



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

Case No.: UI-2023-000266

First-tier Tribunal No: PA/55070/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 22<sup>nd</sup> of September 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**ROM (IRAQ)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Malik, Counsel instructed by Hanson Law Solicitors

For the Respondent: Mr Alain Tan, Senior Home Office Presenting Officer

**Heard at Field House on 4 September 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. The appellant appeals to the Upper Tribunal from the decision of First-tier Tribunal Elliott promulgated on 21 December 2022 ("the Decision"). By the

Decision, Judge Elliott dismissed the appellant's second appeal against the refusal of asylum, his previous appeal against the refusal of asylum having been dismissed on 22 July 2005.

### **Relevant Background**

2. The appellant originates from the autonomous Kurdistan region of Iraq (now known as the "KRI" or "IKR"). The appellant is recorded as having claimed asylum on 30 March 2005. He claimed that he had been forced to flee from his home area as a result of a blood feud between his family and the family of a PUK leader, and that he could not reside safely in any part of the Kurdish autonomous zone ("KAZ").
3. The appellant's asylum claim was refused on 5 May 2005 and his appeal against the decision was dismissed on 22 July 2005. The Judge found that the appellant was not credible. He had not been able to satisfactorily explain the discrepancies in his various statements in relation to the core aspect of his claim. The Judge also found that as the appellant was not a member of any political party, there was no reason why he should be persecuted by any of the political parties on return to the KAZ.
4. The appellant's appeal rights were exhausted on 10 August 2005. The appellant made various applications over the ensuing years, all of which were refused or rejected.
5. On 10 January 2020 the appellant made further submissions in support of a fresh asylum claim. He claimed that he could not return to the KRI on account of his political opinion. He was a member of the New Generation Movement ("NGM"), and his membership of the NGM would place him at risk of persecution from the state and the PUK on return. His *sur place* political activities would also place him at risk on return. In support of his claim, he provided (among other things) a NGM letter dated 5 January 2020 signed by Arian Taugozi, and copies of Facebook posts made in 2019 with translations made on 9 January 2020.
6. In the reasons for refusal dated 24 September 2021, the respondent relied extensively on the June 2021 CPIN on the topic of opposition to the Kurdish Regional Government ("KRG"), including the following passage at 2.4.8:

"The evidence is not such that the person will be at risk of serious harm or persecution simply by being an opponent of, or having played a low-level part in protests against the KRG. Despite evidence that opponents to the KRG have been arrested, detained, assaulted and even killed by the Kurdistan authorities, there is no evidence to suggest that such mistreatment is systematic. In general, a person will not be at risk of serious harm or persecution on the basis of political activity within the KRI."
7. The respondent said that, as he had not evidenced that he had taken part in *sur place* protests in the UK for the NGM, it was therefore considered

that he would not participate in NGM activities return. For that reason, his membership of the NGM would not place him at risk on return to the KRI.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

8. The appellant's appeal came before Judge Elliott sitting in the First-tier Tribunal at Birmingham on 10 October 2022. Both parties were legally represented, with Mr Ahmed of Hanson Law Solicitors appearing on behalf of the appellant.
9. At the outset of the hearing, Mr Khan (the Presenting Officer) confirmed that it was accepted that the appellant had arrived in the UK in 2005, and not in 2002 as stated in the decision letter. He also confirmed that all CSA offices, other than those in Nineveh Governate, had now moved to issuing INIDs in place of CSIDs. It was accepted that the appellant came from Ranya in Sulaymaniyah Governate. Mr Khan also confirmed that, as a result of an agreement between the British and Iraqi Governments, involuntary returnees who originated from the IKR were now returnable directly to the IKR.
10. The Judge heard oral evidence from the appellant, who gave his evidence through a Kurdish Sorani Interpreter. The Judge also heard evidence from Mr Klak Ali Ahmad, a friend of the appellant, who said that he had visited the KRI where he had made enquiries regarding the whereabouts of the appellant's family.
11. In paras [45] to [48], the Judge gave his reasons for dismissing the appellant's appeal in respect of his claimed fear of being a victim of a blood feud.
12. The Judge's findings on the appellant's fresh claim began at para [49]. He held that the NGM was an Iraqi Kurdish political party that was founded in 2017 to contest the 2018 general election. It had anti-corruption, Liberal and social policies. It had gained seats in the KRI Parliament in the two elections fought in 2018, and again in 2021, and it was currently holding nine seats.
13. The Judge noted that the appellant had produced a letter from the NGM Foreign Affairs Office dated 5 January 2020, which stated that the appellant had joined the NGM in the UK on 2 February 2019, and that he was active in his political activities in opposing the authorities in the IKR and Iraq. The letter was signed by Arian Taugozi. However, the Judge observed that the appellant said in evidence that he did not know who Mr Taugozi was. He said that he had not met him, and he had received a letter through Facebook.
14. At paragraph [52], the Judge held that the appellant had no political profile at all in Iraq - or at least there was no evidence that he ever participated in politics there. At the time of his appeal before Judge Juss, there was no suggestion that he had become involved in any political activity in the UK. The letter from the NGM showed that the appellant only

became a member in February 2019, which was well after his appeal rights had become exhausted, and less than a year prior to the submission of his representations. Whilst the appellant said in his witness statement what the broad aims of the NGM were, he had not explained how or why he became involved with the party, or what had caused his sudden interest in politics. The Judge found that this was indicative of someone who was not a genuine political supporter, but who had sought to create a political profile for himself in order to bolster his original asylum claim.

15. At [53], the Judge acknowledged that even if undertaken for opportunistic reasons, *sur place* activity might still lead to a real risk of being persecuted. At paragraph [55] he observed that translations of the Facebook entries referred to 3 posts from 2016 and one in February 2018. None appear to relate specifically to the NGM. The remainder of the posts (the latest of which was dated 23 December 2019) were untranslated. At para [56], the Judge said that all the photographs produced by the appellant appeared to be of publicly reported events. None were specific to him. There were no photographs of him attending any demonstrations - nor was there any direct criticism of individual members of the Government of either the IKR or Iraq. Significantly, he found the appellant had not identified himself as a member of the NGM. In oral evidence, the appellant confirmed that he had never attended any demonstrations in support of the NGM, or against the Governments of Iraq or the KRI.
16. At paragraph [57], the Judge noted that the appellant's Facebook profile showed that he had 173 friends. His most recent post, which appeared to refer to demonstrations in Iraq and dated from 2019, had not been commented upon or liked by anyone. Some of his earlier posts had been viewed and liked, but only by some 9 or 10 people.
17. The Judge went on to refer to some of the background evidence provided in the appellant's bundle, and also to the CPIN cited by the respondent in the refusal decision. In paragraph [63], the Judge found that the appellant did not have a high or significant political profile. He had none while living in the KRI, and his activities in the UK post-dated his appeal rights being exhausted and shortly pre-dated the submission of his further claim. Even accepting that he was a member of the NGM, there was no evidence that he had any significant role in the organisation. He had not attended demonstrations or any meetings, and he had not posted anything other than material that had already been posted by others. His involvement appeared to be limited to short comments, without identifying any particular political affiliation.
18. At para [64], he found that the appellant was not a genuine political activist. His involvement in political activity was at "*the lowest possible level*" and there was nothing more recent on his Facebook since early 2019. The Judge found that it was not reasonably likely that he would be a person at risk of either serious harm or persecution on account of what he had done in the UK.

19. At para [65], the Judge said:

“There is no evidence that the appellant’s Facebook account has been monitored or hacked. Although the appellant’s background evidence refers to the monitoring of social media activity, I find that this is in the context of activity of those within the KRI, not outside it. I have seen no evidence to demonstrate that those participating in activities abroad are the subject of internet and social media monitoring or that the Iraqi authorities have the ability to carry out such monitoring or that they would have any interest in such low-level activity as the appellant has demonstrated.”

20. At para [66], he said that, due to his lack of profile, he did not find it likely that the authorities in Iraq or the KRI would have the ability or desire to access the appellant’s Facebook account and that, even if questioned at the point of return, they would not have any knowledge of those matters which the appellant claimed would put him at risk.

21. At para [67], the Judge said that as confirmed in *XX* there was in principle no arguable defence for the suggestion that a person in the UK with a Facebook account could not be expected to delete that account if the material on it did not represent a genuinely-held belief or opinion. Further, if an account was deleted, it would cease to exist, and any post created or sent by the account-holder would be deleted and not accessible. At para [68], he said that as, he had found the appellant not to be genuine in his activities, he found that it was reasonable in all the circumstances, and would not contravene the *HJ (Iran)* principle, for the appellant to close down his Facebook account which would have the effect of removing all posts he had created.

22. At para [69], the Judge said that Headnote 6 of *XX* confirmed that the timely closure of the appellant’s account would neutralise any risk consequential on having had an account, provided that it was not specifically monitored prior to closure, which he found it would not have been, due to his lack of profile.

23. At para [70], the Judge turned to consider the final issue in controversy, which was whether the appellant had made out his case that he had lost contact with his family in Iraq, with the consequence that he would be unable to return to Iraq safely, as he did not have any identity documents or the support of anyone in Iraq to assist him in that regard.

24. The Judge held that the appellant had contact with his family in Iraq, and that being so, they could provide assistance to him in establishing his Iraqi identity through the provision of his CSID or family book number. He would then be able to obtain a *laissez passer* to facilitate his return to Iraq. While he accepted that a *laissez passer* would not in itself enable the appellant to travel onwards from Baghdad, the agreement that the British Government had made with the KRI Government earlier this year would obviate the need to travel across Iraq and encounter road blocks along the way.

## **The Grounds of Appeal to the Upper Tribunal**

25. Ground 1 was that the Judge had erred in his consideration of *Devaseelan*. Ground 2 was that the Judge had not supplied an evidential basis for stating that the appellant was not politically active in Iraq. Ground 3 was that at para [65] the Judge had wrongly assumed that the background evidence referred to the monitoring of social media only within the KRI, and not outside. The “article” was clear, and so the Judge’s assumption was incorrect. Ground 4 was that at para [69] the Judge had been wrong to state that the monitoring of social media was not feasible: the objective evidence provided in the appellant’s bundle stated that it was feasible and had been done. Moreover, the Judge had misinterpreted *XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC)*.
26. Ground 5 was that the Judge seemed to have applied a higher standard of proof to the evidence of Mr Ahmad. Ground 6 was that the Judge’s finding at para [77] (that the appellant could obtain family assistance if returned to Iraq was flawed, because it ran counter to the guidance given by the Tribunal in the Country Guidance case of *SMO (2)*). It also ran counter to the respondent’s July 2022 CPIN on re-documentation at 2.6.9, where it was stated that the family could not help with re-documentation.

## **The Reasons for the Grant of Permission to Appeal**

27. On 12 February 2023, Judge Dempster granted the appellant permission to appeal on all grounds, although she observed that many appeared to be simply a disagreement with the findings of the Judge:

2. There are a number of grounds many of which appear to be simply a disagreement with the findings of the Judge. However, ground 3 asserts that the Judge found that the monitoring of social media was limited to the KRI at [65] which is said to be inconsistent with the country evidence in the appellant’s bundle. If what is asserted is correct, it appears that the Judge made a mistake as to a material fact, as the appellant’s political activities appeared to be in the main limited to sur place activity. There is thus an arguable error of law and permission is granted.

3. At the hearing before the Upper Tribunal, the appellant’s legal representative will be expected to identify those parts of the country evidence in respect of which it is said the Judge erred.

## **The Rule 24 Response**

28. On 21 February 2023, Mr Willocks-Briscoe of the Specialist Appeals Team gave the respondent’s reasons for opposing the appeal. In summary, he submitted that the Judge of the First-tier Tribunal had directed himself appropriately. The grounds failed to identify what specific information in the background evidence contradicted the Judge’s conclusion that the authorities were monitoring social media within Iraq, but not outside. It was notable that the background evidence from page 179 onwards related to unknown documents seen by Human Rights organisations, but gave no

information to suggest that monitoring was taking place outside the jurisdiction. It was not evidentially clear from the background information in the appellant's bundle that the Iraqi authorities had the ability to monitor social media outside their own jurisdiction or that they actually did so, if they did have the ability. On this basis, it was submitted that the Judge's conclusion was a valid one on the available evidence. The Judge had given adequate reasons for his findings and the grounds did not establish that the Judge's decision contained a material error.

### **The Hearing in the Upper Tribunal**

29. At the hearing before me to determine whether an error of law was made out, Mr Malik developed all six grounds of appeal, but he put forward Grounds 3 and 4 as being the strongest. He took me through the passages in the background evidence which he relied upon as showing that the Iraqi authorities monitored social media outside the jurisdiction.
30. In particular, he relied on an article beginning at page 189 of the appellant's bundle, entitled: "*Hide and Seek: tracking NSO Group's Pegasus spyware to operations in 45 countries.*" The article was dated 18 September 2018. The authors of the article explained that they had developed new internet scanning techniques to identify 45 countries in which operators of NSO Group's Pegasus spyware might be conducting operations. They said that they had found suspected Pegasus infections associated with 33 of the 36 Pegasus operators they had identified in 45 countries. These countries included Iraq, the United Kingdom, and the United States. At page 198 of the appellant's bundle, they said that 10 Pegasus operators appeared to be conducting surveillance in multiple countries. While they had observed prior cases of cross-border targeting, their investigation suggested that cross-border targeting and/or monitoring was a relatively common practice. The scope of this activity suggested that government exclusive spyware was widely used to conduct activities that might be illegal in the countries where the targets were located. The global market for the government exclusive spyware continued to grow, and as it did, more governments and security services with histories of abuse would acquire the technology. The expanding user base of spyware like Pegasus would enable a growing number of authoritarian states to pry into the digital lives of their own citizens, and also into phones and computers in pockets and purses around the globe.
31. On behalf of the respondent, Mr Tan adopted the Rule 24 response and submitted that the appellant was in effect pursuing an appeal on the merits. The skeleton argument that had been relied upon by the First-tier Tribunal had not put forward a case that the authorities in the IKR/Iraq were monitoring the social media of people in the UK. Also, it had not been the appellant's case before the First-tier Tribunal that he had already become the subject of interest by the authorities so as to prompt the authorities to monitor his Facebook account. Mr Malik's submissions on the topic of Pegasus spyware were speculative. An additional consideration was that there was no error of law challenge to the Judge's

findings on the appellant's profile. After hearing briefly from Mr Malik in reply, I reserved my decision.

## **Discussion and Conclusions**

### **Ground 1**

32. Ground 1 relates to paragraphs [45] to [48] of the decision, where the Judge gave reasons for not departing from the adverse finding of Judge Juss on the blood feud claim, notwithstanding the background evidence produced in the second appeal to show that blood feuds were prevalent in Iraqi society.
33. The submission that the Judge erred in his application of *Devaseelan* is wholly without merit. The submission is internally contradictory, as it is acknowledged in Ground 1 that the Judge took into account the relevant background evidence at para [46]. It was clearly open to the Judge to find that the background evidence did not justify a departure from the adverse finding of Judge Juss, as that adverse finding had been based upon an adverse assessment of the appellant's credibility. Judge Juss had not found against the appellant on the ground that his blood feud claim ran counter to the background evidence, but on the basis that the claim was internally discrepant.

### **Ground 2**

34. Ground 2 relates to the finding of the Judge at para [52], that the appellant was not politically active in Iraq - or at least there was no evidence of him having been so. It is asserted in the grounds that the Judge did not refer to any evidence as to how he had come to this conclusion. However, as I pointed out to Mr Malik in oral argument, Judge Juss had made a clear finding on this issue. So, Judge Elliott's finding had an unimpeachable evidential foundation.
35. Another aspect of Ground 2 which was not developed by Mr Malik is the proposition that the fact that the appellant did not engage in political activities in Iraq does not mean that his activities in the UK are not genuine.
36. The Judge addressed the evidence of the appellant's activities in the UK on its own terms. He did not base his finding that they were not genuine simply on the ground that he had not previously engaged in political activity in Iraq.
37. The Judge gave adequate reasons for finding that the appellant's political activity in the UK was not genuine.

### **Ground 3**

38. Permission to appeal was granted specifically with reference to Ground 3 on the basis that the appellant might be able to show in his appeal to the



Upper Tribunal that the Judge had made a mistake of fact in the conclusion which he had drawn from the background evidence.

39. I am wholly unpersuaded by Mr Malik that the Judge has made a mistake of fact as is alleged. The clear implication of the CPIN cited in the reasons for refusal and also by the Judge in the Decision, is that any monitoring of social media that is carried out by the KRG is carried out within the jurisdiction of the KRG, not outside. This is also the implication of all the articles and reports in the appellant's bundle to which I was referred by Mr Malik, with the arguable exception of the report on the use of Pegasus spyware. But this report was not expressly relied on in the skeleton argument put before the First-tier Tribunal, and there is no evidence of it being relied on in oral submissions.
40. In addition, the report does not assert in terms that the Iraqi Government or, more pertinently, the KRG has been using Pegasus spyware to spy on citizens within their respective jurisdictions, let alone to spy on Iraqi citizens outside their respective jurisdictions.
41. Conversely, at para [59] the Judge makes specific reference to the appellant's background evidence at page 135 as indicating that government departments in Iraq lack modern electronic devices and applications, and use rudimentary electronic communications, making it unlikely that they have the means to carry out surveillance of private user internet activity.
42. Accordingly, on a rounded assessment of the background evidence, it was reasonably open to the Judge to reach the conclusion which he did at para [65]: that he had seen no evidence to demonstrate that those participating in activities abroad were the subject of internet and social media monitoring, or that the Iraqi authorities had the ability to carry out such monitoring, or that they would have any interest in such low-level activity as the appellant had demonstrated.
43. There is no error of law challenge to the Judge's finding at para [64] that the appellant's activities in the UK have been of such a low level that he would not be a person at risk of serious harm or persecution on account of what he had done in the UK. There is also no error of law challenge to the Judge's finding at para [65] that the Iraqi authorities would not have any interest in the low-level *sur place* activity that the appellant had demonstrated.
44. Accordingly, even if the Judge was wrong to find that the KRG does not carry out monitoring of social media activity in the UK, the error is not material, as the Judge has made a sustainable finding that the appellant would not have acquired an adverse risk profile in any event.

#### **Ground 4**

45. Ground 4 relates to para [69] of the Decision. It is asserted that the Judge stated that the monitoring of social media was not feasible, whereas

the objective evidence provided to the Tribunal in the appellant's bundle stated that it was feasible and had been done.

46. Ground 4 mischaracterises the finding that was made by the Judge at para [69]. The Judge did not say that the monitoring of social media was not feasible. He held that it was unlikely that the Iraqi authorities and those in the KRI had the capacity or ability to access a Facebook account once it had been closed down, and that XX indicated that for, individuals and international third parties, such as governments, this task was not feasible.
47. Mr Malik challenged the validity of this finding by reference to *WAS (Pakistan)* [2023] EWCA Civ 894. But as this case was reported long after the Judge made his decision, it cannot be an error of law for the Judge to fail to take it into account, insofar as it has any relevance.
48. Mr Malik has not made out the case put forward in the grounds of appeal that the Judge misinterpreted or misapplied XX.

## **Ground 5**

49. Ground 5 is that the Judge erred in finding that the appellant was in contact with his family, or had the means of being in contact with them, despite there being no challenge to the oral evidence of Mr Ahmad, who had provided a consistent and credible account.
50. The Judge accepted that Mr Ahmad had travelled to Iraq and that he had visited the appellant's home area as he claimed. Mr Ahmad said that he was told that the appellant's family had left the area. However, the Judge added, he did not ask where they had gone because he did not want to be thought of as a relative of the appellant, as he had been told that there was an ongoing family feud. He had not gone to the appellant's home - only to the general area.
51. At para [72], the Judge said that Mr Ahmad appeared to have made some limited, general enquiries about the appellant's family in the area in which they lived, but he did not speak to anyone at the appellant's home, or to any friends or neighbours "*so it is perhaps unsurprising that he was unable to obtain any information.*"
52. In light of this, and the fact that the appellant did not appear to suggest in 2005 that he did not have contact with his family, that he had not explained how or when he lost contact with them, or why he had made no formal attempts to locate them, the Judge found that he had not demonstrated that he had no family contact. The Judge said in para [73] that the appellant's premise was that his family must have moved on account of the blood feud. But his account of that feud was found by Judge Juss to lack credibility, and he found no reason to depart from that finding. He therefore did not accept that they would have moved on that account: "*Given that, there is no apparent reason why the appellant would have*

*lost contact with his family, even if they had moved from where they were living at the time the appellant left Iraq.”*

53. In conclusion, Ground 5 is no more than an expression of disagreement with a finding that was reasonably open to the Judge on the evidence, for the reasons which he gave.

## **Ground 6**

54. Ground 6 is that the Judge erred in law in finding that the appellant could safely return to the KRI.
55. The error of law challenge ignores the crucial consideration that the Judge’s finding was based on the premise that the appellant would be returning direct to the KRI, whether voluntary or otherwise.
56. The case put forward by Mr Ahmed, as recorded in the Decision at [38], was that the appellant had no documents and he could not get a CSID or replacement without going to a CSA office. He could not get documents in the UK and he would be unable to travel within Iraq without documents.
57. The case put forward by the Presenting Officer was that the appellant would be returned directly to the KRI and he could then go to Ranya to obtain an INID, and that his family could assist him with that.
58. The Judge did not ignore the fact that the appellant would need to obtain an INID if he was not in possession of his CSID. It was open to the Judge to find (as he did) that the appellant either had contact or could make contact with his family in Iraq, and that that being so, they could provide assistance to him in establishing his Iraqi identity through the provision of his CSID or family book number. He would then be able to obtain a *laissez-passer* to facilitate his return to Iraq.
59. While the Judge accepted that the *laissez-passer* would not enable the appellant to travel onwards from Baghdad, he found that the appellant would be returned direct to the KRI as the result of the agreement made between the British Government and the KRG earlier in the year. Accordingly, as had been submitted by the Presenting Officer, the appellant, if he did not have a CSID, could travel safely from the airport to Ranya and obtain an INID at his local CSA office with the assistance of his family.

## **Summary**

60. For the reasons given above, no error of law is made out.

## **Notice of Decision**

**The Decision of the First-tier Tribunal did not contain an error of law, and accordingly the Decision stands. This appeal to the Upper Tribunal is dismissed.**

**Anonymity**

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
17 September 2023