IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004349

First-tier Tribunal No: PA/55714/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of October 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN

Between

BM
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hussain of Counsel, instructed by A B Legal Solicitors
For the Respondent: Ms C Newton, Senior Home Office Presenting Officer

Heard remotely at Field House on 15 October 2024

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

DECISION AND REASONS

Introduction

1. The appellant appeals with permission the decision of First-tier Tribunal Judge Horton promulgated on 20 August 2023 dismissing his appeal against the respondent's decision dated 16 November 2022 to refuse his protection claim.

Background

2. The appellant is a citizen of Iraq of Kurdish ethnicity. The appellant made two applications for visas to join his father in the UK in 2011 and 2015. In both cases, his applications were refused and his appeals dismissed. However, in 2018 the appellant arrived clandestinely in the UK. The appellant claimed asylum on 14 May 2018. That claim was refused on 14 November 2018. On 19 February 2020, the appellant lodged further submissions with the Home Office which were refused on 16 April 2021. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge O R Williams in decision promulgated on 29 December 2021.

3. The appellant lodged more further representations on 6 September 2022 which were refused on 16 November 2022. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Horton ("the judge") on 11 August 2023 and dismissed on 20 August 2023.

The grounds of appeal

4. On 14 August 2024, the appellant was granted permission to appeal the decision of the First-tier Tribunal by Upper Tribunal Judge Reeds. The appellant relies on three grounds of appeal:

   (1) The judge failed to consider the evidence of the appellant's involvement in political activity against the Kurdistan Regional Government in Iraq ("KRGI") in the UK.
   (2) The judge failed to properly consider the evidence that the appellant has received threatening messages on Facebook on account of his anti-KRGI activities.
   (3) The judge failed to properly consider whether the Kurdish authorities would be monitoring anti-KRGI activities in the UK.

Findings – Error of Law

5. In line with the grant of permission, Mr Hussain, on behalf of the appellant, said that he would be focussing his submissions on Grounds 2 and 3, although he continued to rely on Ground 1 as well. I therefore deal with the grounds in the order in which Mr Hussain advanced them.

Ground 2: Failure to consider evidence of Facebook threats

6. At the hearing before the First-tier Tribunal, the appellant argued that he had received threatening messages on Facebook as a result of him posting anti-KRGI material on his account. At [25], the judge found that

> "even on the appellant's case there is only evidence of one direct threatening Facebook message provided (dated 10 Dec 2022 from an account of a male with the initials SM). That is despite his claimed political activities from 2021. There is no supporting evidence of the identity behind the Facebook account issuing the threat. I specifically asked [the] appellant's counsel for any other specific/translated messages from any of

> the other 2 individuals named (as said to have issued threats) but I was not provided with any such messages…"

7. The appellant argues that the judge made a material error of law in finding that there was only evidence of one direct threatening Facebook message. In fact, there was a second from SM (see page A12 of the respondent's FTT hearing bundle); one from a man, HIM, who lives in New York (page A8 of the respondent's FTT bundle); and one from a third man, RS (page A10 of the respondent's FTT bundle).

8. Ms Newton, on behalf of the respondent, submitted that this did not amount to a material error of law because it would not have made any different to the judge's findings. She argued that it was unclear how the appellant had received two messages from SM when the screenshots showed that the appellant had blocked him. Furthermore, Ms Newton said, it was unclear whether any of the men who made the threats had a position of power or influence in Iraq, especially when one lived in New York. Ms Newton also pointed out that the judge had expressly asked the appellant's counsel whether there was any further evidence of threats beyond the 10 December 2022 one from SM and he was told that there were none. She also submitted that little weight could be attached to screenshots of Facebook posts.

9. This ground is finely balanced. On the one hand, the judge was clearly not assisted by the appellant's counsel before the First-tier Tribunal (who, I would make clear, was not Mr Hussain) erroneously failing to direct him to the evidence of threats in the respondent's bundle. Furthermore, the judge was of the view that little weight could be attached to threat from SM without evidence of whether he held any position of power or influence. On the other hand, the judge clearly did not take into account the evidence before the tribunal and was in error when he found that there was only one piece of evidence demonstrating that the appellant had been threatened on Facebook. The points that Ms Newton raised about how the appellant had received two messages from SM when he appeared to have blocked him and whether any of three senders of the threatening messages had any power or influence in Iraq is, I find, beside the point. Those are points about the weight to be attached to the evidence to be taken into account by the judge when considering the evidence. However, in the present case, for reasons that were not entirely his own fault, he failed to consider all the threats. Ultimately, the judge's finding about the threats the appellant had or had not received on Facebook was something that factored into his assessment at [27] of whether the appellant's political activities were genuine and had brought him any adverse attention.

10. I cannot say whether the judge would have reached the same findings had he been aware that the appellant had provided the additional evidence of the threats he claimed to have received online. I am therefore satisfied that the judge did make a material error of law.

Ground 3: Failure to properly consider whether the authorities would monitor anti-KRGI activities in the UK

11. At [27], the judge found that the appellant had "sought to exaggerate his importance within the opposition and by extension his interest to the KRGI. His sur place political activity is not genuine, but more importantly his profile it [sic] is not of a sufficient size or importance to the KRGI authorities".

12. The appellant argues that the judge failed to consider para 8 of his witness statement which mentions that during the course of participation in anti-KRGI demonstrations he had appeared on two different TV channels, NRT TV and Payam TV. This appears to have been supported by a photo on the appellant's Facebook page which shows him being interviewed by a woman with a NRT microphone. Mr Hussain submitted that had the judge taken into account this evidence, he was unlikely to have found that the appellant was a peripheral figure at the demonstrations. The appellant also argues that the judge failed to consider the likelihood of the KRGI authorities monitoring dissident groups in the UK, and he relies upon para 18 of the judgment of Sedley LJ in YB (Eritrea) v Secretary of State for the Home Department [2008] EWCA Civ 360:

> "…In my judgment, and without disrespect to what is a specialist tribunal, this is a finding which risks losing contact with reality. Where, as here, the tribunal has objective evidence which "paints a bleak picture of the suppression of political opponents" by a named government, it requires little or no evidence or speculation to arrive at a strong possibility — and perhaps more — that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among expatriate oppositionist organisations who can name the people who are filmed or photographed. 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." [Underlining added]

13. Ms Newton submitted that while the judge did not expressly deal with the appellant's evidence of having appeared on TV, the judge had nevertheless given clear reasons at [27] as to why the appellant's profile did not put him at risk on return. The judge, she said, had been entitled to find that the appellant's profile was not a significant one and that he could mitigate any risk by deleting his Facebook account before he returned to Iraq.

14. On consideration, I am satisfied that the judge has made a material error of law for the reasons given by the appellant. The judge's reasons for finding that the appellant did not face a real risk of harm on return were that he was not genuine in his political beliefs (see [26]) and had no significant profile within the anti-KRGI movement (see [27]). However, having correctly accepted at [26] that the appellant's motives were not determinative, the judge gives no consideration to the appellant's evidence that, when attending anti-KRGI demonstrations, he has twice appeared on Kurdish TV stations. I am satisfied that this would have been material to the question of whether, regardless of his motives for attending demonstrations or his lack of a role in organising them, the appellant has come to the adverse attention of the authorities. I cannot therefore say that the judge's finding at [29] that the appellant's activities would not likely have come to the attention of the authorities would have been the same had the judge considered the appellant's claim to have appeared on Kurdish TV on two occasions.

15. Furthermore, I also take into account that the judge did not make any findings about the likelihood of whether the KRGI authorities would be monitoring the activities of groups opposed to them in the UK. Such an error might not be said to

have been material had the judge considered all of the evidence when finding that the appellant had a low political profile. However, in the light of the judge's failure to have regard to the appellant's evidence that he appeared twice on Kurdish TV or all the evidence of the online threats, I am satisfied that this too amounts to a material error.

Ground 1: Failure to consider the evidence of the appellant's involvement in political activity against the KRGI in the UK

16. I am not satisfied that, as a freestanding ground, this would have raised a material error of law. The judge took into account the appellant's evidence that he was member of Dakok in the UK and he gave clear reasons at [20] to [24] as to why he did not accept the appellant held a specific position of leadership within that organisation. That aspect of the ground essentially amounts to a disagreement with the judge's findings. However, in conjunction with Grounds 2 and 3, I am satisfied that that the judge did make a material error of law by failing to have proper regard to whether, irrespective of the appellant's lack of status within Dakok, he has nevertheless drawn adverse attention to himself through his claimed political activities in the UK.

Remaking

17. Both parties were agreed that if I was to find a material error of law in the judge's decision, the extent of fact-finding required meant that the appeal should be remitted to the First-tier Tribunal for a de novo hearing.

18. In the circumstances, I am of the view that none of the findings of fact can be preserved. Taking into account the nature and extent of the findings of fact required to remake the decision, applying paragraph 7.2 of the *Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal*, I am satisfied that remittal for a de novo hearing is the appropriate course of action.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on a point of law.

The decision of the First-tier Tribunal is set aside with no findings preserved.

The remaking of the decision in the appeal is remitted to the First-tier Tribunal at Manchester, to be remade afresh and heard by any judge other than Judge Horton.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

16th October 2024