



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

**Case No: UI-2021-001390**  
**First-tier Tribunal No:**  
**PA/50416/2021**  
**IA/01270/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 05 December 2023**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**ARSH ALI HAMA**  
(no anonymity order)

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr S Winter, Advocate, instructed by Latta & Co, Solicitors  
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

**Heard at Edinburgh on 22 November 2023**

**DECISION AND REASONS**

1. FtT Judge McTaggart dismissed the appellant's appeal by a decision promulgated on 12 November 2021.
2. The appellant sought permission to appeal, on these grounds: ...
  - (i) In paragraphs 55-61 the Judge considers the Appellant's position in respect of contact with his family in Iraq. Whilst it is acknowledged the Judge is not required to set out each piece of evidence and why it is accepted or rejected, it is submitted that the Judge has failed to consider key evidence in relation to this matter or provide reasons for why he has rejected it. Reference is made to the Appellant's partner's statement at paragraph 4, page 38 of the Hearing Bundle and her position that in their more than three years together, she has never seen the Appellant speaking with his family. At paragraph 79 the Judge finds that the Appellant's relationship with his partner is a genuine and subsisting one and it is therefore submitted that given the duration of

the relationship, the Appellant's partner's evidence in relation to the Appellant's lack of contact with his family is of significance.

- (ii) At paragraphs 65-67 the Judge considers the risk to the Appellant as a member of minority group who are not in *de facto* control of the area he is from, specifically as a Sunni Kurd from Kirkuk where the PMF are in control. Whilst it initially appears at paragraph 65 that the Judge has considered the background evidence in relation to the targeting of Sunnis by Shia militia in the region, the Judge then goes on to consider that there is no substantive ongoing ISIS activity shown on the evidence before him. It is therefore submitted that the Judge has failed to make clear findings in relation to whether the Appellant, as a member of a minority group who are not in *de facto* control of the area, would be at risk on return to Kirkuk from those in control, the PMF. Reference is made to the Appeal Skeleton Argument within the Hearing Bundle which was relied upon as part of the submissions in respect of same.

3. On 31 December 2021, FtT Judge Haria granted permission:

The grounds assert that the Judge erred in:

a. failing to take into the Appellant's partner's statement account which is material evidence when considering the position in respect of contact with his family in Iraq [55-61], and

b. failing to make clear findings in relation to whether the Appellant, as a member of a minority group who are not in *de facto* control of the area, would be at risk on return to Kirkuk from the PMF [65-67].

I find ground (b) is arguable. While there is less merit in the other ground, I do not consider it appropriate to limit the grant of permission.

4. There has been unfortunate administrative delay in listing the appeal to be heard in the UT.
5. In a rule 24 response to the grant of permission, the SSHD submits that the FtT was entitled to find that the evidence of the appellant's partner did not tip the balance in his favour, and would be of limited weight, since they did not live together. Mr Diwyncz had nothing to add on that point.
6. The rule 24 response does not deal with ground (ii). The PMF is an Arab Shia militia, under Iranian influence. Mr Diwyncz accepted that the decision fails to resolve the issue raised by the appellant of how his return might be affected by that organisation's *de facto* control of Kirkuk, which was acknowledged at the date of the hearing. He suggested that the case should be retained in the UT to resolve that point on up to date background evidence, applied to such facts as the appellant has established. His general understanding was that the PMF continue to control at least parts of Kirkuk, and the case might turn on a detailed consideration, and on whether the appellant has any need to return there.
7. Mr Winter submitted that the case was apt to be remitted to the FtT, because error was also shown on ground (i), and so further individual findings were needed which might impact on where the appellant could be expected to go in Iraq.

8. The decision shows that the appellant's partner gave evidence and was cross-examined, and that in submissions the SSHD's representative asked for a finding that the relationship was not genuine. The FtT found in the appellant's favour on that matter. That did not of course require the appellant's position about no family, no contact, and difficulties on return, to be accepted. The grounds acknowledge that every aspect of evidence does not require to be explicitly dealt with. Whether an omission is an error turns on the facts of each case. I consider that it would have been preferable to say how far her evidence went as to family, and why.
9. In that light, the decision of the FtT is **set aside**, and the case is **remitted** for a fresh hearing before another Judge.
10. The starting point will be that the appellant established that he was a Sunni Kurd from Kirkuk and that his relationship with his partner in the UK was genuine.
11. It was agreed that there is no need for anonymity.

**Hugh Macleman**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
22 November 2023