



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02167/2020**

THE IMMIGRATION ACTS

**Heard at Bradford
On the 14 October 2022**

**Decision & Reasons Promulgated
On the 24 October 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

DAK
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O’Ryan instructed by ILC Solicitors.

For the Respondent: Miss Young, a Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** In a decision promulgated on 19 July 2021 a decision of First-tier Tribunal was set aside in relation to both the protection and the EEA appeal and directions given for a further hearing of the appellant’s claims. The appellant has since been granted EU pre-settled status enabling him to remain in the United Kingdom. Following service of a section 104 Nationality, Immigration and Asylum Act 2002 notice the appellant indicated his desire to continue with his asylum claim. The

matter comes back before the Upper Tribunal today for the purposes of assessing the merits of that claim.

The evidence

2. It is not disputed the appellant is a citizen of Iraq from Sulemaniyah in the IKR who arrived in the UK illegally on 5 August 2001.
3. The appellant claimed to be a minor upon arrival in the United Kingdom as a result of which he was granted exceptional leave to remain valid to 10 September 2002. The appellant also claimed he never had a CSID in Iraq since he had been in the UK since 5 August 2001.
4. The appellant's initial submissions were that he would be rendered destitute upon his arrival at Baghdad airport as he would now have no funds in order to relocate his life from the United Kingdom to Iraq, did not have a CSID, would not be able to obtain one, did not know the details of his birth and where it is registered, did not know the page or volume number of any record where any of his details might be found, has no prospects of obtaining the same, could not speak Arabic, has no family or friends in Baghdad that could accommodate him, knows no one in Baghdad, and will not be able to find a sponsor to access a hotel room or rent accommodation. The appellant also claimed he was from a minority community, being Kurdish and Sunni, and that he would not be allowed to travel from Baghdad to Sulaymaniyah in the absence of his CSID.
5. The appellant's further submissions, made pursuant to paragraph 353 of the immigration rules, issued by his solicitors when he was detained at Morton Hall, acknowledged the Secretary of State's assertion that the Iraqi authorities have confirmed on 12 June 2019 that a travel document will be issued to enable the appellant to return to Iraq but disputed this claim and asserted in any event that a laissez-passer would not be enough to enable him to leave Baghdad airport and travel outside Baghdad to return to his home area. The appellant claimed in the same further submissions that he has no family left in Sulamaniyah since his mother passed away a number of years ago and that she was the only in last surviving member in the family as his father passed away in 1986.
6. There has been a very important change in the policy of the Secretary of State in relation to enforced returns to Iraq. At the time the further submissions were made the appellant would have been returned to Baghdad. The issues identified in the country guidance caselaw that existed at that time in relation to documentation required to travel from Baghdad to the IKR are reflected in the further submissions made on the appellant's behalf. The fundamental change is that enforced returns are to any airport within Iraq including to the IKR. It is not made out therefore that the appellant cannot be returned directly to Sulamaniyah, which was confirmed at the hearing is the Secretary of State's (hypothetical) point of return. The previous arguments therefore relating to difficulties in travelling from Baghdad to the appellant's home area are no longer relevant.

7. It was not disputed before me that the appellant's local CSA officers is Sulaymaniyah. The appellant confirms that in his most recent witness statement and that his family area is 'Bakhtiari Taza' which does not issue CSID cards any longer but only INID. I do not dispute that the appellant will be unable to obtain a duplicate CSID as these have now been replaced by the Iraqi INID, a digital identity card which the appellant will be required to return to Iraq and provide his biometrics to obtain.
8. I do not find there is any arguable merit in the claim that the appellant would not be issued with a laissez passer as other than the appellant's disagreement with the Secretary of State's statement the Iraqi authorities have confirmed one will be issued to him on 12 June 2019, there is nothing to show this is not the case. The appellant will be able therefore to be returned directly to his home city of Sulamaniyah. As an Iraqi Kurd it was not made out he will experience any difficulties passing through the airport and into his home area. It is what happens next that engaged most of the discussion and submissions at the hearing before me.
9. The appellant has filed an up-to-date consolidated witness statement dated 3 August 2022 in which he confirmed his identity, nationality, and ethnicity. The appellant claims he last had contact with his family in Iraq eight or nine years ago and claims to have no male members in his family as he has no brothers. At [7 - 8] the appellant writes:
 7. In addition to above, as I have stated to the Home Office in the past too, I have no family members left in Iraq and my last contact with any of the family member was about 8/9 years ago. I am now nearly 38 years old and I have lived more than half of my life in UK and even more so, I have lived most prime years of my life in the United Kingdom. Home Office records show that my dad passed away some 20 years ago and I had no male member in my family since I have no brothers. This is also confirmed by Para 6, A1 (Ref: Respondent's bundle).
 8. There is a reference to my three brothers by the Home Office in their review at p 51-54 however I can confirm that these three brothers are not my immediate family brothers namely blood brothers. These are my dad's brother sons and one of them has passed away due to lorry accident at Dover and I don't know whereabouts of the other two. I had no solicitor at the hearing in 2005 to representing me therefore the inference drawn by the Home Office that these are my brothers is not accurate.
10. At [15] the appellant claims he last spoke to his mother eight or nine years ago as a result of enquiries through friends in the UK who travel to Iraq and claims his mother is not alive. The appellant also claims so far as any uncles or aunt in Iraq are concerned, that he is not aware of the same and neither does he have any contact with them referring repeatedly to the fact he has spent over 22 years in the United Kingdom.
11. The appellant in his latest witness statement claims that he last spoke to his mother eight or nine years ago and he has family in Iraq whom he claims not to have contact with which arguably contradicts the

claim in the further submissions made by his solicitors, on his instructions, that he has no family in Iraq. The appellant was asked about family in cross-examination and refer to a sister being married. The appellants evidence regarding family in Iraq has been vague, inconsistent and contradictory, a criticism that has been level by other judges at the appellant in relation to the weight that can be put on his evidence. I find his claim to have no contact with his family is not persuasive. The fact he has been in the UK for some time may prohibit face to face contact, but other forms of communication are available.

12. There have been a number of appeals in relation to the appellant which formed the starting point for considering the merits of the claim as per the Devaseelan principles.

13. The appellant entered the United Kingdom in 2001, as noted above, claimed asylum which was refused, although he was granted exceptional leave until 21 August 2002 on account of his age. The appellant's appeal against the refusal which was heard by Mr G J Davies, an Adjudicator, who in a determination dated 2 October 2002 rejected the appellant's claim for international protection as lacking credibility and who found at [13 - 14]:

13. In light of the above analysis, I make the following findings of fact:

(a) I do not accept that the appellant was recruited into the PUK in Sulamaniyah;

(b) I do not accept that he was trained by the PUK and sent to Diyabakir and there escaped from them;

(c) I do not accept that the photograph which the appellant claims he figures in has anything to do with the PUK.

14. Having made these findings of fact I must now consider whether the appellant has a well-founded fear of persecution in the event of return to the KAA in Iraq. The appellant is of Kurdish ethnicity. There has been no issue about that. Any suggested return would be to the Kurdish Autonomous Area as and when that is practically possible. I note the letters in the respondent's bundle stating that avenues of return to the Autonomous Area of Iraq are being investigated. Those letters are dated March and June 2001 and there is no better information as to how any return to the KAA would be effected. What are the risk factors for this appellant, given that I have rejected his factual basis of claim, if returned to the KAA? In my view there are none. He has his mother and uncle still living in Sulamaniyah. There is no suggestion that they have been in any way ill treated as a result of this appellant's absence. He admits that they had a wealthy way of life sufficient to enable him not to work. He has no prior detentions or problems in his home town of Sulamaniyah. He has no political affiliations that might cause problems. He would be living in an area controlled by the PUK and thus not be at risk because of his ethnicity.

14. It is correct to say that in the determination parts of the appellant's account were criticised as being "vague", "not credible" and "wholly implausible".

15. It is noted the appellant made his second claim for asylum on 28 December 2002 using the name of MJK, not DAK, claiming to have

been born on 20 April 1982, in which he failed to declare his previous application, as a result of which he was arrested on 12 January 2003 on suspicion of seeking leave to remain by deception for which he was charged and later convicted at the Ipswich Crown Court later that month and sentenced to 9 months in a Young Offenders Institute. The appellant was subsequently convicted of breaching the Young Offender Supervision order on 6 June 2003 which had been imposed following his release from detention.

- 16.** The appellant's challenge to the refusal of his asylum claim was heard by Immigration Judge Hemingway is sitting at Stoke on 6 May 2005 who records the appellant as now using the same name as that before Mr Adjudicator Davies. In a determination promulgated on 17 May 2005 Judge Hemingway found the appellant in his oral evidence to be internally inconsistent about what he feared [50] in relation to matters Judge Hemingway thought he would have been consistent about. At [52] Judge Hemingway wrote "*I have found myself able to reach a very clear conclusion that this Appellant is not a credible witness*".
- 17.** Judge Hemingway sets out his findings of fact [53] in the following terms:
53. a) I find the Appellant is a national of Kurdish ethnicity.
 b) I find the appellant is from Suleymania.
 c) I find the Appellant's brother did not kill an individual in 1998 as the Appellant claims or at all.
 d) I find the Appellant was never a member of the PUK.
 e) I find the Appellant was never sent to fight for the PUK in Turkey
 f) I find that the Appellant and his family are not of adverse interest to a family in Iraq is claimed or at all.
 g) I find the Appellant is not of adverse interest to the PUK or the KDP.
- 18.** Although the findings, adverse and positive, reflect the trend running through earlier decisions it is important to note that there was no asylum appeal before Judge Hemingway as the appeal simply related to an application for further leave to remain.
- 19.** The decision of the First-tier Tribunal promulgated on 12 January 2021, although set aside by the Upper Tribunal, still stands as a record of the evidence given, in which the appellant mentioned to the judge how he would make prearranged telephone contact with his mother and sister through a call centre in Iraq.
- 20.** There is therefore reference in the evidence throughout the history of the appellant's proceedings to his father being killed, which is not challenge before me, the appellant claiming his mother died as he had been told this through friends who visited the IKR although there was insufficient evidence to support such a claim before me, his claiming in further submissions to have no family in Iraq whereas it appears he has a sister who he now claims is married but with whom he has no contact although there is insufficient to corroborate such claim, with there having been reference in earlier proceedings to a brother which was previously accepted by another First-tier Tribunal judge but which

the appellant denies, and clear existence of a paternal uncle who the appellant had claimed before First-tier Tribunal Judge Moxon to have been a father figure to the appellant after his own father died, and reference to other male family members who must be cousins. I find in accordance with the Devaseelan principles, considering any further evidence and the issue of fairness, that the appellant's claim not to have such family members in his home area lacks credibility and that such family members do exist in Sulamaniyah and will be able to assist the appellant on return. A number of judges noted the willingness of the appellant to lie in an attempt to secure his aim of been permitted to remain in the United Kingdom, and to have made claims which have been shown to lack credibility. His conviction of false representations to make gain for himself is further evidence of the appellant's willingness to resort to dishonesty in relation to immigration matters.

- 21.** The appellant's claim that those referred to as brothers were not his blood brothers does appear to be a claim which contradicts the evidence recorded by the judge in the determination promulgated on 17 May 2005 where the appellant claimed in his oral and written evidence that one of his brothers had been killed and two of his brothers were missing which clearly indicated they were blood brothers. I find the appellant's evidence at this, as on all other occasions, lacks credibility.
- 22.** Mr O'Ryan's submissions were predicated on the basis that the appellant will be returned to Sulamaniyah without support, by reference to the current country guidance case of SMO [2022] UKUT 00110. It was argued that having been out of Iraq for such a long period of time the appellant will have no associations or contact with anybody within his home area, no support or accommodation or ability to find employment, and will end up destitute, but I do not accept the appellant has made out, even to the lower standard, that he does not have family in Sulamaniyah with whom he is not in contact with and who will be able to assist him in re-establishing himself in his home city if he was to be returned. The submission by Mr O'Ryan that it was appropriate to depart from the adverse findings made by Judge Hemingway and in the earlier determinations has not been made out. I find there is clear evidence of family members even if the appellant seeks to deny this or distance himself from earlier findings.
- 23.** The tradition of hospitality within the Kurdish population means that it is highly unlikely that the appellant will be denied assistance by family members. There was nothing to show that there is anything specific to the appellant that may result in such an outcome.
- 24.** Whilst it is accepted the appellant has been out of Iraq for a number of years it was not made out that he will not be able to secure employment with family support if necessary or to re-establish himself, and if the family have retain the wealth that enabled him not to work previously, as recorded in the early determination, that there will still be economic resources to enable him to rebuild his life.

25. As noted this is effectively a status exercise as it is not made out that the appellant is going to be returned in any event as he has been granted pre-settled status.
26. Whilst Mr O’Ryan submitted that although Sulamaniyah has not experienced violence as other areas have in Iraq the appellant’s uncle, mother, and sister, may no longer be living in that city, I find such a suggestion speculative and no more. There is no evidence to support a claim to this effect. A strong theme running through the determinations relating to the appellant, based upon the evidence, is that the appellant’s claims that they have left or died or that he has no contact with them, or that he had to flee to the UK as a result of risk of present or further persecution, is impacted by the fact he has been found to clearly lack credibility in some of the strongest adverse findings that judges below would express.
27. Having considered all the evidence, both that directly files for the purpose of this hearing and historical information, I find the appellant has failed to discharge the burden of proof on him to establish that he will not have appropriate support in Iraq to assist him in re-establishing himself as he has male family members which will enable him to be able to establish his identity with the authorities within his local CSA office which will permit him to provide his biometric details and obtain an INID card with which he can live a normal life within his home area.
28. I find the appellant has failed to establish an entitlement to a grant of international protection or for leave to remain in the United Kingdom on any other basis relating to his protection claim. Article 8 ECHR does not arise at the appellant is not going to be removed from the United Kingdom as a result of his grant of pre-settled status meaning this decision does not give rise to any interference with a protected right.

Decision

29. I dismiss the appeal.

Anonymity.

30. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. 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.

Signed.....
Upper Tribunal Judge Hanson

Dated 17 October 2022