IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005996
First-tier Tribunal: PA/50850/2022
IA/02582/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

MA (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Alaha Faryl, Counsel, instructed by Adam Solicitors
For the Respondent: Ms Amrika Nolan, Senior Presenting Officer

Heard at Field House on 19 July 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Kelly promulgated on 25 October 2022. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse his protection and human right claims.

Factual background

2. The Appellant is a citizen of Iraq and was born on 7 August 1968.

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3. The Appellant arrived in the United Kingdom via Spain on 18 December 2019 and made a protection claim. The Secretary of State refused that claim on 22 February 2022. The Judge heard the Appellant's appeal from that decision on 17 October 2022. The Appellant gave oral evidence and was cross-examined. He claimed to have participated in the protests against the government in Tahrir Square in 2019. He contended to be at risk at the hands of the government because of the participation on those protests. He further contended that a government minister threated to kill him. The Judge accepted that he had participated in the protests and that his motivation was plausible. The Judge, however, rejected his account of becoming the subject of adverse interest by the government. The Judge found that the objective evidence drawn to his attention did not show that the security forces followed the protests by arresting the participants. The Judge held that the Appellant was not a refugee or entitled to humanitarian protection. The Judge further held that his removal from the United Kingdom would not be incompatible with Article 3. The Judge dismissed the appeal on all grounds in a decision promulgated on 25 October 2022.

4. The Appellant was granted permission to appeal from the Judge's decision on one ground on 12 December 2022 and, subsequently, on two further grounds on 15 February 2023.

Grounds of appeal

5. The Appellant has pleaded three linked grounds of appeal directed at the Judge's finding that there was no objective evidence showing that those who participated in the protests were subsequently followed by the security forces. The first ground is that the finding was procedurally unfair. The second ground is that the Judge failed to engage with the relevant evidence in making that finding. The third ground is that the Judge gave inadequate reasons.

Submissions

6. I am grateful to Ms Faryl, who appeared for the Appellant, and Ms Nolan, who appeared for the Appellant, for their assistance and able submissions. Ms Faryl developed the pleaded grounds of appeal in her oral submissions. She invited me to allow the appeal and set aside the Judge's decision. Ms Nolan relied on her Rule 24 response. She resisted each of the Appellant's grounds of appeal. Her overall submission was that the Judge's findings of fact were open to him and disclosed no error of law. She invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

7. The Judge, at [17], stated:

> "… my attention has not been drawn to any supporting background country information to support his claim that protesters were kidnapped at the scene by government agents posing as taxi drivers prior to them being assassinated [Q172 to 175]. Indeed, when the appellant was asked how he knew that this was what had been happening, he appeared to acknowledge that it was based upon nothing more than rumours that were circulating amongst the crowd [Q175/176]."

8. The Judge, at [18], added:

> "Neither has my attention been drawn to any background country information to suggest that the Iraqi security forces subsequently followed up these protests by arresting its participants after they had returned home, as opposed simply attempting to disperse the crowd during the currency of the protest."

9. However, the evidence before the Judge, at pages 13-16 of the appeal bundle, included an article published in *The Guardian*. It suggested a number of individuals who participated in the protests were shot dead. The death toll, according to the article, passed 100 and thousands of individuals were injured. The article also suggested that protesters and journalists witnessed security forces firing on demonstrators with some saying snipers were taking part. The appeal bundle, at pages 17-82, included the *Iraq 2020 Human Rights Report* by the US State Department. The report, among other things, suggested that over 500 civilians were killed and 20,000 or more injured during the protests. Many of those who were killed were hit in the head and heart.

10. The immediate difficulty with the Judge's analysis that it simply fails to engage with this evidence. The article and the US State Department report were referred expressly in the Appellant's skeleton argument that was before the Judge. There is no explanation in the Judge's decision as to how his findings are justified on this evidence.

11. The Judge, at [20], observed:

> "… the appellant's account also appear to be contrary to the general thrust of the background country information upon which he relies. That information indicates that, whilst the protests were still ongoing, the Iraqi Prime Minister had said that he was ready to meet with the protestors in order to hear their demands, and that the security forces had been given orders not to use live ammunition except in strict cases of self-defence (see the Associated Press article, Monday 7th October 2019, at page 15 of the appellant's bundle of documents)."

12. It is true that the article, among other things, included these views expressed by the Iraqi Prime Minister. However, as I note above, the

article also included substantial amount of information as to the widespread killings of demonstrators and specific targeting by the security forces. There is nothing in the Judge's decision that shows that he considered that evidence pointing to a different direction. The Judge was obliged to address it in a reasoned manner. I emphasise that the Judge was not required to simply accept what was said about the killings and targeting of demonstrators in the article or indeed in the US State Department report. The Judge, however, was required to engage with these items and to give proper reasons for reaching his view.

13. I am not sitting as a first instance tribunal making findings of fact as to the evidence contained in the article and the US State Department report. My task it to decide whether the Judge erred on a point of law in making his decision. This appeal, given that it involves a protection claim, calls for anxious scrutiny. As was explained in *YH v Secretary of State for the Home Department* [2010] EWCA Civ 116 [2010] 4 All ER 448, at [24], in this context, there is a need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account. The Judge's decision and reasons do not reflect anxious scrutiny of this evidence which, on one view, supports the Appellant's claim.

14. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, for the reason set out above, I am satisfied that the Judge's decision is materially wrong in law.

Conclusion

15. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision in its entirety. I apply the guidance in *AB (preserved FtT findings; Wisniewski principles) Iraq* [2020] UKUT 268 (IAC) and conclude that no findings of fact are to be preserved.

16. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding, which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Kelly.

Decision

17. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

18. In my judgement, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, an anonymity order is justified in the circumstances of this case. I make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to parties. Failure to comply with this direction could lead to contempt of court proceedings.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 6 September 2023