IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005189

First-tier Tribunal No: HU/50186/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 4th of February 2025

Before

UPPER TRIBUNAL JUDGE O'BRIEN
DEPUTY UPPER TRIBUNAL JUDGE RHYS-DAVIES

Between

BA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs. N. Ahmed of Counsel, instructed by Success Legal Practice
For the Respondent: Mr. E. Tufan, Senior Home Office Presenting Officer

Heard at Field House on 17 January 2025

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 him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is an Iraqi national of Kurdish ethnicity, now aged in his early 20s. He appeals against the Decision and Reasons of First-tier Tribunal Judge Fern *("the Judge"),* promulgated on 10 September 2024.

2. In that Decision, the Judge dismissed the Appellant's appeal against the Respondent's refusal to grant him asylum or any other status. The HU/- appeal prefix in the First-tier appeal number must have been allocated in error, as this has always been a protection appeal.

Background

3. The Appellant says that he lived in the Independent Kurdish Region of Iraq. He says that he was having an illicit relationship with the daughter of a senior intelligence officer in the Kurdish Democratic Party. The Appellant says that his girlfriend's father found out about the relationship and that the father will kill him for dishonouring their family.

4. The Judge rejected the Appellant's account and dismissed the appeal on all grounds. The Appellant applied for permission to appeal

5. On 7 November 2024, another First-tier Tribunal Judge granted permission on the two pleaded grounds:

   a. That the Judge made a mistake of fact regarding the Appellant's evidence about his knowledge of his girlfriend's father and made unsustainable adverse credibility findings as a result;

   b. That the Judge failed to take into account part of the Appellant's explanation for not claiming asylum in Italy and/or France, and therefore reached an unsustainable finding with regard to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 *("the 2004 Act").*

The Hearing

6. Contrary to the Upper Tribunal's Directions, the Appellant's representatives failed to file and serve a composite hearing bundle in time, or at all. Mrs. Ahmed could not offer any explanation for this. An effective hearing was possible using the bundle created by the First-tier Tribunal, the Decision, the Grounds and the Grant of Permission. However, it is not acceptable for a professional representative to disregard Directions. We directed that the managing partner of Success Legal Practice must provide a written explanation for the non-compliance to Upper Tribunal Judge O'Brien within seven days of the hearing.

7. Mrs. Ahmed relied on both grounds. Mrs. Ahmed also attempted to introduce a third ground, that the Judge had erred by not treating the Appellant as a vulnerable adult and failing to apply the relevant guidance when assessing his credibility. As we stated at the hearing, we find no merit in this point. It had not been pleaded as a ground of appeal before us. It was not being argued that there had been an application to the Judge for the Appellant to be treated as a vulnerable adult. Further, while there is evidence that the Appellant had a limited education (screening interview), it does not necessarily follow he is a vulnerable adult and that the Judge made an obvious error by not treating him as such, particularly when his representatives had not applied for it.

8. Mr. Tufan confirmed that the Respondent opposed the appeal and that there was no r.24 response. He submitted that the Judge's findings on the Appellant's

evidence did not reveal any mistake and that the Section 8 findings were open to the Judge.

Decision

9. We are satisfied that the Judge erred in respect of the first ground. The relevant passages in the Decision are as follows:

"… The Appellant said that he knew Girlfriend's father was of a high rank because he is well known. However, he then said that he did not know the father's rank prior to the relationship. The Appellant had heard that the father was a high-ranking officer in the intelligence information in Peshmerga in S" [15]; and

"The Appellant's account of the relationship with the Girlfriend lacks credibility… . Further he said he knew of the Girlfriend's father being powerful prior to meeting her, and then said he wasn't so aware until after they got together…" [43] – [44].

10. We agree with the Appellant that there is no apparent inconsistency between the first two sentences of [15] as set out above. In the first and third sentences, there is nothing to indicate when the Appellant first knew the girlfriend's father's rank. There is therefore no inconsistency between that and the Appellant's evidence as set out in the second sentence, that he did not know the rank prior to their relationship. The Judge was therefore wrong to proceed on the basis that there was a damaging inconsistency at [43] – [44].

11. Further and in any event, the Judge has not addressed the Appellant's case that there is no inconsistency because the evidence was that while the Appellant was aware of the "well known" and "high-ranking" man before he knew his girlfriend, he did not know that man was her father prior to their relationship.

12. We further find that the Judge erred in respect on the second ground. We have sympathy for the Judge here because, as Mr. Tufan argued, there is an obligation to consider Section 8 of the 2004 Act if an appellant's behaviour engages it. The Judge would have been open to criticism had she not considered Section 8, given the Appellant admits having passed through France and Italy without claiming asylum.

13. Unfortunately, despite having set out the evidence she considered at length at [11] of the Decision, the Judge has omitted any mention of the Appellant's answer to Q74 of his asylum interview:

"Q74. SIGNPOST SECTION 8: Did you have any opportunity to claim asylum in

Italy or France?

A: No I wasn't even able to breathe freely the agent even beat me up"

14. It would have been open to the Judge to have rejected this part of the Appellant's evidence, but there is no indication that it received any consideration. We find therefore that a material factor was omitted by the Judge when she decided at [35] – [37] that Section 8 was engaged and held that, while not conclusive, it reduced "*the Appellant's credibility to a considerable degree".*

15. We can only find an error of law to be immaterial if satisfied that the outcome would inevitably have been the same had the error not been made: (**IA (Somalia) v Secretary of State for the Home Department [2007] EWCA Civ 323**).

16. With that in mind, we raised with the Parties the Judge's finding at [44] that *"Sulaymaniyah is one city far from S and E and could be a suitable place to live were there any well-founded concern".* This finding, that there is an internal relocation option available to the Appellant, had not been challenged in the grounds, nor pleaded in any r24 response.

17. Having heard the Parties and considered the point further, we find that the internal relocation finding is unsustainable in light of the errors of law that we have found proved. If the adverse credibility findings are wrong in law, then the Appellant fears a high ranking intelligence officer, i.e. a state agent of some power. In those circumstances, the finding that there is an internal relocation option available was not reasonably open to the Judge.

18. We conclude that the **IA (Somalia)** test is not met. The Judge's credibility findings are interlinked and it cannot be said that the same conclusion would have been reached if either or both of the two errors were not made.

19. We have considered whether it would be appropriate to retain the case to remake the decision in the Upper Tribunal. However, neither Party sought to retain any of the findings and we agree that none of the findings can be preserved. We take the view that the matter should be reheard on the basis of up-to-date evidence with no findings of fact preserved and that, in the circumstances, it is appropriate to remit the appeal to the First-tier Tribunal.

Notice of Decision

1. The Appeal is allowed.
2. The Judge's Decision involved the making of errors on points of law.
3. The appeal is remitted to the First-tier Tribunal (Hatton Cross) to be heard by a different judge with no findings of fact preserved.

A. Rhys-Davies

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 January 2025