



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000723

First-tier Tribunal No: PA/53136/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of April 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE HARIA

Between

AH (IRAQ)
(ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Sobowale, Counsel, instructed by Barnes Harrild & Dyer

For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 29 February 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

1. To avoid confusion we shall refer to the parties as they were before the First-tier Tribunal

Anonymity

2. The First-tier Tribunal issued an anonymity order. No request was made by either party to set aside the order. We consider it appropriate to maintain the order in relation to the appellant and so we confirm the order above.

Background and preserved findings

3. By a decision sent to the parties on 3 July 2023, Upper Tribunal Judge O'Callaghan set aside the decision of First-tier Tribunal Judge Hawden-Beal dated 23 February 2023. Judge Hawden-Beal had dismissed the appellant's appeal against a paragraph 353 fresh claim decision of the respondent dated 20 June 2022.
4. In this decision we are remaking the decision acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007. The context of this remaking decision is our error of law decision annexed to these reasons, which sets out the background to the appellant's appeal.
5. The appellant is an Iraqi Kurdish Sunni Muslim born in 1991 and originates from Kirkuk. The appellant entered the UK clandestinely on 7 July 2018 and claimed asylum on the same day.
6. His initial asylum claim was refused and his appeal dismissed on 22 February 2019 (PA/00215/2019) in a decision of First-tier Tribunal Judge Malik.
7. The appellant submitted a fresh claim for asylum on 27 October 2020 on the basis of:
 - a. his fear of returning to Iraq undocumented,
 - b. the presence of militias in his home area,
 - c. he maintained his fear of his ex-wife's family.
 - d. he also relied upon evidence of his unsuccessful attempts to redocument himself in the United Kingdom and
 - e. on the fact that he has no contact with his family in Iraq.
8. The appellant's fresh asylum and human rights claim was refused on 20 June 2022 and his appeal dismissed by the Judge in a decision sent to the parties on 23 February 2023.
9. Upper Tribunal Judge O'Callaghan in the error of law decision concluded that the Judge had erred in law in the following two respects:
 - a. The Judge unknowingly proceeded on the basis of an inaccurate translation of a letter and erroneously found at [39] that the

appellant had been inconsistent in respect of the date when his home was attacked.

- b. No consideration was given to the oral evidence of Mr Aram Mohammed ("Mr Mohammed"), who attended the hearing and gave evidence and no reasons were given for rejecting his evidence.

10. For ease of reference, we set out below the preserved findings contained at [41]-[43], [47], and [50] of the Judge's decision:

"41. I now turn to his claimed sur place activities. I have had regard to XX (CG) [2022] UKUT 23 (IAC) and note that, although I do have a printout of his Facebook timeline and I have a screenshot of his profile, I do not know how many followers/friends he actually has. The appellant has provided over 1500 pages of posts from his Facebook account but there is nothing prior to January 2018. The first mention of any possible political activity could be a post on February 3rd, 2019 where the appellant commented on a Kurdish in the UK post. All the posts in the 1500 pages are untranslated and without photographs and so I do not know what was liked or commented upon. There is nothing to say that he has joined any groups on Facebook which support Kurdish rights and therefore no evidence that he is part of a wider social network, such that he is at risk of being caught up in any monitoring of that network by the authorities. I have looked at those posts in the stitched bundle and note that none of the posts between pages 45-56 have been shared and only have between 1 and 10 comments, which means that few people are actually liking or commenting on what he is posting and even fewer, are concerned enough to share those posts.

42. He has claims to have attended many demonstrations in the UK but the evidence of those demonstrations, according to the respondent do not appear to be outside the Iraqi embassy and appear to have been taken on the same date. There is no evidence to suggest that these demonstrations have attracted attention in Iraq. There are NRT posts which the appellant has liked and commented on, but none have been translated and therefore I do not know upon what those reports were commenting on. He has clearly been on several demonstrations, but all these photographs show that he is nothing more than a participant amongst a lot of participants. His name is not shown anywhere on the demonstrations such that anyone scrolling through the pictures of these demonstrations would be able to identify him and then search for him through Facebook or other social media. I am aware of the Supreme Council's order but there is no reason for the authorities to have been alerted to him and his posts against the governments. He had no profile when he fled Iraq and I am not satisfied that his posts will cause the authorities to sit up and start scrutinising what he is posting. He is nothing more than a minnow in a very large sea of online critics and the authorities have far more influential and high-profile critics to worry about in Iraq, which they can do something about than the appellant here in the UK. There is no evidence that the demonstrations were being filmed by anyone from the Iraqi Embassy and no evidence that the government of the IKR

have the capability to put the demonstrations and its participants under surveillance.

43. Given that he had no profile when he left Iraq, I am not satisfied that he will attract attention when he is returned. He has done nothing such that the authorities will have him on their radar so to speak, upon arrival in either Baghdad or Kirkuk. As the respondent says in the refusal letter, there is no evidence that these activities in the UK have come to the attention of the authorities in Iraq or that the regime has the capacity to identify individuals in the UK. There is no evidence before me to say that the Iraqi government can monitor Facebook and private communications which take place outside Iraq. There is no evidence that overseas activities are monitored or that the Iraqis have the funds or the capability to monitor overseas account unlike the Iranians.

...

47. I have considered whether the appellant can be returned at this moment in time and given that the respondent does have his original CSID, I am satisfied that he can. His skeleton argument claims that he is undocumented. He is not. He has his CSID which is original and valid and therefore he can obtain a passport from the Iraqi Embassy with which to travel back to Iraq

...

50. In so far as his article 8 rights are concerned, the appellant finds himself in the same position as he was before Judge Malik. He has no partner or dependent child in the UK; he may have now been here for almost 5 years but that is still not the required 20 years and, having found that he does not qualify as a refugee, is not in need Humanitarian protection or is at risk of having his rights under articles 2 and 3 breached by his return, I am satisfied that there are no very significant obstacles to his integration back into Iraqi society under paragraph 276ADE. Outside the immigration rules, he has no family life; his private life has been established for a further 4 years but that is the only difference between then and now. I have no idea as to his fluency in English because he still required the assistance of an interpreter at this hearing and there is no evidence before me as to how he is supporting himself, unless Aram is assisting him, of which I have no evidence. I have to take into account the public interest in maintaining effective immigration control and I have to find that significant weight must be given to the fact that he cannot meet the requirements of the immigration rules."

11. In respect of [49], the findings were preserved if the appellant is unable to establish at the resumed hearing that he has a well- founded fear of persecution at the hands of his former in-laws and the PMF. The findings at [49] are as follows:

"49. The appellant is from Kirkuk, albeit that he is a Kurd and Kirkuk is within the GOI and therefore the appellant will be returned to Baghdad because, as per SA, he is an involuntary returnee. The skeleton argument requests evidence from the respondent that the appellant's CAS office is issuing INID cards and if the representatives had considered annex D

of the June 2022 CPIN on returns, they would have seen that it is only a few offices around Mosul and in Ninevah governorate which are not issuing INID cards. The appellant has his CSID card and, given that his claim to be in fear of his in-laws has been rejected by Judge Malik and myself, I am satisfied that he can go back there to obtain his INID card. I reject his claim to be destitute when he gets to Kirkuk because upon his return to there, to which he can travel overland using his valid CSID card to negotiate the checkpoints, he still has his friend Balen there, according to his Facebook activity log, who will no doubt be able to assist him until he is able to obtain employment and start to support himself.”

Upper Tribunal hearing

12. The remaking hearing took place on 29 February 2024. The hearing was attended by representatives for both parties as above. We confirmed with the representatives the documents we had before us were all the documents required to remake the decision.
13. The appellant made an application under Rule 15(2A)(a) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to submit further evidence by way of a Supplementary Bundle (SB) of 20 pages comprising an up to date witness statement from the Mr Mohammed and further supporting evidence. There was no objection from Mr Parvar on behalf of the respondent. We refer to the test which we have to apply in determining such an application. Rule 15(2A) requires a party to indicate the nature of the further evidence and why it was not produced before. The Tribunal when deciding whether to admit that evidence must consider inter alia whether there has been “unreasonable delay” in producing that evidence. In this case the further statement from the Mr Mohammed was made in response to the Error of Law decision and so did not exist prior to this. We consider the evidence to be relevant to the issues before us and as there was no objection from the respondent and as we perceive no prejudiced to the respondent, we admitted it in evidence.
14. We heard evidence from the appellant and Mr Mohammed through a Kurdish Sorani interpreter.
15. At the end of the hearing, we reserved our decision.
16. We do not recite the evidence in full or the parties’ respective submissions, except where it is necessary to resolve disputed findings of fact and explain our conclusions. We have considered all of the evidence to which we were referred, whether we make reference to it or not.

Decision and reasons

17. At the outset Mr Sobowale properly conceded that the appellant was no longer pursuing his claim of a fear of returning to Iraq undocumented. We agree that this is a proper concession given the findings of Judge Malik. The respondent is in possession of the appellant’s CSID card. The appellant

can use his CSID card to obtain a passport from the Iraqi Embassy in the UK and then safely return directly to the Iraqi Kurdish Region (“IKR”).

18. The representatives agreed the starting point is Judge Malik’s decision which made the following findings, *inter alia*:
 - The appellant’s account was not true to the lower standard.
 - The documentary evidence relied upon by the appellant failed to identify from whom it originated.
 - Whilst certain documentary evidence mentioned the name ‘Belan’, and the appellant stated that this is his former wife’s name, this was not in itself sufficient to indicate that the provided messages were sent by her.
 - It is not reasonably likely that if the appellant did confront his wife’s family with evidence of her infidelity, they would accuse him of being a liar, if the documentary/audio he sought to rely upon the First-tier Tribunal was provided to them.
 - There was no reasonable explanation as to why the asserted efforts to harm him did not commence in March 2018, the time when he commenced divorce proceedings, rather than after the divorce was finalised in May 2018.
 - The appellant’s evidence as to how he left Iraq was inconsistent. Rather, the journey had all the hallmarks of a preplanned trip and not one made in haste.
 - He has family in Iraq, consisting of his mother, five brothers, two sisters, maternal aunts and uncles. One brother is in the police.
 - The appellant remains in contact with his family.
 - The appellant was in possession of his CSID card which he would be able to use to obtain a laissez -passer or a passport to enable him to return to Iraq.
 - The appellant can use his CSID to journey by land or air in Iraq without real risk and without relocation being unduly harsh.
19. The appellant maintains that he divorced his wife on 27 May 2018 as a result of her infidelity and that on 29 May 2018 his mother told him not to return home as his ex -wife’s brother had raided his home with members of the military. He asserts his father was beaten badly and died as a result of that beating.
20. The remaining issue is the credibility of the appellant’s account that he has a well founded fear of persecution at the hands of his former in-laws and the PMF. Having heard from the appellant and Mr Mohammed, we proceed to consider the appellant’s credibility and the credibility of his account.
21. Dealing first with the appellant’s evidence, Mr Parvar challenged the appellant as to the number of times he had been in contact with his mother since leaving Iraq. The appellant, in his first witness statement claims that since leaving Iraq he has heard from his mother once when she called him to inform him of his father’s passing [RB:46, Paragraph 4].

However, in his oral evidence at the hearing the appellant stated he had heard from his mother twice. The inconsistency was put to the appellant who maintained that he had always stated that his mother had contacted him twice, as on one occasion she had contacted him and sent some documents to him. The appellant's witness statement is quite clear he does not mention his mother contacting him twice as he states:

“ I have heard from my mother once since leaving Iraq when she informed me about my father's passing.”

We find the appellant's explanation to be an attempt by him to seek to explain away an inconvenient inconsistency in his own evidence.

22. Mr Parvar drew attention to the appellant's delay in seeking assistance from the British Red Cross when he lost contact with his mother. The appellant contacted the British Red Cross to assist in tracing his mother around the beginning of February/March 2020. The appellant's bundle includes a letter dated the 8 November 2022 from the British Red Cross stating that they have been unable to obtain any information from any sources regarding the present location of his relatives [AB:13 -14].
23. The appellant was asked why if he had last heard from his mother in 2018 and all subsequent efforts to contact her had failed he waited 2 years until 2020 to contact the British Red Cross. The appellant stated that he did not know of the services of the British Red Cross. The appellant first claimed asylum on 7 July 2018 on entering the UK as an unaccompanied minor and his asylum claim was duly processed. The appellant had the benefit of legal representation at the appeal hearing relating to his asylum claim in February 2019. In the circumstances, we consider it reasonably likely that the appellant would have been made aware of the British Red Cross family tracing services when he claimed asylum by the respondent or by his lawyers prior to 2020. We do not accept the appellant's explanation for his delay in contacting the British Red Cross.
24. The appellant relied heavily on the evidence of Mr Mohammed. In his first witness statement, the appellant claims that he met Mr Mohammed in a Kurdish restaurant in Liverpool and discovered that Mr Mohammed knew of his family in Iraq [Paragraph 8 RB:47-48]. The appellant claims they became good friends. Mr Mohammed was going to Kirkuk in November 2019 and wanted to help the appellant. The appellant states that he gave Mr Mohammed the details of where his mother lived and also the address of his old friend Balen whom he hadn't spoken to since he left Iraq but he knew that Balen would probably help the most.
25. The most troubling aspect of the appellant's account are the efforts of his friend Balen and Mr Mohammed in assisting to trace his family. There is no reasonable explanation as to why the appellant had to involve Mr Mohammed in the search of his family and why the appellant could not have contacted Balen directly to assist him. At the hearing the appellant was asked why if he was in contact with his friend Balen through Facebook

he did not contact Balen immediately and directly when he lost contact with his mother to help him locate his family instead of waiting until November 2019 and relying on Mr Mohammed. The appellant responded stating that once he had become active on social media Balen and his other friends blocked him as they wanted to protect their lives. The appellant was shown and had translated to him the activity logs of his Facebook account which show several entries dated 2019 detailing an interaction between the appellant and Balen. Upon being shown these entries the appellant sought to embellish his account and stated that he had asked Balen to help find his family but Balen said he did not know anything. The appellant stated that Balen blocked him so he was unable to contact Balen directly and that is why he sent Mr Mohammed to visit Balen and take him to see the Mukhtar. This aspect of the appellant's evidence throws doubt on the reliability of his evidence as there is no mention in the appellant's witness statement of his having sought assistance from his friend Balen and Balen refusing and blocking him on Facebook. Although there is an undated statement from Balen [RB:52] on which the appellant relied in support of his further submissions there is no explanation as to why this statement was not available at the 2019 hearing before Judge Malik. Furthermore, the appellant gives no explanation as to why if Balen had blocked him on Facebook he was prepared to assist Mr Mohammed and take him to see the Mukhtar or why he was willing to provide a statement in support of the appellant's claim. We find this aspect of the appellant's account to lack credibility.

26. The appellant in response to being asked how many times his friend Mr Mohammed travelled to Iraq and visited the Mukhtar stated that he went 3 or 4 times. The appellant stated that on each of these occasions he had asked Mr Mohammed to visit the Mukhtar. Mr Mohammed has provided two statements. In the first, dated 16 November 2022 [AB:15] he states he visited Kirkuk in 2019 and 2022. There is a supplementary witness statement from Mr Mohammed [SB:2-3] in which he states at paragraph 3 that he visited Kirkuk on 3 occasions in 2019, 2020 and 2022 and that he had forgotten to mention his 2020 visit in his earlier statement. Whereas at the hearing, Mr Mohammed stated the error was due to someone who had assisted him in writing the dates. Mr Mohammed produced his passport issued in 2019 at the hearing and this showed that he had visited Iraq in 2021, 2020 and 2022. There was no explanation as to why there is no mention of Mr Mohammed's travel to Iraq in 2021. The inconsistency as to the dates throws doubt on the reliability of Mr Mohammed's evidence.
27. At the hearing, Mr Mohammed was asked about the inconsistency between his statement dated 16 November 2022 in which he gives an account of his meeting with the Mukhtar and states that:

“ ... they had no information about them and they did not know (sic) where they are (sic) now. Once again, I visited Kirkuk in 2022 and I met them again. Unfortunately, they had no good news and they said they have not found out anything about them.”;

and paragraph 4 of his latest witness statement dated 6 October 2023 in which he states:

“The Mukhtar told me that his family had not been seen since they fled on 29 May 2018. He told me that the Shia Militias (Hashd Al- Shaabi) had raided his house looking for (the appellant) and they had attacked and injured his father who subsequently dies and as a result his family were forced to flee. The Mukhtar was not able to confirm this in writing because he said it would place him at risk.”.

Mr Mohammed was shown both statements and the relevant parts were translated to him. His explanation for the difference in the two statements was that there had been a mistake in his latest witness statement in that the Mukhtar he did not mention the Hashd Al- Shaabi as he was frightened it was Balen who had explicitly mentioned Hashd Al- Shaabi. Mr Mohammed sought to further explain the difference between the two statements by stating that the Mukhtar could not put anything in writing as it would put him at risk as he was frightened that if such a document fell into the wrong hands he would be killed for having written it. We do not accept this to be a credible explanation as the Mukhtar did provide a written statement confirming the appellant’s family had left their house on 29 August 2018 after gunmen attacked their house [RB:50-51].

28. For the reasons given above we find that the appellant and Mr Mohammed lack credibility and that the appellant’s further submissions are an attempt by him to bolster his false asylum claim. We note Judge Malik’s findings, having considered the evidence before us we find the evidence presented is insufficient to undermine Judge Malik’s conclusions. Accordingly we find the appellant has failed to establish he has a well founded fear of persecution at the hands of his former in laws and the PMF.

Notice of Decision

29. By a decision dated 2 June 2023 the Upper Tribunal set aside the decision of the First-tier Tribunal sent to the parties on 23 February 2023.
30. The decision is remade, and the appeal dismissed on asylum, humanitarian protection and human rights grounds.
31. The anonymity order is confirmed.

N Haria

Deputy Upper Tribunal Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 April 2024

ANNEX



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

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First-tier Tribunal No: PA/53136/2022

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Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**AH (IRAQ)
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Sobowale, Counsel, instructed by Barnes Harrild & Dyer
For the Respondent: Mr S Walker, Senior Presenting Officer

Heard at Field House on 25 May 2023

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 against a decision of Judge of the First-tier Tribunal Hawden-Beal ('the Judge'), sent to the parties on 17 February 2023, dismissing his asylum and human rights appeal.

Anonymity

2. The Judge issued an anonymity order and no party before me requested that it be set aside. I confirm the order above.

Relevant Facts

3. The appellant is a national of Iraq and is presently aged 31. He asserts that he hails from Kirkuk and worked as an electrician whilst in Iraq.
4. He states that he married his former wife in 2013 and that they have a child, born in 2014. Consequent to her infidelity, as asserted by the appellant, he divorced his wife in 2018. He states that his in-laws hold him responsible for her actions and the couple's divorce.
5. Two days after the divorce he was informed by his mother that his former brother-in-law had attended her home with five members of the Popular Mobilisation Force (PMF) looking for him. They beat his father badly.
6. The appellant was scared consequent to these events. A friend arranged and paid for an agent to enable him to leave Iraq. Having arrived in the United Kingdom, the appellant learned that his father had died from his injuries.
7. The appellant sought asylum, and a subsequent appeal against the respondent's refusal of the international protection claim was unsuccessful before the First-tier Tribunal. By a decision sent to the parties on 29 February 2019 (PA/00215/2019), Judge of the First-tier Tribunal Malik concluded, *inter alia*:
 - a. The appellant's account was not true to the lower standard.
 - b. The documentary evidence relied upon by the appellant failed to identify from whom it originated.
 - c. Whilst certain documentary evidence mentioned the name 'Belan', and the appellant stated that this is his former wife's name, this was not in itself sufficient to indicate that the provided messages were sent by her.
 - d. It is not reasonably likely that if the appellant did confront his wife's family with evidence of her infidelity, they would accuse him of

being a liar, if the documentary/audio he sought to rely upon the First-tier Tribunal was provided to them.

- e. There was no reasonable explanation as to why the asserted efforts to harm him did not commence in March 2018, the time when he commenced divorce proceedings, rather than after the divorce was finalised in May 2018.
 - f. The appellant's evidence as to how he left Iraq was inconsistent. Rather, the journey had all the hallmarks of a preplanned trip and not one made in haste.
8. Judge Malik further found that the appellant was in possession of his original CSID and remained in contact with his family.
 9. The appellant lodged further submissions, including reliance upon *sur place* activities, which were refused by the respondent on 20 June 2022, but were accepted to be a fresh claim under paragraph 353 of the Immigration Rules.

Decision of the First-tier Tribunal

10. The appeal came before the Judge sitting at Birmingham on 10 February 2023. The appellant attended, along with a witness, Mr Aram Mohammed, a British citizen.
11. In respect of his fear of his former wife's family, the appellant detailed:
 - '14. He confirmed that he had provided letters of support from two friends and had had been sent them by one of the friends via WhatsApp. He confirmed that the friends were shown in the photograph at pdf page 120 and that photograph was taken in Kirkuk on November 21st, 2019.
 15. He said that he lost contact with his mother at the end of 2018 but prior to that she had sent him the documents which were at pdf pages 176-8. He confirmed that his friend Aram went to Iraq to speak to his other friend Balen and that Balen knew he could speak to Aram because Aram showed him his passport to show that he had come from the UK and showed him a photograph of the appellant and Aram. He said that Aram went to see Balen with his cousin because his cousin was more familiar with the area in which Balen lived. He said that after he received his refusal letter in 2019, he went to seek help from the Kurdish community and he met Aram in Liverpool and they found out that they were from the same area and he has been helping him ever since.
 16. He confirmed that he had had threatening messages from the Shia militia and pdf page 132 is the Facebook profile of the person who sent these messages. He said that this person sent him a threatening message to his Facebook account, which is a public account, as shown at pdf pages 133-39 and he responded to him.

He said those messages came in 2020 and he showed them to his representatives in September 2020.

17. He said that he had attended many demonstrations in the UK including October and November 2019, October 2020 and February 2020 or 2021.'

12. Mr Aram Mohammed detailed in his evidence:

'21. I then heard from Mr Aram Mohammed with the assistance of the interpreter and he confirmed the contents of the two letters he had written at pdf pages 42 and 122. He confirmed that he went to Iraq from October to December 2019 and saw Balen, at the address which the appellant had given him. He said that he went with his cousin. He confirmed that Balen was in the photograph at pdf pages 120 and 121 and that the photograph were taken by his (the witness' cousin) on November 21st, 2019. He said that he sent them to the appellant via WhatsApp. He said that Balen agreed to speak to him after he had given him some information from the appellant to show that they were friends. He also showed his passport to show that he had come from the UK. He said that Balen told him that the appellant's in-laws had attacked his family home on several occasions. He said that he and Balen went to see the local councillor who confirmed that he knew that the appellant's family were missing because he lived nearby and knew of them, but that he did not know where they were.

22. In cross examination he said that he did not just go to Iraq in 2019 to see Balen. He also went to see his mother who is alone there.'

13. The appellant further detailed that he had attended many demonstrations in the United Kingdom. He stated that such activity occurred in October and November 2019, October 2020 and in either February 2020 or February 2021.

14. The Judge identified the starting point of her consideration of historic events in Iraq in accordance with the guidance in *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka** [2002] UKIAT 00702, [2003] Imm AR 1.

15. Turning to the written evidence of Mr Sami Abdullah Mohammad, a local councillor in Iraq, and a friend, Mr Balen Sabah Mohammad, the Judge concluded:

'39. I place no weight upon these two letters from Balen and the councillor for the following reasons. Neither mention the other attack and neither mention any injuries to the appellant's family, from either attack which is important because paragraphs 2 and 3 of the appellant's October 2020 statement says that he had contact with his mother at the end of 2018, after she had apparently fled to an unknow place according to the councillor and it was as a result of the May 2018 attack that his father died in June 2018. If there had been an attack and the father died from his injuries from that May 2018 attack, I would have

expected either or both Balen and the councillor to have mentioned it, since they lived close to the family and both claim to have known it. I also note that the letter from Balen makes it clear that the appellant was at his house on the night of May 29th, 2018 when the attack allegedly occurred and that he put him in a lorry to Turkey, which would contradict what the appellant initially said to Judge Malik about arriving in Turkey on the same day as the attack. Judge Malik did not find it reasonably likely that, given that the appellant initially said and then denied flying to Turkey, that he would have been able to arrive in Turkey by lorry on the same day as he fled after the raid took place that night.

40. I am satisfied that the discrepancies between each of their evidence and that of the appellant's own evidence in his 2020 statement and his evidence to Judge Malik, indicates that those statements have been written solely in an attempt to fill in the cracks in a previously rejected asylum claim. I am satisfied that, given that the appellant had been in touch with Balen over Facebook since June 2nd 2018 (pdf page 372/509), after he said he had fled Iraq, that this evidence could have been produced to Judge Malik for the hearing in February 2019 but was not and there is no reasonable explanation as to why it was not. I am satisfied that there is no new evidence whatsoever to persuade me to depart from Judge Malik's findings that the appellant fabricated his claim in its entirety and I am satisfied that the appellant was found not to be credible and in relation to that aspect of his claim, he remains not credible.'

16. As to the refugee *sur place* claim, the Judge had regard to XX (*PJAK sur place activities, Facebook*) CG [2022] UKUT 00023 and concluded:

'41. I now turn to his claimed *sur place* activities. I have had regard to XX CG [2022] UKUT 23 (*IAC*) and note that, although I do have a printout of his Facebook timeline and I have a screenshot of his profile, I do not know how many followers/friends he actually has. The appellant has provided over 1500 pages of posts from his Facebook account but there is nothing prior to January 2018. The first mention of any possible political activity could be a post on February 3rd, 2019 where the appellant commented on a Kurdish in the UK post. All the posts in the 1500 pages are untranslated and without photographs and so I do not know what was liked or commented upon. There is nothing to say that he has joined any groups on Facebook which support Kurdish rights and therefore no evidence that he is part of a wider social network, such that he is at risk of being caught up in any monitoring of that network by the authorities. I have looked at those posts in the stitched bundle and note that none of the posts between pages 45-56 have been shared and only have between 1 and 10 comments, which means that few people are actually liking or commenting on what he is posting and even fewer, are concerned enough to share those posts.

42. He has claims to have attended many demonstrations in the UK but the evidence of those demonstrations, according to the

respondent do not appear to be outside the Iraqi embassy and appear to have been taken on the same date. There is no evidence to suggest that these demonstrations have attracted attention in Iraq. There are NRT posts which the appellant has liked and commented on, but none have been translated and therefore I do not know upon what those reports were commenting on. He has clearly been on several demonstrations, but all these photographs show that he is nothing more than a participant amongst a lot of participants. His name is not shown anywhere on the demonstrations such that anyone scrolling through the pictures of these demonstrations would be able to identify him and then search for him through Facebook or other social media. I am aware of the Supreme Council's order but there is no reason for the authorities to have been alerted to him and his posts against the governments. He had no profile when he fled Iraq and I am not satisfied that his posts will cause the authorities to sit up and start scrutinising what he is posting. He is nothing more than a minnow in a very large sea of online critics and the authorities have far more influential and high-profile critics to worry about in Iraq, which they can do something about than the appellant here in the UK. There is no evidence that the demonstrations were being filmed by anyone from the Iraqi Embassy and no evidence that the government of the IKR have the capability to put the demonstrations and its participants under surveillance.

43. Given that he had no profile when he left Iraq, I am not satisfied that he will attract attention when he is returned. He has done nothing such that the authorities will have him on their radar so to speak, upon arrival in either Baghdad or Kirkuk. As the respondent says in the refusal letter, there is no evidence that these activities in the UK have come to the attention of the authorities in Iraq or that the regime has the capacity to identify individuals in the UK. There is no evidence before me to say that the Iraqi government can monitor Facebook and private communications which take place outside Iraq. There is no evidence that overseas activities are monitored or that the Iraqis have the funds or the capability to monitor overseas account unlike the Iranians.'

Grounds of Appeal

17. The appellant relies upon succinct grounds of appeal drafted by Counsel who represented him before the Judge, who was not Mr Sobowale.
18. Three grounds of appeal are advanced:
 - a. The Judge erroneously found at [39] that the appellant has been inconsistent in respect of the date when his home was attacked.
 - b. No consideration was given to the evidence of Mr Aram Mohammed, who attended the hearing and gave evidence. No reasons were given for rejecting the evidence.

- c. The Judge erred in failing to assess the appellant's risk in being active on Facebook or otherwise in Iraq and failed to provide reasoning as to why such activities would not create a real risk of persecution for the appellant.

19. Judge of the First-tier Tribunal Lawrence granted permission to appeal to the Upper Tribunal by a decision dated 17 March 2023.

Discussion

20. Mr Walker accepted from the outset that ground 2 established a clear material error of law, and in those circumstances presented no substantive resistance to ground 1. For the reasons briefly dealt with below he was correct to adopt such position.

21. The submissions before this Tribunal were therefore primarily focused towards ground 3.

22. It is appropriate to firstly turn to ground 2 which is succinctly identified in the grounds of appeal:

'Failing to take into account a material matter/provide adequate reasons: IJ does not take into consideration and or provide reasons why she rejects the evidence of the witness, Mr Aram Mohammed, who had provided oral evidence on the day. Mr Mohammed had provided two letters of support ... and also oral evidence. In his oral evidence he provided evidence of what he was told by Balen Sabah Mohammad and Mr Sami Abdullah Mohammed. He testified to what they had told him namely: they confirmed they knew of [the] Appellant and his problems, that [the] Appellant's house/family had been attacked by the Appellant's in laws and were armed, that because of the attack the family have moved and that their whereabouts are unknown. The [respondent] did not challenge the witnesses' oral evidence or suggest that it was not credible. IJ does not engage with this evidence and reason why his evidence is rejected.'

23. It is axiomatic that a determination discloses clearly the reasons for a Tribunal's decision. As is well established by the Presidential decision of *MK (duty to give reasons) Pakistan* [2013] UKUT 00641 (IAC), if a Tribunal finds oral evidence to be implausible, incredible or unreliable it is necessary to say so in the determination and for such findings to be supported by reasons.

24. As Mr Walker candidly accepted the Judge noted the oral evidence of Mr Aram Mohammed but at no point in her reasoning does she engage with it. The presumption must be that it was rejected, because the Judge did not find the appellant to be credible on the matters that Mr Aram Mohammed's evidence covered. However, as is well established by the guidance provided in *MK*, there is a requirement that the rejection of oral evidence be accompanied by adequate and lawful reasoning. The fact that no reasons are given at all for rejecting Mr Aram Mohammed's

evidence is sufficient to establish a material error of law, and consequently the Judge's decision as to the historic risk of persecution in Iraq must be set aside.

25. In those circumstances it would not normally be necessary to address the issues raised by ground 1. However, I observe complaint is made that at [39] of the decision the Judge relied upon an inaccurate translation of a document when finding inconsistency. The relevant document is a letter from Mr Sami Abdullah Mohammad and in the translation a date is provided of 29 August 2018. However, the original Kurdish Sorani document clearly identifies in Arabic numerals the date 29 May 2018. That date is consistent with the appellant's evidence as to the underlying issues. It is unfortunate that the appellant's legal representatives did not identify the error in translation prior to the hearing day, nor that the error was identified by the appellant's counsel before the Judge, though she relies upon the consequences of not having aided the Judge by means of her grounds. Legal representatives are always to be mindful of their obligations to cooperate with the Tribunal: rule 2(4) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.
26. In the circumstances the Judge understandably proceeded on the basis of the translation being accurate. However, I accept that the translation is not accurate, and the subsequent finding as to inconsistency was an error of fact and therefore an error of law: *R (Iran) v. Secretary of State for the Home Department* [2015] EWCA Civ 982. In those circumstances the appellant has established his complaint by means of ground 1.
27. Turning to ground 3, the grounds of appeal identify this challenge as:

'Failing to take into account a material matter and or give adequate reasons: IJ finds that the Appellant would not be at risk on account of his sur place activities from the UK at paragraphs 41-44. It appears the IJ does not reject the Appellant being genuinely active on his Facebook or in demonstrations in the UK. IJ however then fails to go on and assess the Appellant's risk in being active on Facebook or otherwise in Iraq and reason why on return such activities in Iraq would not create a risk for the Appellant.'
28. Mr Sobowale did not advance submissions beyond the written ground of appeal, though did not formally withdraw reliance upon it.
29. The difficulty for the appellant is that whilst the Judge should properly have considered future risk of social media activity upon return to Iraq, the findings of fact as to his activities in respect of social media were clear and cogent: he has not joined any groups on Facebook which support Kurdish rights, there is no evidence that he is part of a wider social network, and he has no profile in respect of the Iraqi authorities. Translating those clear and cogent findings of fact, which are not challenged by the appellant, into future risk there is no material error of law as no reasonable Judge could find that such limited activity would place him at real risk of being

persecuted by the Iraqi authorities upon his return to Iraq if he continued to engage with social media.

30. For those reasons ground 3 of the appellant's appeal is dismissed.

Resumed Hearing

31. The appellant is successful as to grounds 1 and 2, but unsuccessful in his challenge as to his refugee *sur place* claim.

32. In the circumstances as agreed by the parties, it is appropriate that the resumed hearing of this appeal will take place in the Upper Tribunal at Field House.

33. The following findings of fact are preserved: [41] - [43], [47], and [50].

34. In respect of [49], the findings can properly stand if the appellant is unable to establish at the resumed hearing that he has a well-founded fear of persecution at the hands of his former in-laws and the PMF. The appellant's appeal before this Tribunal did not seek to establish that the First-tier Tribunal materially erred in respect of those findings if an adverse conclusion was reached as to the well-foundedness of the appellant's fear of persecution in Iraq.

Decision

35. The decision of the First-tier Tribunal sent to the parties on 23 February 2021 is set aside for material error of law in respect of the appellant's fear of persecution in Iraq consequent to his divorce.

36. The resumed hearing of this appeal will be undertaken before the Upper Tribunal sitting in Field House.

37. The findings of fact made by the First-tier Tribunal at [41]-[43], [47] and [50] of its decision are preserved.

38. In respect of [49], the findings can properly stand if the appellant is unable to establish at the resumed hearing that he has a well-founded fear of persecution at the hands of his former in-laws and the PMF.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 June 2023