IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Ce-File Number: UI-2022-003983
First-tier Tribunal No: PA/01585/2021

THE IMMIGRATION ACTS

Heard at Field House IAC
On the 9 December 2022

Decision & Reasons Promulgated
On the 27 February 2023

Before

THE HON. MR JUSTICE DOVE, PRESIDENT
UPPER TRIBUNAL JUDGE RINTOUL

Between

R R G
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Lee, instructed by Manuel Law
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Caskie, promulgated on 14 June 2022, dismissing the appeal against the respondent's decision of 21 April 2021 to refuse his protection and human rights claim.

2. The appellant is in Iraqi national of Kurdish ethnicity from Sulimaniyeh which is within the independent Kurdish Region ("KRG") of Iraq (referred to in the First-tier Tribunal's decision as the IKR). His case, for the purposes of this appeal, is that he is at risk on return due to his political activities conducted in the United Kingdom. He has made politically motivated posts on Facebook, has participated in demonstrations; he has also given "vox-pop" interviews to a Kurdish TV channel in which he was critical of the government.

3. It is also the appellant's case that he has lost contact with family in Iraq and has no access to the documentation he would need there, including a CSID, and could not obtain such documentation, attempts to contact family having failed and the Iraqi Embassy being unable to assist.

4. In addition to these factors, the appellant maintained before the FtT that he was at risk of an honour killing, a risk not accepted by either judge who had heard his previous appeals.

5. The Secretary of State was not satisfied that, given the previous adverse credibility findings, his account should be believed. She noted that his political activity had begun only after his previous claims had been refused, and that there was insufficient evidence to show that anyone who had been an opponent of or had played a low-level part in protests against the KRG was at risk of persecution, nor did she accept that any participation at demonstrations would result in such a risk. She did not consider that returning the appellant to Iraq would put him at risk of treatment contrary to articles 15 (b) or (c) of the Qualification Directive.

6. The judge directed himself as to the relevant law [4] and that [5] he had taken into account all the relevant material to which he had applied anxious scrutiny. He noted also [7] to [8] that the stating point was the previous determinations, the previous judges having found his account to be "utterly implausible".

7. Having accepted [21] that the appellant had attended demonstrations and had given a "vox pop" interview to a Kurdish TV channel [21] and having directed himself in line with YB (Eritrea) [2008] EWCA Civ 360, the judge found [23]:

> 23. Whilst the appellant has undoubtedly developed a profile on Facebook I have not seen any evidence of any part of the Iraqi regime including that the IKR monitoring Facebook with a view to identifying opponents, more particularly opponents abroad and more particularly opponents abroad who were not politically active before their departure. I consider it so much more likely that the Iraqi regime including that in the IKR will consider the appellant's activities to be a fabrication designed to

> assist him in remaining in the United Kingdom and even if they were aware of it they would not regard the appellant as anything but a low level fellow traveller unworthy of attention. They would not regard the appellant in my view as being an individual about whom they need to have actual concerns.
>
> 24. I consider that assessment of the appellant to be an accurate one…

8. The judge noted that the appellant had not said he had any position of real prominence or responsibility with respect to the demonstrations [25], and that if he were wrong about the activities of the KRG security services in identifying opponents abroad, they would conclude that the appellant was simply trying to engineer a successful claim for asylum. He noted also [26] that the appellant had not produced any of the threats said to have been made against him via Facebook.

9. The judge concluded that the appellant was not a genuine opponent of the regime and would not wish to continue to denounce it if returned to Iraq, and that he could be safely and reasonably be required to return to Sulimaniyeh [28]. He then dismissed the appeal on refugee, humanitarian protection and human rights grounds.

10. The appellant sought permission to appeal on the grounds that the judge had erred in law by:

    (i) making irrational findings about the situation in concluding that the KRG was not an oppressive regime, given the evidence to the contrary, indicating that those in the appellant's position were targeted;

    (ii) failing properly to apply YB(Eritrea);

    (iii) failing to provide a reasoned, evidential basis for his conclusion that the IKR security services would conclude the appellant was simply engineering an asylum, had his activities abroad been identified

11. On 3 September 2022, permission was granted by the First-tier Tribunal. Subsequent to that, and following directions issued by the Upper Tribunal, both parties served skeleton arguments.

Submissions

12. Mr Lee submitted that the judge had failed to take into account material evidence as to how the KRG authorities act towards those who criticise it, material identified in the appellant's skeleton argument before him. He submitted further that there was a lack of reasoning why they would not be interested in the appellant when (as the judge accepted) he had attended demonstrations, had made postings on social media, and had given an interview. The evidence was that the KRG treated such

things seriously. That, in turn, he submitted led into the failure properly to apply YB(Eritrea), and that there was sufficient evidence to show that the regime had the reach and determination to conduct surveillance.

13. Mr Lee accepted that in order to succeed on ground (iii) he would need to show the appellant was at risk of being targeted (ground (i)).

14. Mr Avery submitted that properly applying the case law since YB(Eritrea) the judge had not erred. He submitted that the KRG is not a state and did not have the capacity to reach overseas; it was not a dictatorship like Eritrea. There was no evidence of overseas monitoring and no evidence that those who criticised the KRG while abroad faced problems on return.

Discussion

15. There is no challenge in the grounds to the finding [27] that the appellant was not a genuine opponent of the regime and would not wish to continue to denounce it on return. Thus, the focus of this appeal is whether the judge erred in his findings that the activities the appellant has undertaken in the United Kingdom will not have come to the attention of the KRG authorities and, even if they did, that he would not be ill-treated as a result.

16. The judge was not satisfied [22] that the KRG (or for that matter the Iraqi government) sought out its opponents in the diaspora with a view to identifying and intimidating opponents through community-based spies.

17. What is pleaded is ground (i) at [3] misrepresents what the judge said, and as Mr Lee accepted, the evidence put before the judge did not contain evidence of the KRG or the Iraqi government carrying out surveillance outside its borders. There is, as the judge accepted, evidence of the targeting of journalists and activists on social media, but that relates, so far as can be ascertained, to activities undertaken in Iraq or the KRG. The judge cannot therefore be criticised for this finding [23] that there was no evidence of the KRG monitoring Facebook to identify opponents abroad, particularly those who were not politically active before they left.

18. In reaching these findings, the judge did not err in his application of the principles set out in YB (Eritrea) as further elaborated in subsequent decisions.

19. As the respondent submits, the existence of surveillance is not in itself enough to demonstrate a risk. As Sedley LJ held in YB (Eritrea) at [18]:

> … Similarly, it does not require affirmative evidence to establish a probability that the intelligence services of such states monitor the internet for information about oppositionist groups. The real question in

most cases will be what follows for the individual claimant. If, for example, any information reaching the embassy is likely to be that the claimant identified in a photograph is a hanger-on with no real commitment to the oppositionist cause, that will go directly to the issue flagged up by art 4(3)(d) of the Directive.

20. We recall that article 4(3) sets out factors to be taken into account in assessing the asylum claim; article 4(3)(d) provides:

> (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;

21. In this appeal the judge did find [27] that the appellant was not a genuine opponent of the regime, a finding the grounds did not challenge.

22. We observe that in KK and RS (*Sur place* activities: risk) Sri Lanka CG [2021] UKUT 130 (IAC) it was not accepted that all those who undertook anti – government activities outside Sri Lanka were at risk despite the findings at [404] to [408] of a sophisticated, highly resourced intelligence-gathering system being in place. The same can be said with respect to XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 23.

23. What both of these decisions identify is that significant resources have to be dedicated to identifying opponents for there to be a sufficient risk to those in the appellant's position. We note also that the KRG is not a state.

24. The findings impugned by ground (iii) are in the alternative. As Mr Lee submitted there is in paragraph [23] an apparent jump in reasoning between the first and second sentences. But that is only so if that paragraph is considered in isolation from the rest of the decision and in isolation of the question identified by Sedley LJ in the passage from YB (Eritrea) cited above at [19].

25. Drawing these strands together, we find that the judge was entitled to conclude that there was insufficient evidence of the KRG or the Iraqi authorities seeking to persecute or ill-treat on return those in the appellant's position; and, gave adequate, sustainable reasons for doing so. He directed himself properly in line with YB (Eritrea), concluding that the appellant would not be of interest, and would, even were his activities to become known, be seen as a fellow traveller and thus would not be at risk. These are conclusions which are properly and sustainably reasoned.

26. For these reasons we dismiss the appeal.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and we uphold it.

Signed Date: 22 December 2022

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul