Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2023-004174**

PA/55132/2022
LP/00079/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 December 2023

Before

Deputy Upper Tribunal Judge MANUELL

Between

[H I A]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Forbes, Counsel
(Instructed by Eurasia Legal Services)
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 17 November 2023

DECISION AND REASONS

1. The Appellant, a national of Iraq, appealed with permission granted by First-tier Tribunal Judge Bibi on 11 June 2023 against the decision of First-tier Tribunal Judge J Robertson who had dismissed his appeal against the refusal of his

international protection claim. The Appellant, who is of Kurdish ethnicity, claimed that he was afraid of ISIS and of his mother's family in Iraq. He had military associations which added to the risk. The decision and reasons was promulgated on or about 29 April 2023.

2. The Appellant had previously claimed asylum following his arrival in the United Kingdom in 2015, but that claim had been refused and was dismissed on appeal by First-tier Tribunal Judge Sangha on 16 September 2016. Following further representations which were again refused by the Respondent, the Appellant's renewed claim was heard and dismissed by First-tier Tribunal Judge Elliott on 26 November 2020. The Appellant made yet further representations on 11 May 2021, which were refused and which were the subject of his latest appeal.

3. It was accepted by the Respondent that the Appellant was a national of Iraq (and it seems, of Kurdish ethnicity) but the remaining elements of his claim were not accepted. Devaseelan* [2002] UKIAT 702 applied to the First-tier Tribunal's previous findings. Judge Robertson set out a number of reservations about the Respondent's evidence. The judge found that there was nothing to justify departing from the previous findings made by Judge Elliott, which were largely of adverse credibility. Any role the Appellant had had in past military activity was minor and insufficient to place him at real risk. The judge did not accept that the Respondent had lost contact with his mother's family in Iraq or was at risk from them. The Appellant could be returned to Baghdad where his family could assist him to obtain the necessary documentation for travel. The Appellant's attempts to trace his family via Red Cross had been perfunctory, particularly given the Appellant's claim that he had been able to contact friends via Facebook.

4. When granting permission to appeal, Judge Bibi observed that the judge had arguably failed to provide adequate reasons to support his finding that the Appellant would have access to his CSID (or its current equivalent) on return to Iraq. Country guidance had arguably not been applied.

5. Mr Forbes for the Appellant relied on the grounds of appeal and Judge Bibi's grant of permission to appeal. CSID documents were not readily available to returnees, as SMO (2) showed. Most CSA centres were dependent on INID terminals which required personal attendance for biometrics. The judge had failed to consider whether the Appellant was in a position to know his family book number or even his place of birth. The judge had been over optimistic about that. The Appellant's ability to qualify for humanitarian protection had not been properly considered. Further analysis was needed.

6. Although the Respondent had earlier filed a rule 24 notice resisting the onwards appeal, Mr Walker stated that in his view there were in fact one or more material errors of law, such that the determination could not stand. The First-tier Tribunal's decisions in 2016 and in 2020 had been reached before the current, binding country guidance on redocumentation for returnees had been handed down. Redocumentation was a separate issue from the Appellant's general credibility, and had been insufficiently addressed. The Appellant's appeal could not be resisted.

7. The tribunal agreed with Mr Walker. Despite the various well founded and sustainable reservations the judge had expressed about the Appellant's claim, which in its varying forms had twice been dismissed, once the judge had accepted by necessary implication that the Respondent was of Kurdish background, was not Arabic speaking, and had not been in Iraq for over 7 years, it was difficult to see how the judge found that the Appellant 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).

8. While the Appellant had been found by the judge to have family in Iraq with whom he was in contact, continuing the tribunal's previous findings to such effect, the probable inference was that any remaining family, like the Appellant, 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/or why the Appellant's relatives might have been able to meet him with current identity documents at Baghdad Airport required specific consideration. Here it is unclear what the Home Office said about the intended place of return at the hearing, i.e., whether to Baghdad or elsewhere in Iraq, so that the judge was not given sufficient assistance.

9. Applying SMO [2022] above) meant that the Appellant was at real risk of Article 3 ECHR harm in Baghdad, if his return was indeed to 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 Appellant was familiar with Baghdad or had any contacts or connections there capable of assisting him.

10. None of these matters has so far been sufficiently investigated. The Appellant's unreliable testimony as to his past in Iraq is not of itself sufficient to enable express inferences about the consequences of his place of return to be drawn, whether Baghdad or elsewhere. In all fairness to the judge, it is not clear that these issues were fully argued before him and so he did not receive sufficient assistance, as has been noted above.

11. It is clear that the return of Iraqis where the substance of a claim has been dismissed nevertheless requires close attention to the ability to obtain documentation needed for safe forced return. Here it is perhaps useful to recall UTJ Blundell's observations in SA (Removal destinations; Iraq; undertakings) (Iraq) [2022] UKUT 00037 (IAC):

"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.
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> 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. It is also clear that the impact of paragraph 276ADE(1)(vi) of the Immigration Rules on the Appellant's claim required fuller consideration, particularly given the length of his absence from Iraq.

13. Although the Appellant's claim has now been considered no less than three times before the First-tier Tribunal, there has been no remittal as the Respondent had entertained a fresh claim on each occasion. There is accordingly no requirement that the present appeal should be re-determined in the Upper Tribunal. Since the appeal will have to be reheard, it may well be that the Appellant will wish if possible to obtain better and more concrete evidence of the presence or absence of family members in Iraq, and their present location. The Respondent should state expressly the intended place of return for the Appellant and the specific travel arrangements which are proposed.

DECISION

The onwards appeal is ALLOWED

The decision and reasons of Judge J Robertson is set aside. No findings are preserved.

The appeal must be reheard in the First-tier Tribunal by any judge except Judge J Robertson.

Signed R J Manuell **Dated** 22 November 2023
Deputy Upper Tribunal Judge Manuell