



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: UI-2022-000505  
PA/53094/2020 [IA/00400/2021]

**THE IMMIGRATION ACTS**

**Heard at Bradford (Hybrid Decision & Reasons Promulgated  
hearing)  
On 23 September 2022** **On 13 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE LANE  
UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MOHAMMED MAHMOOD KHALID**  
(Anonymity direction not made)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Timson instructed by Kings Law Solicitors  
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Curtis ('the Judge') promulgated on 13 December 2021 in which the Judge dismissed the appellant's appeal on all grounds.
2. The appellant is a citizen of Iraq born on 5 January 1989 who entered the United Kingdom on 10 March 2017 and claimed asylum. That

application was refused by the Secretary of State and an appeal against the refusal dismissed by First-tier Tribunal Judge Drake on 5 July 2018. On 7 September 2019 the appellant lodged further submissions which were, again, refused by the Secretary of State. It is the appeal against that refusal which is the subject of these proceedings.

3. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out his findings in relation to what he describes as the discrete issues in the appeal from [41] of the decision under challenge.
4. In relation to the protection claim the Judge finds the appellant not to be a credible witness who was not truthful in his oral evidence before the Judge. The Judge had taken as the starting point an earlier decision of First-tier Tribunal Judge Drake, as per the Devaseelan principle, and found there was no material evidence provided in the current appeal that justified departing from Judge Drakes findings.
5. The Judge at [41] made the following finding: *"I am satisfied the Appellant is excluded from the Refugee Convention by virtue of the operation of Article 1F. His asylum claim must therefore be dismissed."*
6. At [44] the Judge writes *"Article 17 (1) (a) and (c) of the Qualification Directive is an almost identical replication Articles 1F(a) and (c) of the Refugee Convention. It must follow, and I so find, that since the Appellant is excluded from the Refugee Convention he is also excluded from being eligible for humanitarian protection. His appeal on humanitarian protection grounds shall be dismissed."*
7. In his grounds seeking permission to appeal the appellant asserts the Judge arrived at an incorrect decision in excluding the appellant from the Refugee Convention as the facts of the appellant's claim did not warrant a decision to exclude him from either the Refugee Convention or Humanitarian Protection, on the basis that Article 1F does not apply to the appellant's case.
8. In response to a specific direction given by the Upper Tribunal, the Secretary of State wrote:
  1. The Respondent has had regard to Article 1F which states that the provisions of the Convention do not apply where there are serious reasons to consider that an individual: a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes b) has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee c) has pleaded guilty of acts contrary to the purposes and principles of the United Nations.
  2. The Respondent is mindful that Article 1F is intended to exclude individuals from refugee protection where there are serious reasons to consider that they have committed certain serious crimes and they are avoiding being brought to international or national justice to be held to account for their actions. It is designed to protect the host state and the integrity of the asylum process from abuse but is not a punitive measure and it must be applied responsibly, bearing in mind the humanitarian character of the Refugee Convention and the consequences of exclusion for the individual. Those excluded from refugee status under Article 1F will also normally be excluded from humanitarian protection.

3. The Respondent has subsequently carefully considered the totality of the evidence in this case in assessing whether the provisions of the Convention (in Paragraph 1, above) apply to the Appellant.
4. It is submitted that the case of Al-Sirri v Secretary of State for the Home Department & Anor [2009] EWCA Civ 222 (paragraph 18) assists in the above assessment in which the UN Security Council, by way of Resolution 1624, called upon all states to prohibit and prevent acts and to *“deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of such conduct.”*
5. The Respondent has also considered the assertion in the Appellant’s Witness Statement [ASA paragraph 18 refers] and that it is not of significant weight to fairly amount to be serious reasons for believing that the Appellant has committed or is guilty of an offence or act as detailed in Article 1F (a, b or c).

#### CONCLUSION

6. The Respondent therefore submits that bearing in mind the facts of the case there are not serious reasons for considering that the Appellant has committed a crime act contrary to Article 1F.

Dated 20 August 2021

9. The Tribunal is grateful to Mr Diwnycz for clarifying a confusion that arose prior to the hearing when another of his colleagues filed a later dated Position Statement which appeared to contradict the above concession. It was accepted that the concession in the document dated 20 August 2021 properly represents the Secretary of State’s position with which we agree.
10. We have set out the text of that document in full as discussion arose during the course of the hearing as to the nature and impact of the concession. We find that the Secretary of State has not conceded legal error in relation to the Judge’s factual findings in this appeal but only to the application of those findings to the applicable legal test. The Secretary of State accepts that on the basis of the facts as found in this case the necessary threshold was not crossed.
11. We directed the parties to the issue we needed to consider in light of the clear wording of the concession, which was whether the error in relation to the application of the exclusion clauses was material to the decision to dismiss the appeal.
12. We adopted that stance in light of the content of [45 - 46] of the Judges decision which is in the following terms:
  45. In relation to the Appellant’s appeal on human rights grounds, notwithstanding my findings as to his exclusion from international protection, I am required to consider whether it is reasonably likely that his return to Iraq will expose him to treatment prohibited by Article 3 ECHR. He, of course, maintains that he remains of interest to the PUK because of the way he left the Asayish and because of their perception that he was a spy. Judge Drake made a finding on these aspects of the Appellant’s account. I have set those findings out above. A principal finding was that nobody from the PUK or KDP was “hunting” for the Appellant and that he had received no threat from either organisation. His subjective fear was based on an assumption rather than it flowing from an actual threat. Judge Drake was not satisfied that the Appellant had satisfied the burden of establishing that there was a real risk of persecution or serious harm

to him on return. He also suggested that a return to Erbil was possible (that city being controlled by the KDP).

46. The Appellant did provide two witness statements; one was undated (AB:42-48) and one was dated 9 February 2018 (AB:495-500). The former is the more recent (it refers to the decision letter of 22 October 2020). The latter was before Judge Drake. In the former he maintains that he will be arrested by the PUK because of the allegations that he was a spy. He has now provided a copy of his Asayish ID which established his role within that organisation. That does not take his claim much further forward because it was accepted that he was a PUK staff member (see para. 16.1 of Judge Drake's determination). I acknowledge that the ID does referred to his role within the Asayish (which perhaps indicates he was more than a "staff member"), it does not, in my view, justify a departure from Judge Drakes finding that there was no direct threat to him even after the asserted spying allegation came to light. The remainder of his undated witness statement amounts to repetition of the evidence presented to Judge Drake or a disagreement with his findings.
13. Two issues arise from these findings, the first is that there is nothing before us to support the assertion that the Judge's finding that the appellant would face no risk of harm on return was influenced in any way by the error in relation to the application of Article 1F. The Judge took Judge Drake's dismissal of the appellant's claim and finding of lack of risk as the starting point but concluded there was nothing in the appellant's evidence that had been subsequently produce that justified a departure from those earlier findings. It has not been made out that the principle of fairness required to Judge to make any other finding on the evidence.
14. As the appellant has been found not to be at risk of harm on return, as a result of persecution or otherwise, we find the Judge's dismissal of the claim for international protection under the Refugee Convention, Qualification Directive, Article 3 ECHR to be sustainable and with the range of findings reasonably open to the Judge on the evidence and not infected by material legal error.
15. The Judge went on from [47] to consider the appellant's *sur place* activities in the UK. The Judge clearly considered the evidence with the required degree of anxious scrutiny and analyses the nature and quality of that evidence including that to be found within the appellant's Facebook account. The Judge considered the correct country guidance case of BA [2011] UKUT 36 (IAC) in relation to any risk the appellant may face as a result of demonstrations he attended in the United Kingdom before concluding that no real risk arose from those activities sufficient to engage Article 3 ECHR [51].
16. The appellant in his grounds claimed that he had attended demonstrations and taken part in *sur place* activities and that the Judge had failed to properly assess the appellant's evidence that was placed before him and that the Judge did not give any weight to the evidence which was made available. There is also reference to UNHCR's Handbook in the grounds.
17. The first point of note is that we find it is not legal error for the Judge not to consider the UNHCR Handbook. In HF (Iraq) and others v Secretary of State for the Home Department [2013] EWCA Civ 1276 the Claimant failed asylum seekers unsuccessfully

challenged the most recent country guidance decisions relating to Iraq. The Court rejected an argument that there was justification for conferring a presumptively binding status on UNHCR reports merely because of their source. The Court had to assess all the evidence affording such weight to different pieces of evidence as it saw fit. It was said that UNHCR was responsible not merely for objectively assessing risk but also for assisting returnees and the court was entitled to be alive to the possibility that the latter function might colour the risk assessment even if only subconsciously. The question for us is whether the Judge considered the evidence with the required degree of anxious scrutiny, which we find the Judge did, whether the Judge has made findings on the issues which he was required to make findings upon, which we find he did, and whether those findings are adequately reasoned. In that respect we find a reader of the determination is able to understand not only what the Judge found but also the reasons for coming to such conclusions.

18. The argument the Judge failed to place weight upon aspects of the evidence is a claim that has no merit. The weight to be given to the evidence was a matter for the Judge who had the advantage of not only reading the documents but also seeing and hearing the appellant give oral evidence. The Judge noted discrepancies in the evidence and matters of concern arising from the material with which he had been provided which warranted the finding that the appellant lacked credibility. That is a finding within the range of those available to the Judge and is not a finding made on the basis of the Article 1F conclusion either directly or based upon the argument raised before us that that conclusion somehow infected the Judges thought process and assessment of the evidence. We find no such claim to be made out. We find there is a clear separation between the finding in relation to Article 1F that the appellant's conduct crossed the necessary threshold, which all parties accept is wrong, and the assessment of the credibility of the evidence dealing with the other matters the Judge was required to consider.
19. Arguments in the grounds as to the approach the Judge had taken by reference to case law fails to establish legal error when the Judge clearly adopted the correct approach to assessing the evidence and in relation to the findings made.
20. In relation to documentation, the appellant claims in the grounds that to make the journey from Baghdad to Erbil he would need either the original CSID or a new INID. The decision under challenge was written when the Secretary of State's policy was that all enforced returns to Iraq were to Baghdad. That policy has now changed in that enforced returns can be to any airport within Iraq including to the IRK. Irrespective of the issue of the CSID, which we discuss further below, the appellant can be returned directly to the city in which he previously resided and in which it is not made out he faces any risk on return; where he will be able to access his local CSA office to obtain any identity documents he requires.

21. The Judge's specific findings relating to documentation are set out at [52 - 55] in the following terms:
52. In terms of the Appellant's documentation position, I draw the following conclusions. He provided a colour photograph of his Iraqi passport with the further submissions (AB:537). He was not asked how he came to be in possession of this photograph but, from the asylum interview transcript, when he told the interviewing officer that he had photographs of his ID cards on his mobile phone it is perhaps reasonable to assume that he had taken a photograph of the passport before, as he says, losing it on the boat over to Greece. After all, he had taken a photograph of his Asayish ID card too, when he was in Iraq.
53. I asked the Appellant whether he had ever taken a photograph of his CSID and he said that he had, but that it was in his previous phone's memory and it was gone. I do not accept that evidence. Since he took a photograph of his passport (which he lost, on his own timeline, prior to his CSID being handed to the German authorities) he must have still been in possession of his CSID at that time. Why, then, would he be able to retrieve the photograph of his passport to provide with his further submissions but not retrieve the photograph of his CSID? Furthermore, on his account, he took a photograph of his Asayish ID card when he was in Kurdistan and has been able to, lately, obtain a copy of that too. It assists his claim to say that the photograph of his CSID cannot be obtained and I consider it too convenient, in light of the above reasons, for it to be true.
54. In any event, I have rejected the Appellant's overall credibility. I find him to be an untruthful witness on material matters and I cannot therefore accept that he handed his CSID to the German authorities. If it were true he could have written to the German authorities and asked them to confirm that it was handed to them during the asylum claim. On his own admission, he has made no attempts to "retrieve" it. I am not satisfied, then, that the Appellant has established that he is not in possession of his CSID therefore, it is not reasonably likely that he will face the difficulties envisaged by the Upper Tribunal in SMO, KSP & IM (Article 15 (c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) during any journey from Baghdad to Erbil. The Appellant's return does not amount to a breach of his rights under Article 3 ECHR on account of his documentation position.
55. Finally, and for completeness, I conclude that since the Appellant has a photograph of his Iraqi passport, he should have no issue obtaining a laissez passer (see, for instance, SMO [375]) so that his return to Iraq is feasible.
22. The above assessment in relation to documentation and feasibility of return is not disturbed by the more recent country guidance case of SMO [2022] UKUT 00110 (IAC).
23. We find Mr Timpson has not made out his argument that the Judges conclusions in relation to credibility of documentation and feasibility of return are in any way affected by the Judges error in relation to the Article 1F point. A reading of the determination makes no mention of that specific aspect at this point, and the claim that the Judge's thinking was somehow impaired or affected by the earlier finding, such that subsequent findings cannot be sustainable, is simply not made out.
24. The Judge considered the appellants medical condition in the determination which we do not need to set out verbatim. No material legal error is made out in relation to the findings made.

25. We conclude, whilst accepting that the Judge erred in finding Article 1F applied to this appellant when clearly on the facts it does not, that we do not find that such error is material in relation to the rejection of the protection claim. We do not find it made out that the weight given to any of the evidence considered by the Judge is irrational or outside the range of that available to the Judge. We find the Judge's findings are adequately reasoned and do not find it has been established that the error in relation to Article 1F infected the other findings made by the Judge. Those findings were clearly by reference to other aspects of the evidence.
26. Whilst the appellant disagrees with the Judge's findings, and clearly would like a more favourable outcome to enable him to remain in the United Kingdom, we do not find any aspect of the grounds pleaded by the appellant establishes legal error material to the decision to dismiss the appeal. The decision shall stand.

**Decision**

- 27. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

28. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 3 October 2022