Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2021-001506**
(PA/01678/2020)

THE IMMIGRATION ACTS

Heard at Manchester CJCentre
On the 21 November 2022

Decision & Reasons Promulgated
On the 01 December 2022

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MAM
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr A Tan, Senior Home Office Presenting Officer
For the Respondent: Ms Barton, instructed by The UK Law Firm

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing MAM's appeal against the respondent's decision to refuse his asylum and human rights claims.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and MAM as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Iraq of Kurdish ethnicity, born on 18 December 1982. He claims to have arrived in the United Kingdom in December 2017 and claimed asylum on 9 December 2017. His claim was refused on 14 May 2018 and his appeal against that decision was dismissed on 13 July 2018. He was refused permission to appeal to the Upper Tribunal and became appeal rights exhausted on 30 August 2019. On 27 November 2019 he made further submissions which were treated by the respondent as a fresh claim which was, in turn, refused on 3 February 2020.

4. The basis of the appellant's claim was that he feared persecution from his father-in-law for marrying his daughter against his will. His father-in-law was powerful and was part of the militia group Hashd al Shaabi based near Kirkuk. The appellant claimed that he met his wife in 2011 when she used to visit her uncle who was his neighbour and they used to meet discreetly. His father-in-law refused their proposal to marry as he (the appellant) was Kurdish, non-Arab and Sunni whilst his wife was a Shia Arab. His wife was about to be forced to marry one of her cousins and she asked for his help so he went to pick her up at night time and took her to his uncle in Kirkuk. They got married on 23 October 2013 without her father's permission and after a month they moved to Tuz Kharmato where they lived for two years. When the Shia militia took over Tuz Kharmato he was scared for his family and they moved back to Kirkuk, to Panja Ali. Once his father-in-law found out that they had moved back there after he went to visit his mother in Kirkuk, a group of militia attacked the appellant's mother's house in August 2017 whilst he, the appellant, was inside with his wife and their children. He managed to escape and left everyone behind. He hid at his uncle's house and found out that his wife and children had been taken. His uncle tried to mediate but his father-in-law refused and said he would kill him. He therefore fled Iraq on 17 August 2017 and went to Turkey. Whilst in Turkey his wife contacted him and said he should return as they may be able to resolve the problem, so he returned to Iraq in November 2017 but his father-in-law was still intending to kill him, so he fled again on 9 November 2017 and came to the UK.

5. The respondent did not accept the appellant's claim to be credible and did not consider that he was at risk on return to Iraq. The respondent noted that the appellant had confirmed that he had a CSID and a passport in Kirkuk and considered that his mother and siblings could be contacted and could help him obtain the CSID.

6. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Herwald on 9 July 2018. Judge Herwald noted that, on his own account, the appellant and his wife had lived together in Iraq for four years after their marriage without coming to any harm and considered that if her father was as powerful as claimed he could have found them when they were living in Tuz or Panja Ali. Judge Herwald did not accept the appellant's account of being sought by his father-in-law or of his father-in-law having any power base. He had

regard to a number of reports relied on by the appellant of an attack on his home by his father-in-law and other armed people, on 24 February 2018, after he had left Iraq, which were produced on the day of the hearing, but did not find any of the evidence reliable, noting various inconsistencies in the appellant's evidence as to the provenance of the reports. Judge Herwald found that the appellant had a CSID and that he could access his document and relocate to the IKR. He dismissed the appeal.

7. In his further submissions made on 27 November 2019, the appellant produced further documentation in support of his claim which were sent in a DHL envelope, maintaining that he would be at risk on return to Iraq. He stated in a witness statement dated 26 November 2019 that the documents were sent to him by a friend in Kirkuk, AM, through another person HR.

8. The respondent treated the submissions as a fresh claim but refused that claim, noting that the documents were only copies. The respondent noted that the documents in the DHL envelope included newspaper articles which referred to the appellant having been sentenced by a court for abandoning his wife; hospital letters, photographs and other evidence about his brother having had his leg amputated which he claimed to be a result of being attacked on 25 November 2018; evidence of his house being bombed and his mother's house being set on fire and of a complaint made by her to the authorities; and evidence of complaints made by his family on 27 February 2018, 5 March 2018 and 10 October 2018. The respondent considered that only little weight could be given to those documents as they were just copies. The respondent noted that the appellant had also produced evidence of sur place activities in the UK including Facebook activity and attending demonstrations supporting the Kurdish people, but concluded that he had not demonstrated that he had a political profile that would place him at risk on return to Iraq. As for documentation to enable him to return to Iraq, the respondent noted that the appellant's evidence had been that he had a copy of his CSID on his mobile phone and that the marriage certificate he had produced as part of his claim included his register number and page number. The respondent considered that the appellant was in contact with his family in Iraq and would be able to obtain documentation and safely return to Iraq.

9. The appellant appealed that decision and his appeal was heard by First-tier tribunal Judge Jones on 1 December 2020. In a decision promulgated on 26 January 2021 Judge Jones allowed the appeal, finding that the appellant would be at risk on return to Iraq. The judge considered the appellant's appeal statement and heard oral evidence from the appellant and a witness IHA who had travelled back to Iraq in September 2019 and again in September 2020 and had travelled to the appellant's mother's home but had found the newly built house empty and locked up. The judge considered the appellant's evidence that he had received threats through Facebook and that his friend in Iraq had told him that he would be killed if he returned. Judge Jones decided to give weight to the documentary evidence and he found the witness to be credible. The judge considered that the evidence of his family home being destroyed and his brother being injured and having his leg amputated all supported the appellant's claim to be at risk of being the subject of an honour

killing. The judge found that there would not be sufficient protection for the appellant and that those seeking him were powerful and connected. Although he found that the appellant would not be at risk as a result of his claimed sur place activities, the judge considered that the appellant's family was not available to him and that he would not be able to recall his details in order to be redocumented, such that his return to Baghdad would put him at risk contrary to Article 3.

10. The respondent sought permission to appeal to the Upper Tribunal on the following grounds: that the judge's findings were infected by an absence of reason and anxious scrutiny owing to the decision being littered with typographical and grammatical errors and sentences which were hard to follow; that the judge failed to set out how the evidence and the subsequent findings enabled a departure from the findings of the previous Tribunal in relation to the appellant's father being powerful and in relation to documentation and failed to apply the principles in Devaseelan; that the judge, in according weight to the documents relied upon by the appellant, failed to explain which documents those were and how they assisted the appellant; that the evidence about the appellant's home being destroyed was inconsistent; and that the judge, in finding that the appellant would not be able to obtain relevant documentation to return to Iraq, made findings at odds with SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 and failed to have regard to relevant findings made by the previous Tribunal.

11. Permission was granted by the Upper Tribunal on 5 February 2022.

Hearing and submissions

12. The matter then came before me and both parties made submissions.

13. Mr Tan relied upon the grounds. He submitted that the typographical and grammatical errors made by the judge invaded his findings and showed an absence of anxious scrutiny. The judge failed to apply the principles in Devaseelan and failed to have regard to the various bases upon which the previous tribunal rejected the appellant's claim. The judge failed to give proper reasons for accepting the appellant's documents and did not consider the need for circumspection to be allowed, as per Devaseelan, when documents had not previously been submitted. Mr Tan submitted that the judge failed to explain how the matters at [61] supported the appellant's claim and he made inconsistent findings in regard to the family home and whether it had been destroyed or re-built, which was relevant to the question of whether he maintained contact with his family. As for the judge's findings on re-documentation, the judge gave cursory reasons for concluding that the appellant would not be able to recall details in order to re-document himself, and gave no proper reasons for his conclusion. The judge's decision was littered with errors of law and needed to be heard afresh in the First-tier Tribunal.

14. Ms Barton submitted that the Secretary of State's grounds were simply a disagreement and a disgruntled effort to find problems with the determination.

Whilst there were typos, and whilst the decision was poorly written, that did not affect the decision as it was a decision which could be understood. The judge said that he had considered the totality of the evidence and he did not need to refer to every piece of evidence. He applied Devaseelan and gave reasons for departing from the previous decision. It was clear which documents the judge was referring to and he was entitled to give the documents the weight that he did. There was no contradiction in the appellant's evidence about the family home being destroyed and re-built. The judge was entitled to conclude that the appellant's father-in-law was as powerful as claimed for the reasons given. With regard to re-documentation, the judge clearly considered SMO and made reasonable findings on the evidence. The judge had given sufficient reasons to justify allowing the appeal and was entitled to conclude as he did.

15. In response, Mr Tan submitted that the grounds were not just disagreement, but there was an absence of clear and intelligible reasons for allowing the appeal. The judge had made findings on the wrong premise and had failed to follow the principles in Devaseelan.

Discussion

16. I do not agree with Ms Barton that the grounds were simply a disagreement with the judge's decision and consider that there is merit in the grounds. I am willing to accept that, whilst the judge's decision contains a number of typographical and grammatical errors which show a lack of care and poor decision-writing, that is not to the extent that it gives rise, without more, to a proper basis for setting aside the decision. However, when taken together with the Secretary of State's other grounds, I do consider that it demonstrates a lack of proper decision-making and anxious scrutiny such that the decision simply cannot stand. I therefore turn to the other grounds.

17. I agree with Mr Tan that there has been a clear failure by the judge to provide reasons for departing from the decision of the previous tribunal. It was Ms Barton's submission that the judge had applied the principles in Devaseelan, but I cannot see how that is the case. Although he referred to, and properly directed himself on, the principles in Devaseelan at [3], there was no indication in the judge's findings that they had actually been applied or that Judge Herwald's findings had, in practice, been taken as a starting point. The only references to the previous tribunal's decision were at [13] and [15] where Judge Jones simply referred to the respondent's reflection upon the previous judge's adverse findings in regard to the appellant's fear of his father-in-law and his identity documents, and at [59] where he simply stated that the further documentary evidence adduced had not been available to the previous tribunal.

18. Judge Herwald made strong adverse credibility findings against the appellant in his decision. At [14] he gave various reasons for concluding that the appellant's claim about the extent of his father-in-law's power was not a credible one, noting that there was no suggestion that the appellant's marriage was a secret one and at [14(e)] and [14(j)] that he and his wife had lived together in Iraq for four years after their marriage without coming to any harm.

At [14(f)] he noted the inconsistencies between the appellant's evidence at his interview and in his subsequent witness statement in regard to the militia to which he claimed his father-in-law belonged. At [14(i)] he gave reasons why the appellant's account of the incident in August 2017 was not credible and at [14(l)] he noted inconsistencies between the appellant's evidence at his interview and at the hearing about his return to Iraq following his departure in August 2017 and found that he was not telling the truth. At [14(m)] Judge Herwald rejected the appellant's claim that his father-in-law had a power base. At [14(n)] and [14(o)] he found the documentary evidence relied upon by the appellant to be unreliable and he noted the inconsistencies in the appellant's account of their provenance, and at [14(p)] he referred to inconsistencies in the appellant's evidence about prior contact with his wife. He also referred to the appellant's inconsistent evidence at his interviews about the whereabouts of his passport and at [20(a)] he found that the appellant was not telling the truth about the whereabouts of his passport and his CSID. At [15] he made a general adverse credibility finding against the appellant.

19. Clearly, therefore, Judge Herwald rejected the appellant's account in its entirety on the basis of various inconsistencies between his evidence at his interviews, in his appeal statement and at the hearing, and found the documentary evidence which he had produced to be unreliable.

20. However, none of that was referred to or acknowledged by Judge Jones. Judge Jones simply provided a detailed summary from [31] to [36] and [42] to [46] of the appellant's response to the respondent's critique of his fresh claim, followed by several paragraphs confirming his acceptance of the appellant's response and his acceptance of the witness's evidence, but with little or nothing by way of analysis of the evidence or detailed reasoning to explain why the appellant's claim was accepted. Indeed, at [57], Judge Jones found that the appellant had provided a consistent account throughout in his statement, asylum interview and oral evidence, but failed to provide any elaboration on that and failed entirely to address the various inconsistencies noted by Judge Herward arising from the evidence in the interviews and the statement and oral evidence before him. Further, despite the acknowledged concerns raised by the respondent about the new documentary evidence, and despite the adverse findings made by Judge Herwald about the documentary evidence produced before him at that time, Judge Jones simply accepted the documents as reliable without addressing any of those concerns. At [61] he accepted that the documents all supported the appellant's claim about his father-in-law's power and the risk his father-in-law posed to him, but he gave no reasons as to how or why that was the case. There was no consideration whatsoever, in making such a finding, of the various reasons given by Judge Herwald for concluding that the account about his father-in-law was not a genuine or credible one. There is no suggestion in any part of Judge Jones's findings that he gave any regard to the adverse findings previously made and certainly no reasons given for departing from those adverse findings. Accordingly his decision completely fails to apply the principles in Devaseelan and the grounds are therefore made out on that basis.

21. Likewise the final ground raises a proper challenge to the judge's decision in relation to the issue of documentation. Judge Jones addressed that issue in the last sentence of the final paragraph of his determination, a sentence which is difficult to comprehend but appears to conclude that the appellant would not be able to obtain the required documentation to enable him to return to his home area. That conclusion was based on the appellant's limited education and inability to recall his family registration details. However such a conclusion failed to take account of the guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (as it was at the time) at [391] and [392], as quoted in the respondent's grounds, and was also contrary to the fact that the appellant's family registration details were contained in the documents he produced in support of his claim, including his marriage certificate, and to the fact that, by his own admission, he had an image of his CSID on his mobile phone. It also failed to take account of the previous tribunal's finding that he could access his documentation.

22. For all of these reasons I find that Judge Jones's decision contains material errors of law and that the decision has to be set aside in its entirety. The appropriate course is for the case to be remitted to the First-tier Tribunal to be heard *de novo* before a different judge with no findings preserved.

DECISION

23. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The Secretary of State's appeal is allowed and the decision is set aside.

24. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard before any judge aside from Judge Jones.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 24 November 2022