



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

Case No: UI-2022-005019

First-tier Tribunal No: PA/56042/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 12 September 2023**

Before

UPPER TRIBUNAL JUDGE REEDS

**Between**

**SML**  
**(Anonymity direction made)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr Wood, Solicitor advocate instructed on behalf of the appellant.

For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at IAC on 17 August 2023

**DECISION AND REASONS**

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal ( "the FtT") who, in a determination promulgated on the 2 August 2022 dismissed the appeal of the appellant on protection, humanitarian protection and human rights grounds.
2. The FtT did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. Failure to comply with this order could amount to a contempt of court.

The background:

4. The factual background to the appeal is set out in the decision of the FtTJ, the decision letter and the papers in the parties' respective bundles. The appellant is a national of Iraq of Kurdish ethnicity from the IKR.
5. The appellant arrived in the UK on 14 November 2007 and claimed asylum the same day using the name " M G Z". He applied for assisted voluntary return on 4 July 2008, which was withdrawn and on 1 October 2008 applied again for an assisted voluntary return and on 21<sup>st</sup> of January 2009 he left the UK. His asylum claim was withdrawn on 23 January 2009.
6. He returned to the UK on 8 August 2016 and claimed asylum the same day, which was refused on 13 September 2017. His wife and child were dependents on his claim.
7. The factual basis of his claim was that he was at risk in Iraq because of a blood feud and an honour-based feud in Iraq. He claimed that his father was killed in 1992 had affiliations to Qasim Agha, a Kurdish collaborator, who was involved in the killing of Kurds in the Anfal campaign. His claim was that his father and grandfather held positions in that man's battalion, and they held close links with him. This had caused the appellant's problems in Iraq and in May 2009 the relatives of the fighters who had been killed came to his shop and identified him as his father's son. The 2<sup>nd</sup> strand of his claim was that he had married his wife against his wife's family's wishes as they did not consider him suitable because of his family background. They had eloped in 2009. Her family had links to both the KDP and the PUK. In 2014 the area was taken over by ISIS and in 2016 he was found by wife's brother was beaten with a rifle causing injury to his head and loss of teeth. He went to medical clinic for treatment and arranged to leave Iraq the next day.
8. The appellant's claim was refused, and he was unsuccessful in an appeal promulgated on 2 November 2017 by Immigration Judge Bell. He became appeal rights exhausted on 17 November 2017.
9. The appellant submitted further submissions on 23<sup>rd</sup> of July 2021 which were refused on 22 November 2021. The appellant appealed the decision, and the appeal came before the FtTJ on 18 July 2022. In a decision promulgated on 31 July 2022, the FtTJ dismissed the appeal on asylum, humanitarian protection and human rights grounds.

The appeal before the Upper Tribunal:

10. Permission to appeal was sought on behalf of the appellant which was refused by FtTJ Hatton but on renewal was granted by UTJ Jackson on 12 December 2022.

11. At the hearing, Mr Wood of Counsel appeared on behalf of the appellant and Mr Diwnycz, Senior Presenting Officer appeared on behalf of the respondent.
12. Mr Wood referred to the email letter sent to the tribunal requesting further evidence to be admitted under Rule 15 (2A) in the light of the matters set out in the grant of permission which referred to the material being placed in a Rule 15(2A) application. The grounds referred to maps showing the journey from Sulaymaniyah airport to the appellant's home area and from Erbil airport to the appellant's home area and also further country information and copy of the respondent's CPIN dated July 2022. Mr Diwnycz had also provided a document by way of email which was a map to show the location of the appellant's home area in the IKR. Mr Diwnycz did not seek to argue that the material should not be admitted.
13. At the hearing there was agreement between the parties that the decision of the FtTJ involved the making of an error on a point of law. Mr Diwnycz confirmed that there was a Rule 24 response on behalf of the respondent setting out the agreed position.

“The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the appellant will indeed be at risk upon return. In particular, Judge Jackson's permission grant, as reproduced here :- “However, the issue of travel to a CSA even if returned to the IKR is a relevant consideration if the Appellants do not return with their CSID documents, which has arguably not been considered adequately by the Tribunal” seems to be particularly apposite, and it is the SofS's submission that the FTT would benefit from fresh, fulsome evidence on the point.

The SofS concedes solely the putative error on the issue of the Italian authorities holding the appellant's documentation. All other points raised are reserved to the discretion of the following Presenting Officers.”
14. It was not entirely clear what had been conceded by the respondent in the Rule 24 response but Mr Diwnycz, who was the author of the document, confirmed that grounds 1 and 2 which related to the issue of the documents held by the Italian authorities, was conceded. He also confirmed that ground 3 which related to the issue of return in the context of the INID being rolled out in the IKR was also made out.
15. As to ground 4 which concerned the issue of the expert report, Mr Diwnycz did not have a copy of the expert report. A copy was provided to him, and time given to read and respond to ground 4. When the appeal resumed, Mr Diwnycz indicated he did not make any concession on Ground 4.
16. Mr Wood relied upon the written grounds and the material provided. Dealing with ground 4, which remained in issue between the parties, he submitted that the FtTJ had materially erred in law by failing to take account of a material evidence when assessing the appellant's account of having links to Qasim Agha/Anfal campaign.
17. At [20] of her decision the FtTJ provided her reasons for finding that the appellant did not and does not have any links to Qasim Agha or the Anfal campaign. Mr Wood submitted that when reaching her decision the FtTJ had failed to demonstrate that she had considered the country expert report of Dr

Giustozzi when reaching her conclusion on the appellant's links to Qasim Agha and the Anfal campaign, relying on paragraph 36 of the expert report. He submitted that the expert report did not emanate from the appellant but was a country expert report and therefore did not require to be treated with circumspection applying the decision in Devaseelan. It was also evidence that was submitted as part of his fresh claim. Mr Wood further submitted that failure to consider the report in the context of his factual claim was a material error of law.

18. He submitted that the failure of the FtTJ to consider Dr Giustozzi's opinion at [19] and [20] of her decision must vitiate her conclusions on the appellant's account. The appellant's account involved an adverse attitude towards him from his wife's family because of his family's association with Qasim Agha and the Anfal campaign; this in turn led to them eloping without family approval. The elopement gives rise to an adverse interest from the appellant's wife's family.
19. The material error of law infected the FtTJ's subsequent consideration of the appellant's case. This would include risk on return from his wife's family, also the likelihood of the Appellant finding employment if he and his family are associated with Qasim Agha and the Anfal campaign.
20. Mr Diwnycz submitted that in relation to the matters raised in ground 4 that the FtTJ had dealt with the issue of the report well enough and whilst the judge did not state what weight she gave to the report, it was obvious that some parts were given weight but not other parts. Thus whilst he accepted there were errors of law in relation grounds 1-3, dealing with documentation and return, he did not accept that there was an error based on the asserted failure to consider the expert report.
21. By way of reply Mr Wood submitted that the issue with the FtTJ's decision was in paragraph 20 where the FtTJ stated his family had links with Qasim Agha and ignored the material in the expert report that related to this issue. He submitted that a party was entitled to understand why their case was being dismissed and there is silence in relation to material evidence, in this case the expert report and that this was a material error of law.

#### Discussion:

22. As set out above, it is conceded on behalf of the respondent that grounds 1 to 3 are made out. Those grounds deal with the issue of redocumentation and return. Given that the parties agree, it is only necessary to set out the reasoning briefly in this respect.
23. Grounds 1 and 2 relate to the assessment of the issue of return and the documents necessary for that take place. At paragraph 28 the FtTJ referred to the appellant and his family members approaching the Italian authorities to ask for the return of the CSID's and passports. As the parties accept, the return of the appellant and his family's documentation from the Italian authorities was not a point raised by the respondent and was not raised at the hearing given the absence of a presenting officer. It therefore agreed that it was procedurally unfair to take that issue against the appellant when it was not part of the respondent's case. Ground 2 also relates that issue and that at paragraph 28 it is accepted that the FtTJ engaged in speculation as to the return of those documents and that there was no evidence before the tribunal that the

authorities initially would entertain a request for those documents. There is a lack of clarity as to the documents that were held by the authorities. Reference had been made in the earlier decision that the authorities kept the passports in Italy and given them copies (paragraph 25 of IJ Bell's decision). A passport is different to a CSID and is not relevant to internal travel to be re-documented. Nonetheless it is conceded by the respondent that the issue of obtaining the documents from the Italian authorities had not been raised nor does it appear to have been put to the appellant at the hearing given that there was no presenting officer in attendance. In the circumstances, it was, as the respondent accepts unfair to take that point as one adverse to the appellant without giving an opportunity for a response. Thus the FtTJ's s adverse conclusion on the availability of the appellant's and his family's CSIDs materially impacted upon the assessment of risk on return.

24. As to ground 3, the respondent also concedes that the FtTJ's analysis of the issue of redocumentation failed to take account of the position relating to the IKR and travel to the CSA office. The assessment at paragraph 28 that the appellant had his father's ID card and therefore could obtain a new CSID, did not take account of the material in the CG decision that a CSID could not be obtained from the UK if in the appellant's home area and CSA office the INID had been rolled out. At paragraph 60 of SMO (2) the Upper Tribunal considered that CSID's continued to be available at the Iraqi embassy but only for individuals who are registered at a CSA office which has not been transferred to the digital INID system. However if the individual is registered at a place where the INID has been rolled out, they would not be able to apply for a CSID in Iraq or in the UK. As set out in the July 2022 CPIN the INID had been rolled out in the IKR and there was no dispute that the appellant's home area is in the IKR). As set out in the headnote [12] of SMO and KSP (Civil status documentation, article 15) (CG) Iraq [2022] UKUT 110 (IAC) (16 March 2022): "In order to obtain an INID, an individual must personally attend the Civil Status Affairs ("CSA") office at which they are registered to enrol their biometrics, including fingerprints and iris scans..."
25. The parties accept that the assessment made at paragraph 29 that the appellant could be met by family members at the airport and attend with him at the CSA office did not take account of how those factors could achieve redocumentation. The grounds provide copies of maps showing the likely location of the appellant's home CSA. In further evidence provided there is material available to demonstrate that relation to paragraph 2.6.9 of the CPIN that the requirement to travel internally to a CSA office may create risk to the appellant and his family members. In this context there are likely to be check points whether travelling from Sulaymaniyah or Erbil airports and that this was a material issue given that the IKR had moved to the INID system. These were not available at the hearing, but Mr Diwnycz accepted that they were likely to be check points based on the material available but the extent to which they operated was not clear and required assessment.
26. Dealing with ground 4, it is submitted that Judge has materially erred in law by failing to take account of a material evidence when assessing the appellant's account of having links to Qasim Agha/Anfal campaign. Having heard the submissions of the parties and the written grounds, I am satisfied the ground 4 is made out. Mr Wood points to paragraph 20 of the FtTJ's decision that he had not evidenced even to the lower standard that his family did or does have links to Qasim Agha. Whilst reasoning was provided by reference to the earlier

findings of fact, when reaching that decision the FtTJ did not take into account the expert report. Whilst Mr Diwnycz submits that the FtTJ referred to the report in other parts of the decision, that was in the context of the blood feud claim relating to his wife's family. In his report the country expert provided a history of Qasim Agha and the evidence of what had happened to former Jash /Chete members and being executed by the Kurdish peshmerga ( see paragraphs 4 - 7) and provided a timeline referring to the appellant's account of his family members. At paragraph 36 the country expert concluded that the appellant's account was plausible by reference to the earlier material and by reference to the appellant having originated from the hometown of Qasim Agha and that the Jash/Chete were recruited amongst the local people and simply being from the town implied a high probability that someone from the appellant's family would have been in Qasim Agha's unit. Whilst the FtTJ did consider the country expert report in relation to the issue of blood feuds with the appellant's wife's family, there was no assessment of this part of the report which dealt with the factual claim relating to the familiar links with Qasim Agha and the Anfal campaign.

27. There is no dispute that the previous FtTJ made a number of credibility findings that were adverse to the appellant and as such would be the starting point of the FtTJ's assessment applying the well-established reasoning in Devaseelan. Whilst there can be no error of law in relying upon the earlier findings of fact as a starting point, there had been new material and further evidence which had been provided in support of the appellant's factual claim in respect of his claimed links to Qasim Agha and the Anfal campaign. Whilst the FtTJ addressed the (now) translated ID document and death certificate, and the new evidence of photographs and videos, the expert country report of Dr Giustozzi which also dealt with this factual issue was not taken into account in assessing risk on return based on his families links with Qasim Agha. It was open to the FtTJ to treat with circumspection relevant facts not brought to the previous tribunal's attention as set out at paragraph 19 but as Mr Wood submits, the country expert report was not evidence that was available to the previous FtTJ and also was not evidence that could properly be viewed as emanating from the appellant but was from a country expert. This evidence is also formed part of the fresh claim and was therefore material evidence to take into account when addressing the issue of risk and return based on that factual premise.
28. As the appellant's account was that his wife's family were against him because of his family's association with Qasim Agha and their elopement gave rise to an adverse interest by her family, I accept the submission that the error of law is material as the assessment which was incomplete would likely infect the subsequent consideration of the appellant's claim and the risk from his wife's family.
29. In summary, it is conceded on behalf of the respondent that the FtTJ erred in law as set out in grounds 1 to 3. For the reasons set out above, ground 4 has also been established.
30. Consequently the appellant has been established that the FtTJ's decision involved the making of an error on a point of law and shall be set aside. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

31. I have considered the submissions of the advocates. Mr Wood has stated that in respect of the issues of documentation and return, that an expert report may be necessary and as relevant to the contents of the CPIN. Mr Diwnycz was in agreement with this. It is therefore not possible to remake the decision at the hearing. As regards ground 4, the issue of risk on return on the factual basis as claimed requires further fact finding and assessment of the evidence.

32. I have considered the issues in the light of the practice statement recited and the recent decision of the Court of Appeal in AEB v SSHD[2022] EWCA Civ 1512 and the decision in Begum [2023] UKUT 46(IAC. ) As to the remaking of the decision and having heard from the advocates I am satisfied that in light of the error of law identified and the fact findings which will be necessary, the appeal falls within paragraphs 7.2 (a) and (b) of the practice statement. I therefore remit the appeal to the First-tier Tribunal for that hearing to take place. The FtT will be best placed to issue any directions and will identify the relevant issues. It will be for the tribunal to undertake a holistic assessment of credibility and risk in the light of the evidence as a whole.

### **Notice of Decision**

33. The decision of the FtT involved the making of a material error of law and is set aside and is remitted to the FtT for a rehearing.

Upper Tribunal Judge Reeds

Upper Tribunal Judge Reeds

22 August 2023