



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2023-
000721**

**PA/50819/2022
IA/03185/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 11 September 2023**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr SARBAST MOHAMMED SADIQ
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Schwenk, Counsel
 (instructed by Freedom Solicitors)
For the Respondent: Mr S Walker, Home Office Presenting Officer

Heard at Field House on 25 August 2023

DECISION AND REASONS

Appeal

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1. The Appellant appealed with permission granted by Upper Tribunal Judge Bruce on 11 June 2023, permission to appeal having been refused by First-tier Tribunal Judge Dempster on 5 March 2023, against the decision of First-tier Tribunal Judge A W Devlin who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on or about 8 December 2022.
2. The Appellant is a national of Iraq, born on 3 March 1992. He claimed in summary that he was at risk on return from the government of Iraq because of his *sur place* political activities in the United Kingdom. This was accepted by the Respondent as a fresh claim. The Appellant had previously claimed asylum
3. In a thorough decision which extended to 217 paragraphs over 40 pages, Judge Devlin set out many reservations about the Appellant's evidence. Nevertheless, the judge found that the Appellant's *sur place* activities in the United Kingdom expressing his political opinions were sufficient to place him at real risk on return to Kirkuk, and by necessary implication, within Northern Iraq. (The judge made occasional reference to "Iran" in his decision but these were obvious typographical errors.)
4. The judge found that the Appellant had a reasonable internal relocation option, by moving to Baghdad. The judge found that the Appellant had family in Iraq who could assist him and that the Appellant would be able to obtain identity documents.
5. Upper Tribunal Judge Bruce considered that it was arguable that Judge Devlin had erred by finding that the Appellant would be safe in Baghdad, and that the judge had in effect misunderstood or misapplied SMO (Iraq) CG [2022] UKUT 110 (IAC).
6. No notice under rule 24 had been served by the Respondent. Mr Stephens for the Respondent informed the tribunal that he accepted that the judge had erred as UTJ Bruce had indicated.

7. The tribunal agreed. Despite the various well founded and sustainable reservations the judge had expressed about the Appellant's *sur place* claim, only made by the Appellant after his previous claim had been dismissed, once the judge had accepted that the Appellant was of Kurdish Sunni background, was not Arabic speaking, and was at real risk because of his political opinion in Kirkuk, it was difficult to see how the judge's conclusion that the Appellant could relocate safely to Baghdad could stand alongside the specific advice to the contrary in SMO (Iraq) CG [2019] UKUT 400 (IAC), at [415] and [416], which was reaffirmed in SMO (Iraq) CG [2022] UKUT 110 (IAC), as indeed the judge had noted.
8. While the Appellant had been found by the judge to have family in Iraq, continuing the tribunal's previous finding to such effect, the proper inference is that the family like the Appellant were Kurdish. There was no evidence to suggest that any of the Appellant's family lived in Baghdad, and from the country background evidence, it was unlikely that they did so.
9. Mr Schwenk for the Appellant confirmed that his principal contention was that the judge had materially erred as to the reasonable possibility of relocation to Baghdad. That was an obvious flaw in the decision. It was not necessary in the light of the Respondent's concession to examine other matters.
10. Dialogue with the representatives followed. It was agreed that the decision should be set aside and remade, all findings preserved except for the reasonableness of relocation, and then SMO (above) applied. Even accepting that the Appellant had family in Iraq, they could not assist him as they were in the KRG where the judge had found that the Appellant was at real risk because of his political opinion.
11. Applying SMO (above) in the light of that finding meant that the Appellant was also at real risk in Baghdad. He was Kurdish and Sunni, not an Arab. He had no family or other network of support available to him in Baghdad. There was no reason to believe that the Appellant was familiar with

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Baghdad or had any contacts or connections there capable of assisting him. The tribunal so finds.

12. It follows that the Appellant's appeal succeeds.

DECISION

The onwads appeal is allowed. The making of the previous decision involved the making of a material error on a point of law. The decision is set aside.

The decision is remade as follows:

The Appellant's appeal is allowed

No fee award is made

No anonymity direction is needed

Signed R J Manuell **Dated** 31 August 2023
Deputy Upper Tribunal Judge Manuell