



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

Case No: UI-2022-006077

First-tier Tribunal No: PA/54925/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 24 August 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**DAM**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. M. Mohzam for CB Solicitors  
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 8 August 2023**

**Order Regarding Anonymity**

**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.**

**DECISION AND REASONS**

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Juss, (the “Judge”), dated 18 July 2022, in which he dismissed the Appellant’s appeal against the Respondent’s decision to refuse a grant of asylum. The Appellant is an Iraqi national.
2. Permission to appeal was granted by First-tier Tribunal Judge Fisher on 20 December 2022 as follows:

“The grounds seeking permission firstly assert that the Judge erred in referring to the Iranian authorities in his decision, when the Appellant was an Iraqi national. It is also said that he failed to “grasp” the Appellant’s case. Finally, the grounds are critical of the Judge’s treatment of the issue of return documentation.

It has to be acknowledged that, in paragraphs 6 and 7 of his decision, the Judge has made references to Iran, rather than Iraq. However, I do not consider that to be necessarily fatal to his overall decision, as he makes it clear in his reasoning, principally at paragraphs 18 to 20, that he was assessing the risk on return to Iraq. The assertion that he failed to “grasp” the case is nothing more than a disagreement with the Judge’s findings. However, the issue of documentation is considered in paragraphs 22 and 23. The Judge makes no reference to the 2022 decision in **SMO**. It is arguable that he fails to analyse whether the Appellant already has a CSID or INID, or access to it, or whether he would be able to obtain replacement documentation in light of the roll-out of the biometric INID card.

Ground 3 is, therefore, certainly arguable. In order not to bind the Upper Tribunal, I have decided not to restrict this grant. All are arguable in the round. Accordingly, permission to appeal is granted.”

### **The hearing**

3. At the outset of the hearing, Mr. Lawson stated that the Respondent agreed that the decision involved the making of a material error of law in relation to Ground 3, as the Judge had not considered the case of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC). I indicated that I was in agreement with this.
4. The grant of permission was not restricted. I indicated that I did not consider that Ground 1 was made out as being a material error, but that I would hear further submissions on Ground 2. Mr. Lawson made brief submissions. Mr. Mohzam relied on the grounds of appeal. I reserved my decision.

### **Error of law**

5. In relation to Ground 1, while the Judge has made reference to Iran rather than Iraq at [6] and [7], I find that this is not a material error given the references throughout the rest of the decision to Iraq.
6. It has been accepted that Ground 3 has been made out, given that the Judge did not consider the most up to date Country Guidance when considering the Appellant’s documentation and feasibility of return. At [22] the Judge refers to “SMO [2019] UKUT 400”. The decision was dated 18 July 2022. SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) was promulgated on 16 March 2022, some four months prior to the Judge’s decision. The guidance in SMO [2022] in relation to documentation is materially different to

that given in SMO [2019]. I find that the failure to apply the relevant Country Guidance is a material error of law.

7. In relation to Ground 2, the Grounds of Appeal are not particularly clear, but in essence it was submitted that the Judge had “failed to grasp the case” and had failed to deal with the Appellant’s evidence at [18] to [20].
8. I have considered the Appellant’s case as set out in his witness statement provided to the Respondent when he claimed asylum. This is very similar to the statement provided for the appeal. The Appellant states that Nahro “wanted more land and my family’s land was his target” [10]. He refers to “our land” at [11], [12] and [13], and to the land having “belonged to us for many generations”. At [14] he refers to the “stolen land”.
9. In his asylum interview at Q75 when asked about his problems he stated that Nahro sent some people to “our land”, and “started building a boundary wall around the land to keep it for himself”. He states that his father and brother asked him “to give us back the land it was our land”. He said that Nahro said “that he was not going to give it back as we are opposing them and we are organizing demonstrations and he told me he had seen me in the demonstrations”. At Q77 he said that the land “was inherited from our grandfather”. At Q93 he said that the land was not registered, but that it was “our land as it was inherited from grandfather and great grandfather”.
10. At paragraphs [18] and [19] the Judge states:

“First, the appellant’s evidence is confused and contradictory. However, what he was clear about was that in oral evidence was that following his family’s troubles with ‘Nahro’ a court-case was instigated after that his father complained to the police. His evidence was that, ‘ Given that he had left Iraq he does not know what is happening with the court case (see also his WS (§11). That suggests that local remedies have not been exhausted. There is still hope that an on-going court case will resolve itself in the Appellant’s favour. It is also not clear whether ‘Nahro’ is indeed acting unlawfully because as the Appellant explained, his landlord’s attempt to then turn the land into an ‘orchard’ was actually entirely in accord with Government policy where ‘agricultural use’ of land was allowed by the Government. It is after all the landlord’s land and if he wishes to repossess it and put it to agricultural use this is a matter for him, provided it is done in accordance with the law, which appears to have been the case.

Second, when the Appellant was asked whether he had any encounter with ‘Nahro’ from the time of his problems to the time he left and he said he did not. This shows he was not at risk from him. In fact, I do not find the Appellant’s claim to be intrinsically credible. If the Appellant now claims that on return he fears Nahro will kill him, in revenge for his son’s death (AIR) this cannot be true because as he himself admitted he was left unmolested by ‘Nahro’ for the time he was there. The only true aspect of his claim is the possibility of his father’s land being repossessed again by the landlord which he appears to have been entitled to do.”

11. The Judge in these paragraphs repeatedly refers to Nahro as the “landlord”. He finds that “it is after all the landlord’s land and if he wishes to repossess it and put it to agricultural use this is a matter for him”. He finds that the land was “repossessed again by the landlord which he appears to have been entitled to do”. This was not the Appellant’s case. His evidence was that the land was their family land, and that Nahro had taken it from them. Neither in his statement nor in his asylum interview does the Appellant refer to Nahro having any legitimate

claim to the land as the landlord. The Respondent did not refer to Nahro being the landlord in her decision, but referred to the Appellant being involved in a “land dispute”. The land was unregistered, but the Appellant’s claim was that it was their family land which they had inherited. It was never his case that the land had been leased from Nahro.

12. I find that the Judge has misunderstood the Appellant’s claim by stating that Nahro was the landlord who legitimately sought the repossession of his own land. This was not the evidence before him. I find that this error of fact has led to the Judge making an error of law as he has considered the Appellant’s account on this basis. I find that this is material as it goes to the core of the Appellant’s claim.
13. I find that the decision involves the making of material errors of law. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

*“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*

*(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”*

14. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I have found that the decision involves the making of material errors of law which go to the core of the Appellant’s claim. The findings on the core of his account cannot stand. Given the extent of fact finding necessary, I consider that it is appropriate to remit the appeal to the First-tier Tribunal to be reheard.

### **Notice of Decision**

15. The decision of the First-tier Tribunal involves the making of material errors of law.
16. I set the decision aside. No findings are preserved.
17. The appeal is remitted to the First-tier Tribunal to be reheard de novo.
18. The appeal is not to be listed before Judge Juss.

**Kate Chamberlain**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
10 August  
2023