



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

Case No: UI-2021-001950

First-tier Tribunal No: PA/53087/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 22 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**HHM**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr T Hussain instructed by Halliday Reeves Solicitors  
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 27 June 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.**

**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 (and/or other person). Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision First-tier Tribunal Judge Mack ('the Judge') promulgated following a hearing at Manchester IAC on 23 July 2021, in which the Judge dismissed the appellant's appeal on all grounds.
2. The appellant is citizen of Iraq born in Tuz Khurmatu on 2 March 1989. He claims to have entered the UK on 4 January 2016. He claimed asylum on 5 January 2016

which was refused on 24 February 2016 and his appeal against that refusal dismissed by another judge of the First-tier Tribunal on 9 January 2017. The appellant was not removed and on 4 October 2020 lodged further submissions which were refused on 9 November 2020. It is the appeal against that decision which came before the Judge.

3. The Judge records the appellant's case as a claim he is at risk of being targeted as a result of his Kurdish ethnicity alone.
4. The Judge sets out findings of fact from [17] correctly directing himself that the starting point, as per the Devaseelan principles, is the previous determination promulgated on 9 January 2017. In that decision the judge did not find the appellant to be credible. The appellant's earlier claim was a fear that if returned to Iraq he will be harmed by ISIS as he was suspected of reporting some of their members to the authorities and also by the Iraqi authorities as he will be suspected of being an ISIS sympathiser. At [21] of the current determination the Judge records that the appellant in his further submissions provided 'fresh evidence' by way of a police notification letter stating he is wanted for suspected involvement with ISIS. The Judge notes that even a brief perusal of the first and further submissions show "a marked and obvious similarity to the narrative which he asserted at his last appeal".
5. At [25], having considered the evidence, the Judge writes:
  25. Considering the evidence of the appellant I find that he is as implausible today as he was at his 2017 appeal. Once I have rejected the genuine nature of this "fresh" evidence, the appellant is left, as he was in 2017, that it is not believed as to have any real or perceived relationship with ISIS or the Government. Of note at the hearing before me when the appellant was asked why he left Iraqi said, "I had a problem". Ask what was the problem, he said, "Daesh killed my brother". He made no mention of any threats to him by anyone. I reject imputed political opinion. It was only when asked if he could relocate in Iraqi said "no my life is in danger" when asked by whom he said " Hashi Al Shaabi. He was asked why the authorities wanted him and said, "everything controlled by Hashi al shaabi in Iraqi and they don't like Kurdish people especially Sunni". Saying he cannot go back because of his ethnicity is not the same reason as saying he cannot go back because he is wanted, and I found he was simply proffering anything he could think of to suit his chosen narrative of the moment.
6. The Judge went on to consider the issue of documentation. The appellant claimed that he was not in contact with his family in Iraqi, but it was found in the earlier decision that such a claim was not made out. At [26] the Judge rejects the appellant's account of lack of family contact, does not accept he is not in contact with his family and friends in Iraq, and finds he can contact them for assistance on return.
7. The Judge goes on to consider the feasibility of return by reference to relevant country guidance. The Judge refers to SMO [2019] UKUT 400 and the guidance provided therein. At [47] the Judge writes:
  47. I have clearly found that the appellant has family support, is not wanted by the authorities or anyone else he has no political profile, his able bodies (sic) and able to work, he has shown himself resourceful, is able to obtain his CSID and is able to access support from his family. As he will have the relevant documentation there is no Article 3 risk to him upon return.
8. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on the basis it was arguable that the Judge erred in making no findings as to (a) the whereabouts of the appellant's family members

and (b) his CSID card and (c) the basis on which he could gain admission to the IKR given that he is from Tuz Khurmatu

### Discussion and analysis

9. The grounds seeking permission to appeal refer to the Judge's finding at [32] that returning the appellant to Tuz Khurmatu is not an issue. The Judge in that paragraph states that risk in Tuz Khurmatu is only in play if the appellant is to be returned to that place but that the tribunal was not considering this issue. Although in the Refusal letter there it appears to be suggested the appellant could return to this area there is no cross-appeal by the Secretary of State against the Judges approach.
10. The Judge went on to consider the issue of relocation to the IKR or Baghdad. Although the grounds seeking permission to appeal claim the latter had not been a submission by the parties nowhere is it made out the Judge was not able to consider all available options.
11. The grounds assert the Judge erred in law in failing to make findings in relation to where the appellant's family are and that in finding he could rely on family support on relocation to Baghdad and/or the IKR, the Judge erred.
12. Reference the sliding scale and the risk of indiscriminate violence under Article 15 (c) does not establish legal error as the Judge does not find the appellant will be returned to an area where there is a risk of indiscriminate violence.
13. I do not find it has been made out the Judge erred in law in not making a specific finding in relation to the whereabouts of the appellant's family as the finding is that he remains in contact with family members and therefore he presumably knows where they are.
14. A judge can only make findings based upon the evidence available. As the appellant denied having contact with family members, which was proved to be a claim lacking credibility, he did not provide detailed evidence in relation to the situation of his family members. Had he done so the Judge could have made appropriate findings.
15. In terms of support, it is not made out that an individual's family would need to be in the same location or that the individual needed to live with the family to receive appropriate adequate support.
16. The Judge also records at [38] that the appellant was being deliberately vague in relation to his knowledge of what a CSID card is which also impacted upon his credibility.
17. Whilst the Judge claims the appellant could be returned to Baghdad the appellant is an Iraqi Kurd and it is Secretary of State's practice for all enforce returns to be to any airport within Iraq and to return Iraqi Kurds to the IKR. Lack of transparency in the appellant's evidence and deliberate attempts to mislead the Judge meant he had not established that it is unreasonable for him to internally relocate if he cannot return to his home area.
18. The submission by Mr Hussain that insufficient findings had been made and it was not known how the appellant will survive in the IKR has to be considered in the context of the appellant not being truthful about the circumstances.
19. Mr Tan's submissions noted that the appellant provided a copy of his CSID in his previous appeal which indicated he had access to the original. It was submitted that as either the appellant has his CSIS, or his family have the same, that he can have sent to him, it means he is properly documented.
20. Having considered the issues raised in the application for permission to appeal, grant of permission to appeal, submissions and evidence, I do not find it made

out the Judge has erred in law in a manner material to the decision to dismiss the appeal, especially in light of the difficulties faced by the Judge in the appellant failing to be honest about relevant matters. The appellant has been found to lack credibility by two judges of the First-tier Tribunal.

21. I find the Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made. It is not made out those findings are outside the range of those reasonably available to the Judge on the evidence.

### **Notice of Decision**

22. No error of law material to the decision of the First-tier Tribunal has been made out. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**7 August 2023**