



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Numbers: UI-2021-000710  
PA/02025/2020**

**THE IMMIGRATION ACTS**

**Heard at Cardiff Civil Justice  
Centre  
On the 6 October 2022**

**Decision & Reasons Promulgated  
On the 14 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**SRK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Moriarty instructed by Rashid & Rashid Solicitors

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the

appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

### **Introduction**

2. The appellant is a citizen of Iraq who was born on 6 January 1991. He is Kurdish and was born and lived in Kirkuk.
3. In 2007, as a result of threats from his maternal uncle to kill him because he had joined the youth wing of the PUK whilst his uncle was a senior member of the Komalay Islami Party (“KIP”), the appellant went into hiding in an aunt’s house in Ranya in Sulaymaniyah in the IKR. The appellant claims that he continued to receive threats at his aunt’s house and, as a result, he left Iraq on 18 August 2017 travelling to the UK via Iran and Turkey.
4. The appellant entered the United Kingdom clandestinely on 5 November 2007 as an unaccompanied minor, age 16. He claimed asylum but that application was refused by the respondent on 8 February 2008. He was, however, granted discretionary leave until 6 July 2008 on the basis of being an unaccompanied minor. He made a further application for asylum on 29 September 2008 but that application was again refused on 3 August 2010. The appellant did not appeal either of those decisions.
5. On 9 July 2018, the appellant made a further application for asylum, again relying upon the risk on return to Iraq from his uncle as a result of his political opinion.
6. On 14 February 2020, the Secretary of State refused the appellant’s claims for asylum, humanitarian protection and under the ECHR.
7. The Secretary of State did not accept that the appellant’s claim was credible, in particular the Secretary of State concluded that there was no objective evidence to confirm the existence of the KIP of which the appellant claimed his uncle was a senior member. The respondent concluded that at best the KIP was extremely small and would not have the resources to locate the appellant elsewhere in Iraq. The respondent also concluded that the appellant would not face a real risk of serious harm arising from indiscriminate violence under Art 15(c) of the Council Directive (Council Directive 2004/83/EC). Further, the respondent concluded that the appellant could obtain a replacement CSID either in the UK or from Iraq with the assistance of his family so that he would not be exposed to a serious risk of harm contrary to Art 3 when travelling to his home area.

### **The Appeal to the First-Tier Tribunal**

8. The appellant appealed to the First-tier Tribunal. In a decision sent dated 7 July 2021, Judge T J Cary dismissed the appellant’s appeal on all grounds.
9. First, the judge rejected the appellant’s claim to be at risk on account of his involvement with the PUK and his uncle’s involvement with the KIP. The judge did not accept that the appellant’s claim was credible having

referred to a medico-legal report from Dr Hameed dated 26 March 2021, which diagnosed the appellant as suffering from PTSD and Adjustment Disorder (Mixed Anxiety and Depressive Reaction) and to a country expert report from Dr George dated 25 February 2021 which, inter alia, identified the existence of the KIP which had taken part in regional and Iraqi national elections and had sometimes joined coalition governments with the PUK and KDP.

10. Secondly, the judge found that the appellant would not be exposed to a real risk of serious harm arising from indiscriminate violence under Art 15(c) on return.
11. Thirdly, the judge found that the appellant could obtain a replacement CSID either in the United Kingdom or through his family in Iraq.
12. Fourthly, the judge rejected the appellant's claim under Art 3 of the ECHR based upon his mental health.
13. Finally, the judge dismissed the appellant's appeal under Art 8 of the ECHR.

### **The Appeal to the Upper Tribunal**

14. The appellant sought permission to appeal to the Upper Tribunal.
15. Initially, permission to appeal was refused by the First-tier Tribunal (Judge O'Garro) on 6 October 2021. However, on a renewed application to the Upper Tribunal, on 27 January 2022, UTJ Gill granted the appellant permission to appeal.
16. On 1 March 2022, the Secretary of State filed a rule 24 response seeking to uphold the judge's decision.
17. The appeal was listed for a hearing on 6 October 2022 at the Cardiff Justice Centre. The appellant was represented by Mr Moriarty and the respondent by Mr Bates.

### **The Appellant's Submissions**

18. Mr Moriarty relied upon the four grounds of appeal upon which permission had been granted.
19. Ground 1 contends that the judge was wrong to rely upon the fact that the respondent had not accepted the appellant's account to be credible in 2008 and 2010 in reaching adverse decisions on his asylum claim. In doing so, the judge had failed properly to take into account the medical evidence from Dr Hameed as to the appellant's present mental health condition. Mr Moriarty submitted that had been relevant at the time that the respondent had reached her earlier adverse decisions. The judge had been wrong to presume that the appellant had been fit to give evidence at that time (although he was not now) and by taking into account that the appellant had not challenged the earlier decisions including rejecting the appellant's claim that he had not been notified by his then representatives that he could appeal.

20. Ground 2 contends that the judge failed properly to have regard to Dr George's evidence that the IKP existed and that it had been part of Iraqi national and regional elections and had joined in coalition governments with the PUK and KDP when accepting the respondent's conclusion that the appellant's account of his uncle's involvement with the KIP was not credible and the KIP would not be able to locate the appellant elsewhere in Iraq because it was "extremely small".
21. Further, Mr Moriarty submitted that the judge had failed to engage with Dr George's evidence that there was not a sufficiency of protection or that the appellant could not internally relocate within Iraq.
22. Ground 3 contends that the judge failed properly to consider the appellant's risk under Art 15(c) by failing to have regard to his mental health which was a relevant factor that had to be applied in the "sliding scale" assessment following SMO and others (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC).
23. Ground 4 contends that the judge failed to give adequate reasons why the appellant's *sur place* activities were disingenuous and so he could both delete his Facebook account and would not be required to dissemble on his political activity if questioned on return to Iraq applying the principle in HJ (Iran) v SSHD [2010] UKSC 31.

### **The Respondent Submissions**

24. On behalf of the respondent, Mr Bates accepted that Ground 3 was established. The judge had failed properly to consider Article 15(c) and the decision had to be remade, at least, to that extent. He submitted, however, that the remainder of the judge's findings should be preserved as Grounds 1, 2 and 4 were not established.
25. As regards Ground 1, Mr Bates submitted, in essence, that the medical evidence concerning the appellant's mental health was in relation to his current mental health problems and there was no evidence that his mental health problems existed in 2008 and 2010 when he did not challenge the respondent's two adverse decisions. Likewise, Mr Bates submitted there was no evidence that he had been inadequately represented at the time and not told about his appeal rights.
26. As regards Ground 2, Mr Bates submitted that the judge had considered Dr George's report, especially at para 44, and the judge had not simply adopted the respondent's position in her two decisions in 2008 and 2010.
27. As regards Ground 4, Mr Bates submitted that the judge had given adequate reasons at para 57, for concluding that the appellant's *sur place* activities were not genuine based upon an assessment of the nature of those activities at paras 49 - 53. Mr Bates submitted that, in any event, the judge found, at para 54, that it was not established that the appellant's activities, in particular his involvement in various demonstrations in the UK, had come to the attention of the Iraqi authorities or that they would be particularly interested in them.

## **Discussion**

28. As I have said, it was accepted by Mr Bates that the judge's findings and decision in relation to Article 15(c) could not stand as the judge had failed properly to apply the "sliding scale" assessment in SMO and others, in particular having regard to the appellant's mental health problems identified in Dr Hameed's report.
29. I agree with that submission. The judge's reasoning at paras 45 - 46 simply does not engage with the "sliding scale" assessment required by SMO and others.
30. There is, however, a further problem with the judge's application of Article 15(c) which has somewhat broader consequences for the appellant's appeal. It is not clear where the judge contemplates the appellant has to establish an Article 15(c) risk on the basis of his home area. Throughout the decision, the judge refers variously to the risk to the appellant in Kirkuk or in Sulaymaniyah in the IKR; for example in relation to internally relocating "elsewhere in Iraq or Kurdistan ("see para 44"). The appellant's home area is undoubtedly Kirkuk. The evidence is that the appellant only moved temporarily to his aunt's house in Sulaymaniyah in order to avoid, he claimed, a threat from his uncle in Kirkuk.
31. That said, in assessing the ability of the appellant to obtain a replacement CSID or INID, it seems clear that the judge considered whether the appellant could obtain this document "in the Kirkuk Governorate where he claims he was born" (see para 70). If that is the case, it was relevant at the time of the judge's decision (as indeed it is now) to determine whether the CSA Office in Kirkuk only issues INIDs or still issues CSIDs. The evidence then in the relevant CPIN ("Iraq: Internal Relocation, Civil Documentation and Returns" (June 2020)) and now in SMO and KSP (Civil status documentation, article 15) CG Iraq [2022] UKUT 110 (IAC) is that if the local CSA office only issues INIDs then no replacement CSID or INID can be obtained from the Iraqi Embassy in the UK and an INID can only be obtained in Iraq in person by the individual at their home CSA office which they would then need to reach safely in order to obtain the document.
32. In reaching her finding that the appellant could obtain a replacement CSID either in the UK or (through family assistance) in Iraq, the judge failed to consider whether the appellant's home CSA office in Kirkuk continued to issue CSIDs or only INIDs and, to the extent that the appellant's claim would require him to obtain a document in Kirkuk itself, whether he could safely travel there. At the very least, this required a clear and sustainable finding in relation to any Article 15(c) risk in Kirkuk and an assessment of whether the appellant would be at risk on the journey whether from Baghdad or the IKR if returns were possible to the latter.
33. In the result, therefore, neither the judge's finding in relation to Article 15(c) or in relation to any risk arising from the absence of an ID document are sustainable.

34. Turning now to Ground 1, it is perhaps surprising that the judge should focus, as her starting point, upon the respondent's two decisions in 2008 and 2010 when assessing the credibility of the appellant's claim. In doing so, the judge would appear to be reflecting the proper approach to a previous judicial decision when the principles in Devaseelan apply. I am far from persuaded that that is the proper approach to a finding or (more accurately) conclusion made by the respondent in an earlier decision refusing an individual's asylum claim. This did not form part of Ground 1 but it does, in my judgment, form the backdrop to the substance of Ground 1 to which I now turn.
35. Mr Bates is, of course, correct that Dr Hameed's report relates to the appellant's present mental health problems. In that report, Dr Hameed, a consultant psychiatrist states that the appellant currently has symptoms of PTSD and Adjustment Disorder (Mixed Anxiety and Depressive Reaction). There is no direct evidence as appellant's mental health in 2008 or 2010. Indeed, Mr Moriarty accepted that the appellant had not undergone any psychiatric assessment before 2010. Mr Moriarty's submission was, in effect, that if the appellant's psychiatric condition was as a result of his experiences in Iraq then the judge should have considered whether or not this evidence provided some support for a 'long standing' condition which would negate the statement made by the judge in para 42 that the appellant was "presumably fit to give evidence".
36. This point only arises because the judge took as her "starting point" the respondent's two previous adverse decisions and, in some way, gave those conclusions credence because the appellant had not sought to challenge them by appealing. I have considerable reservation as to whether or not that is an appropriate approach to conclusions reached by the respondent in decisions dating back thirteen and eleven years respectively to a time when, at least in the first of those, the appellant was a child. I am persuaded that there is merit in Mr Moriarty's submission which goes to undermine the judge's adverse credibility finding in this appeal. When taken with my view in relation to Ground 2, the combination is, in my judgment, cumulatively significant and material in undermining the judge's adverse credibility finding.
37. I turn then to Ground 2. Here, again, the judge relied upon the adverse credibility conclusions by the respondent and, in particular, her view that the KIP was, at best, an "extremely small" party and would have no ability to locate the appellant elsewhere in Iraq. The respondent reached this view, not least, because there was no objective evidence to confirm the existence of the KIP.
38. That position changed before the judge. Dr George is clear in para 240 of his report that the KIP exists. He describes it as a  
"small Islamicist party formed in 2001 and led by Ali Bapir that maintained a militia of about 1,500 men".
39. Dr George then goes on to state that the party collaborated with the PUK and

“was (and remains) the dominant part in the eastern part of Iraqi Kurdistan.”

40. Dr George states that the party:

“Has participated in conventional politics, taking part in regional and Iraqi national elections, usually in joint lists with other parties, and sometimes joining coalition governments with the PUK and KDP. The party has only limited popular support. In the last Kurdish region parliamentary elections, in 2018, Komali 7 of the 111 seats and 7% of the votes”.

41. In my judgement this evidence potentially contradicted the respondent’s position, set out by the judge in para 26 of her decision, that the party was “extremely small” and would not have the resources to locate the appellant elsewhere in Iraq. At para 44, the judge refers to Dr George’s report but only to state that it does not directly provide a link between the appellant’s uncle and that party to support the appellant’s claim that his uncle was a senior member of the KIP. That, in my judgment, wrongly underplays the relevance of what Dr George said in para 240 of his report.

42. Further, the underplaying of Dr George’s evidence is accentuated in the final sentence of para 44 of the judge’s decision where she says:

“The appellant’s account is simply not credible and even if it were he has the option of seeking either the protection of the authorities or alternatively relocating elsewhere in Iraq or Kurdistan.”

43. Those conclusions do not engage with the opposite view expressed by Dr George in relation to sufficiency of protection (at paras 148 - 152) and in relation to internal relocation (at paras 153 - 168). I do not say that the judge necessarily had to reach different conclusions on these two issues but she had to grapple with Dr George’s evidence both in relation to a central issue of the appellant’s claim, namely that his uncle was involved with the KIP and that was what led to the political dispute with the appellant, and whether the appellant would be able to obtain a sufficiency of protection and internally relocate given the evidence about the KIP. Of course, in relation to those latter two issues, the judge needed to carefully identify both the appellant’s home area and, having done so, where it was being proposed that the appellant should internally relocate.

44. For these reasons, I am satisfied, on the basis of Grounds 1 and 2, that the judge materially erred in law in reaching her adverse credibility finding and in dismissing the appellant’s asylum claim.

45. That then leaves Ground 4 and the challenge to the judge’s finding, made in para 57, that the appellant’s *sur place* activities were disingenuous. He could, therefore be expected to delete his Facebook account and not disclose his disingenuous activities on return (see paras 57 and 58). At paras 57 and 58, the judge gave no reasons why he found that the appellant’s “underlying motives” for participating in demonstrations and posting comments on the Iraqi regime were not due to genuine opposition to any of the authorities in control of Iraq.

46. Mr Bates sought to resist Ground 4 on the basis that the judge's conclusion in paras 57 and 58 had to be read in the light of her findings in relation to the appellant's activities set out at paras 49 - 56. The difficulty with Mr Bates' submission is that the judge considered the appellant's *sur place* activities in the light of her adverse credibility finding that the appellant had not established his account that he had been involved in a political dispute between his uncle (who was a senior member of the KIP) because he (the appellant) was a member of the youth party of the PUK which was not acceptable to his uncle. Assessing, therefore, whether the appellant's political activity in the UK was genuine must, necessarily, have been influenced by the fact that the judge had already found that the appellant had not been involved in any political activity or family dispute in Iraq. That finding, however, cannot stand on the basis of Grounds 1 and 2. It would not be right, in my judgment, to allow the judge's finding that the appellant cannot succeed on the basis of his *sur place* activity because, without having regard to whether or not he had actually been involved in political activity in Iraq, his activity was disingenuous and, without any previous activity, would not be of interest to the Iraqi authorities. It may be that that latter finding would be open to a judge regardless of the genuineness or otherwise of the *sur place* activity. But, I am not persuaded that such a finding would be certain, such that the judge's error in finding that the appellant's *sur place* activity was disingenuous cannot stand. In my judgment, in remaking the decision, a judge must assess afresh the appellant's *sur place* activity, its genuineness and whether that activity was likely to come to the attention of the Iraqi authorities (whether, as relevant, in central Iraq or the IKR) such as to put the appellant at risk.
47. For these reasons, I accept on the basis of Ground 3 that the judge materially erred in-law in reaching her adverse decision in relation to the risk to the appellant based upon his *sur place* activities.

### **Decision**

48. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
49. The decision must be remade in relation to the appellant's asylum and humanitarian protection claims and under Art 3 of the ECHR insofar as the latter concerns any risk to the appellant on return without ID documentation.
50. Neither the grounds, nor Mr Moriarty in his oral submissions, challenged the judge's decision to dismiss the appellant's appeal under Art 8 or under Art 3 in respect of any risk arising from the appellant's mental health. Those findings, and the judge's decision in relation to those issues, are therefore preserved.
51. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal



of this appeal is to remit it to the First-tier Tribunal in order to remake the decision as set out in paras 49 and 50 above. The appeal to be heard by a judge other than Judge Cary.

Signed

**Andrew Grubb**

Judge of the Upper Tribunal  
17 October 2022

