the grant did not specifically limit the basis on which permission to appeal had been granted, in accordance with guidance of which all First-tier judges granting permission should be aware.

44. It is also arguable that permission should have been refused when this matter is looked at carefully on all the grounds pleaded, none of which have been shown to have any merit, and had permission been refused it is highly unlikely it would have been granted on a renewed application to the Upper Tribunal.

45. Referring again to the guidance provided by the Court of Appeal above, I conclude it has not been shown the Judge's findings and decision to dismiss the appeal are rationally objectionable, contrary to the law, or that the grounds establish any basis for my finding any error of law material to the decision to dismiss the appeal in the determination.

Notice of Decision

46. Appeal dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 September 2024