Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2021-000977**
(PA/52839/2020); IA/00846/2021

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre **Decision & Reasons Promulgated**
On : 16 September 2022 **On the 04 October 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

DA
(Anonymity Direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Holmes, instructed by Ashwood Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant is a citizen of Iraq, born on 10 April 1994 in Ranya, Suleymaniyah, of Kurdish ethnicity. He arrived in the United Kingdom in January 2019, having left Iraq in June 2015 and having stayed in various other countries

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on the way to the UK, including Germany and France where he made unsuccessful asylum claims.

3. The appellant claimed asylum in the UK on 9 January 2020. He claimed that he was a member of the Sultan Al Deen tribe and in 2013 started working for an organisation called Young Peoples' Future whilst also being paid as a peshmerga for the PUK and working as a security guard for the intelligence office. He claimed that the Young Peoples' Future was a secret informant organisation and that he would spy on people who were taking and dealing in drugs. He claimed to have received information from a person called M, in 2015, who was a drug addict, regarding a man named HS, whom M told him had been dealing drugs. The appellant claimed that he passed on this information to the Young Peoples' Future organisation and HS was arrested for having drugs in his possession which he intended to supply to people. The appellant claimed that HS belonged to a tribe named 'Shenai' which was a big tribe connected to the government, but that he was unaware of that at the time. He found out that HS had hung himself in prison a few days after being arrested. The appellant claimed that M told HS's family that he (the appellant) had informed on him and that M was the only person who had passed on the information to HS's family. HS's family then went to the appellant's family and attacked them and they were looking for him. His younger brother told him what had happened and warned him not to go home. He therefore fled Iraq and feared being killed by HS's family if he returned there.

4. The appellant's claim was refused on 26 November 2020. The respondent noted that the claim was based on being a potential victim of a blood feud, but rejected that claim owing to it being internally and externally inconsistent. The respondent noted that the Shenai tribe could not be verified by available background information and that the tribe was not amongst those named in the background information as the most important Kurdish tribes. The respondent considered that the appellant's claim, that the tribal issues could not easily be sorted out and that they would kill him, was inconsistent with country guidance which showed that tribes would first seek to resolve a dispute in a non-violent way. The respondent relied upon sources which referred to the reconciliation process followed by tribes. The respondent noted further that the appellant's account given in his asylum interview, that he accumulated information about M and also asked M for information about HS's whereabouts so that he could go and buy drugs off him, was inconsistent with his statement that he had informed his organisation immediately after obtaining information about M. The respondent noted also that the appellant's claim that M told HS's family that he (the appellant) had informed on him and that M was the only person who had passed on the information to HS's family, was inconsistent with his statement during his screening interview that it was law officers who had given HS's family his (the appellant's) details. The appellant's account was also inconsistent with his claim that the organisation was secret and no one knew his duties or work and that he had showed himself to M as though he was taking drugs rather than as working for the organisation. The respondent accordingly did not accept the appellant's account and found that he was at no risk on return to Iraq on that or any other basis. The respondent considered

that the appellant would be able to access relevant documentation to enable him to return to his home area or to another part of the IKR.

5. The appellant appealed against that decision. The appeal was heard by First-tier Tribunal Judge Austin on 18 October 2021. Judge Austin did not accept the appellant's claimed basis for leaving Iraq, finding that he had given an inconsistent account of the events leading to his departure. The judge accepted that the appellant worked for the peshmerga and accepted that he worked for a secret organisation through which he was responsible for passing details of a suspected drug dealer to a relevant authority and that the drug-dealer was then arrested and committed suicide in custody. However, he did not accept that the appellant's details were passed to the drug-dealer's family as he had given an inconsistent account of how that happened and found each version of the account to be implausible. The judge also considered that the appellant had failed to answer the challenge to the identification of the tribe concerned and had failed to show that there was such a tribe and that it had the power to threaten him.

6. The judge, however, allowed the appellant's appeal in relation to documentation, relying on the guidance in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 in regard to the new INID card and the requirement for an individual to attend in person at their local CSA office in order to enrol their biometrics to obtain an INID. The judge found there to be a risk of the appellant being unable to obtain replacement documents to enable him to return to the IKR and that he would be left in Baghdad in conditions which would amount to a breach of Article 15(b) and that he would be at risk of harm in breach of Article 3. He accordingly allowed the appeal on humanitarian protection and Article 3 grounds.

7. The respondent did not seek to appeal the judge's decision. However the appellant sought permission to appeal to the Upper Tribunal against the dismissal of his protection claim on the following two grounds: firstly, that the judge had failed to take account of relevant matters, namely the appellant's evidence in relation to the tribe which the appellant feared and the appellant's evidence in his statement about how his name was reported to HS's family; and secondly that the judge had failed to give adequate reasons for rejecting the appellant's account of his details being passed to the drug-dealer's family when he otherwise accepted a large part of the appellant's claim.

8. Permission to appeal was initially refused in the First-tier Tribunal, but was granted upon a renewed application to the Upper Tribunal.

Hearing and Submissions

9. The matter then came before me for a hearing. Both parties made submissions

10. Mr Holmes submitted, with regard to the first ground, that the judge had failed to consider the fact that the appellant's account of the tribe he feared had been rejected by the respondent on the basis of old sources dated back to

1931 and 1940 in a report which was about Iran, and had failed to resolve what evidence the appellant was required to show that the tribe existed or to consider the appellant's evidence in his statement. He submitted that the appellant had produced evidence in his appeal bundle at page 34/35 which stated that there were thousands of tribes in Iraq and he referred me to a document entitled "Iraq: The Role of Tribes" in the appeal bundle before the judge which stated that it was not known exactly how many tribes there were. It was therefore his submission that the judge had erred by failing to resolve the matter. As for the second part of the first ground, Mr Holmes submitted that the judge had failed to consider the appellant's evidence, in his witness statement at [21] and [22], that he had simply deduced or inferred how the drug dealer's family had known that he was the informant and that there was therefore no inconsistency. The judge had failed to deal with the substance of the appellant's narrative. Mr Holmes submitted that the second ground was a reasons challenge and that the judge's reasons for rejecting the appellant's account were insufficient, as were his reasons for finding his account of the drug dealer to be inconsistent.

11. Mr McVeety submitted that the findings in regard to the tribe had to be considered in the proper context, which was that the appellant was claiming that the tribe was so powerful that it could influence the PUK and could influence the authorities to track him down and kill him without him being able to find protection. Whilst the evidence relied upon by the respondent for the tribes in Iraq was old, tribes did not disappear, and it was reasonable to expect that such a powerful tribe with such significant influence could be found. Therefore, the conclusions to be drawn from an inability to find the name of the tribe in any list were either that the tribe did not exist or that it was a minor tribe and was not as influential as the appellant claimed. Mr McVeety agreed that the judge's decision was brief, but he submitted that there were limited issues and that the decision could therefore be decided on limited points. The judge's reasoning was sufficient and there was no error of law.

Discussion

12. I agree entirely with Mr McVeety that the issue of the existence of the tribe which the appellant claimed to fear had to be considered in the context of his claim. It was the appellant's evidence that the tribe he feared was influential and powerful, so much so that they could find him wherever he was in Iraq. That was the account given at [32] of his witness statement, where he stated that they found and attacked his brother after a period of several years and that as a result his brother had to move around in different areas for his own safety. In that context it is entirely reasonable to expect the tribe to be named in one of the lists referred to by the respondent, the more recent of which was provided in a link attached to the Respondent's Review as mentioned by the judge in his decision at [35]. That was the case irrespective of the appellant's account of there being thousands of tribes not all of whom were known. As such, it was fully and properly open to the judge to find that, whilst the matter had not been conclusively resolved, the appellant had failed to show that there was a tribe which had the power to threaten him as claimed and that he had therefore failed to discharge the burden upon him to make out

his claim to have been threatened and to be at risk of harm for the reasons given. I reject the assertion that there was an error made by the judge or a failure to take account of material matters in that regard.

13. Likewise, I reject the assertion that there was a failure by the judge to take account of material matters when considering the appellant's claim as to how the family of HS found out he was the informant. It is submitted that the judge failed to have regard to the appellant's evidence at [21] and [22] of his statement and to address the substance of his narrative therein which showed that there was no inconsistency in his account. However, the judge clearly had regard to the totality of the appellant's evidence, in his asylum interviews and in his statement, as well as his oral evidence before him, as he made clear at [27]. At [34] he gave clear and cogent reasons why he found the appellant's account to be inconsistent. Those reasons were aside from the reasons given by the respondent at [43] of the refusal decision arising from inconsistencies between the evidence at the screening interview and the asylum interview, which were essentially what the appellant was addressing at [20] to [22] of his witness statement. It was the appellant's explanation in his statement, and in particular his statement at [21] that the judge was addressing at [34] and it seems to me that those were perfectly proper reasons to reject the appellant's claim, when considered in the context of the appellant's account as a whole.

14. The second ground asserts that the judge's reasons for rejecting the appellant's account were inadequate, when considering that he had otherwise accepted a large part of his claim. However, whilst the reasons were limited, I agree with Mr McVeety that they provide an adequate basis upon which to find the claim to be lacking in credibility. The fact that the judge accepted the appellant's account of his work for the peshmerga and for the secret organisation leading to the arrest of a drug dealer was not a reason in itself to accept the reasons he gave for having to leave Iraq and for fearing return there. It was entirely open to the judge, on the evidence before him, to conclude that the appellant's account of being found out and threatened as an informant on a drug dealer was not a credible and genuine account. There were cogent reasons given for reaching such a conclusion and I reject the assertion in the grounds that the judge erred by dismissing the appellant's claim on that basis.

15. Accordingly, I find the grounds of challenge not to be made out. Judge Austin was entitled to dismiss the appeal on the basis that he did. His decision contains no errors of law and is accordingly upheld.

DECISION

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Anonymity

The anonymity direction previously made in the First-tier Tribunal is maintained.

Signed: S Kebede Dated: 22 September 2022
Upper Tribunal Judge Kebede