



**Upper Tribunal
(Immigration and Asylum Chamber)
UI-2023-000815**

Appeal Number:

**PA/54418/2021
LP/00514/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 28 September 2023**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Mr MARDAN ABODAKR QADIR
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer

For the Respondent: Mr T Hussain, Counsel

Heard at Field House on 12 September 2023

DECISION AND REASONS

1. The Appellant, the Secretary of State for the Home Department, appealed with permission granted by Upper Tribunal Judge Stephen Smith on 11 June 2023, permission to appeal having been refused by First-tier Tribunal Judge

Barker on 5 March 2023, against the decision of First-tier Tribunal Judge Turner who had dismissed the appeal of the Respondent against the refusal of his international protection claim, but had allowed the appeal on human rights grounds, Articles 3 and 8 ECHR. The judge applied SA (Removal destinations; Iraq; undertakings) (Iraq) [2022] UKUT 00037. The decision and reasons was promulgated on or about 21 December 2022.

2. The Respondent 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 Appellant as a fresh claim. The Respondent had previously claimed asylum on 19 December 2016, but that claim had been refused and was dismissed on appeal by First-tier Tribunal Judge Moxon on 5 February 2018.
3. In a thorough and careful decision, Judge Turner set out many reservations about the Respondent's evidence. The judge found that the Respondent's *sur place* activities in the United Kingdom expressing his political opinions were insufficient to place him at real risk on return. The judge did not accept that the Respondent had lost contact with his family in Iraq. Nevertheless, applying SA (Iraq) (above), the judge found that the Respondent did not have appropriate documentation to ensure a feasible and safe return to Iraq. An undertaking by the Secretary of State for the Home Department that the Respondent would not be removed until such documentation was available would not form a proper basis for reaching a decision. Hence although the asylum appeal was dismissed, the appeal was allowed on Article 3 ECHR and Article 8 ECHR grounds.
4. Upper Tribunal Judge Stephen Smith, when granting permission to appeal, observed that the judge had found at [42] that the appellant left his CSID with his family upon his departure from Iraq in 2016. It was thus arguable that the judge should have (i) made clear findings as to whether the appellant was in contact with his family in Iraq, rather than simply rejecting his case that he was not in contact with them, to the proper standard [41], and (ii) if so, expressly considered whether the appellant's remaining family in Iraq

- would be able to have sent his CSID card to him in the UK, or met him with it upon his arrival in Baghdad.
5. Ms Everett for the Appellant relied on the grounds of appeal and the Upper Tribunal's grant of permission to appeal. The Respondent had been found not credible, comprehensively so. Thus the judge should have examined the logical consequences of that in terms of the Respondent's access to his identity documents.
 6. Mr Hussain for the Respondent submitted that adequate findings had been reached on the access to identity documents issue. The judge had followed the clear guidance given in SA (Iraq) (above), such that a material error of law could not be shown.
 7. The tribunal agreed with Mr Hussain. Despite the various well founded and sustainable reservations the judge had expressed about the Respondent's contrived *sur place* claim, only made by the Respondent after his previous claim had been dismissed, once the judge had accepted that the Respondent was of Kurdish Sunni background, was not Arabic speaking, and had not been in Iraq for over 6 years, it was difficult to see how any judge could have found that the Respondent could be safely returned to Baghdad, against 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 Respondent had been found by the judge to have family in Iraq, continuing the tribunal's previous finding in 2018 to such effect, the proper and obvious inference was that the family, like the Respondent were Kurdish. There was no evidence to suggest nor any reason to infer that any of the Respondent's family lived in Baghdad, and from the country background evidence about the nature of Iraqi society, it was unlikely that any of them did so. How and why the Respondent's relatives might have been able to meet him with current identity documents at Baghdad Airport would have been so speculative that no finding was possible or necessary.
 9. Applying SMO [2022] (above) meant that the Respondent was at real risk of Article 3 ECHR harm in Baghdad. He was Kurdish and Sunni, not an Arab. There was no evidence

that he had family or other network of support available to him in Baghdad. There was no reason to believe that the Respondent was familiar with Baghdad or had any contacts or connections there capable of assisting him.

10. In conclusion, it is perhaps useful to recall UTJ Blundell's observations in SA (Iraq):

"57. In the circumstances, I conclude that the FtT erred in relying on the possibility of the appellant returning voluntarily to the IKR and that the only permissible conclusion available on the facts of this case is that the appellant's removal would be unlawful under section 6 of the Human Rights Act 1998 as being in breach of Article 3 ECHR.

58. I reach that conclusion with no enthusiasm for two reasons. Firstly, because the appellant can avoid the risk which obtains in Baghdad by choosing to go voluntarily to the IKR... For the reasons I have given, however, I do not consider that [this] bears on the appellant's entitlement to a declaration that his enforced removal by the only available route would be a breach of Article 3.

59. I add this observation... The appellant is not a refugee and the decision I have reached affords him no comparable status. He is simply entitled not to be removed to Baghdad because to do so would be in breach of Article 3 ECHR. What leave the respondent should grant to a person in that position - who is perfectly able to return to a safe part of his country but refuses to do so - is a matter for her. It might well be thought that such a person is undeserving of any leave to remain, regardless of the outcome of such an appeal."

12. Those observations might be thought equally apposite to the Respondent's appeal, which succeeded only because of the absolute nature of Article 3 ECHR (and the impact of that on paragraph 276ADE(1)(vi) of the Immigration Rules) not because of any other merit. It follows that Secretary of State for the Home Department's appeal fails.

DECISION

The onwards appeal is DISMISSED

The decision and reasons of Judge Turner dated 21 December 2022 stands unchanged

Number: UI-2022-000815

Appeal

**PA/54418/2021
LP/00514/2022**

**Signed R J Manuell
Deputy Upper Tribunal Judge Manuell**

Dated 18 September 2023