



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

Appeal Numbers: UI-2022-0001281  
(IA/01377/2021)

**THE IMMIGRATION ACTS**

**At: Bradford  
On: 15<sup>th</sup> September 2022**

**Decision & Reasons Promulgated  
On: 28<sup>th</sup> October 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**BAA  
(anonymity direction made)**

Appellant

**And**

**Secretary of State for the Home Department**

Respondent

**For the Appellant: Mr Karnik, Counsel instructed by Collingwood  
Immigration Services**

**For the Respondent: Mr Diwnycz, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Iraq born in 1994. He appeals with permission the decision of the First-tier Tribunal (Judge Saffer) dated the 9<sup>th</sup> February 2022 to dismiss his protection appeal.
2. The matter in issue before Judge Saffer, and myself, is this: will the Appellant face a real risk of destitution in Iraq such that the United

Kingdom would be precluded from removing him there under Article 15(b) of the Qualification Directive?

3. In answering that question Judge Saffer was bound by the findings made by other Tribunals who had considered the Appellant's case on previous occasions. Judge Saffer identified the following *Devaseelan* findings as being relevant to what might await the Appellant upon his return to Iraq. He:
  - (1) had not had the problems claimed in Iraq;
  - (2) had produced a Laissez Passer which was used upon his removal from Romania in 2013 when he returned to Iraq;
  - (3) has family in Iraq with whom he was in contact;
  - (4) could be financially supported by his uncle who could vouch for him, travel to Baghdad, and assist him obtain a CSID;
  - (5) could fly to the IKR or travel by land with his uncle;
  - (6) would be permitted to enter the IKR; and
  - (7) has worked as a labourer, on a farm, and in takeaways and restaurants.
4. From these findings the Tribunal extrapolated that the Appellant could be returned to Iraq without difficulty.
5. Before me the parties were in agreement that in doing so, the Tribunal erred in law, in failing to follow and apply the country guidance extant at the time: SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) ("SMO I"). Specifically, Mr Diwniycz was prepared to accept that the Tribunal's starting point should have been to determine whether the Appellant's civil registry in Kirkuk was one which has installed the new 'INID' terminals which require the physical attendance of the applicant. Had the Tribunal considered that guidance, it would have seen at paragraph 431 thereof that the panel was satisfied that it is reasonably likely that such terminals have now been installed in Kirkuk. Indeed that much is now effectively confirmed, not just by the decision in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ('SMO II') but by the updated country background information which appears at Annex D of the Respondent's Country Policy and Information July 2022: *Iraq: Internal relocation, civil documentation and returns*.
6. That being the case, the seven *Devaseelan* findings that formed the centrepiece of the First-tier Tribunal's decision were no longer particularly relevant. That is because no one but the Appellant - no proxy, no lawyer, no uncle - could attend the offices to obtain a valid

new card. No old documentation, including the *laisser passer*, would be of any use to him. The Family Book details were irrelevant, as was the '1957 document' then relied upon by the Respondent. As SMO II makes clear, without valid documentation, having an uncle who might vouch for you will not get you through all the checkpoints that lie between Baghdad airport and Kirkuk. Without valid documentation the Appellant is unable to fly straight to the IKR, as the First-tier Tribunal believed. In those circumstances there is a real risk that the Appellant will be stranded in Baghdad; in the absence of any family or friends in the area he will, according to the terms of the Respondent's own concession, quickly fall into destitution. On that basis I am invited to allow the appeal.

7. The only wrinkle in that logic is the presence - somewhere near Kirkuk - of the Appellant's uncle. Last contacted in 2017, Judge Saffer not unreasonably concluded that he would be able to offer his nephew some assistance. I have considered whether that matter makes any difference to the overall conclusion set out above and I have determined that in reality, it does not. Without being able to leave the environs of the airport, it is difficult to see how an uncle in Kirkuk could have any meaningful impact on the Appellant's ability to re-establish himself in Iraq without facing a real risk of inhuman and degrading treatment contrary to Article 15(b). On that narrow basis the appeal must be allowed.

### **Anonymity**

8. Until the deadline for appeal of this decision has passed, and the relevant document issued by the Respondent, the Appellant continues to seek protection. Having had regard to the Presidential Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private<sup>1</sup> I am satisfied that in those circumstances it would therefore be appropriate to make an order in the following terms:

"Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him, any of his witnesses or any member of his family. This direction

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<sup>1</sup> Paragraph 28 of the Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private reads: In deciding whether to make an anonymity order where there has been an asylum claim, a judge should bear in mind that the information and documents in such a claim were supplied to the Home Office on a confidential basis. Whether or not information should be disclosed, requires a balancing exercise in which the confidential nature of the material submitted in support of an asylum claim, and the public interest in maintaining public confidence in the asylum system by ensuring vulnerable people are willing to provide candid and complete information in support of their applications, will significant weight. Feared harm to an applicant or third parties and "harm to the public interest in the operational integrity of the asylum system more widely as the result of the disclosure of material that is confidential to that system, such confidentiality being the very foundation of the system's efficacy" are factors which militate against disclosure. See R v G [2019] EWHC Fam 3147 as approved by the Court of Appeal in SSH D & G v R & Anor [2020] EWCA Civ 1001

applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decisions**

9. The decision of the First-tier Tribunal is set aside.
10. The decision in the appeal is remade as follows: the appeal is allowed on protection grounds.
11. There is an order for anonymity.

A handwritten signature in black ink, appearing to read 'CBE', is positioned to the left of the typed name and date.

Upper Tribunal Judge Bruce  
15<sup>th</sup> September 2022