



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

**Case No: UI-2022-004602**  
**First-tier Tribunal No:**  
**PA/50974/2022**  
**IA/02831/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**RS**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Holmes instructed by the Greater Manchester Immigration Aid Unit.

For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

**Heard at Manchester Civil Justice Centre on 13 September 2024**

**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 is a citizen of Iraq born on 5 March 1996 who arrived in the United Kingdom on 20 August 2022 and claimed asylum on the basis he was at risk on return to Iraq from ISIS, having informed on one of their members to the police, with subsequent threats of revenge.

2. The appellant's appeal against the refusal of his asylum claim was dismissed by a judge of the First-tier Tribunal.
3. The appellant's appeal against that decision came before Upper Tribunal Judge Jackson by remote video on 30 May 2023, who in a decision promulgated on 22 June 2023 set the decision of the First-tier Tribunal aside with no preserved findings and directed a further hearing before the Upper Tribunal. Following the making of a judicial transfer order the appeal comes before me for the purposes of enabling me to substitute a decision to either allow or dismiss the appeal.
4. The appellant's case is, in summary, that he is an Iraqi Kurd who lived and worked in Dubiz in the Kirkuk governorate where he owned a business. He claims he informed upon a customer who he had compelling grounds to believe was a member of ISIS. The appellant cooperated with the local police as a result of which the customer was arrested and detained.
5. The appellant claimed that ISIS, having learned of the assistance he rendered to the police, threatened to kill him as a result of which he fled Iraq and sought protection as a refugee.
6. The respondent does not dispute the fact the appellant is an Iraqi Kurd who lived and worked in Dubiz in northern Iraq but disputed the credibility of the claim and stated that, in any event, the appellant could relocate to the IKR where he would find a sufficiency of protection.
7. The appellant has provided a witness statement dated 17 May 2022 in which he sets out the above claim and a more recent statement, dated 30 August 2024, in which he sets out details of enquiries made of the Red Cross to trace his wife and his family whom he claims he lost contact with in 2020, and claims ISIS (Daesh) remain a threat for him both in his home area and elsewhere.

#### Discussion and analysis

8. The appellant describes his hometown is a small town in the north-west of Kirkuk Governorate in northern Iraq.
9. Although the appellant refers to a fear of harm at the hands of ISIS, he accepts in his first witness statement that his town was never occupied by that group in 2014. There also insufficient evidence of ISIS presence in that area today sufficient to give rise to a real risk for that reason alone.
10. The appellant claims the risk arose as he had a shop in his hometown selling second-hand mobile phones which he also repaired. A local Kurdish man who was a regular customer came to the shop stating he had an issue with his iPhone and asked the appellant to look at it. The appellant stated the customer gave him a contact number for him to be contacted on, if required in the interim, whilst the phone was fixed.
11. The appellant claims that while fixing the phone he realised he would need the customer's Apple ID and password to enable it to be activated again which the customer gave to him. When checking the phone to see if it was properly restored he looked into the photo album in which he claims he found a photograph of the customer with bearded fighters from ISIS.
12. The appellant reported this to the police as result of which two officers came to the shop and looked at the pictures. They asked the appellant to telephone the customer, tell him his phone was fixed and to collect it from the shop, where the police would be hiding. He was to give the police officers a signal when the man came in and they would make the arrest.
13. The appellant claims that when customer was arrested and being led out of the shop, he threatened the appellant. The appellant claims that he received a threat from somebody purporting to be from ISIS later that day who stated he was a friend of the man who was arrested at his shop. He was told he must be

- killed as he had betrayed that individual, that it was useless for him to hide, and that they would find him and cut his head off.
14. The appellant states the following day he went to a police station and reported to the police and was told to keep vigilant and that they would monitor his situation, but the appellant claims that as a result of ISIS having supporters everywhere, and not knowing who they are, he was not reassured by the police.
  15. The appellant claims he confided his fears to others, concluded it was not safe to stay in Dubiz as he did not want to involve his mother and brother, so he and his wife decided to go north to Erbil in the IKR.
  16. The appellant claims they found a hotel and that whilst his wife remained in the hotel he went to explain the situation to the Asayish who he claims told him they could not protect him and that he would need a guarantor if he wanted to stay, which he claimed was a problem as he knew nobody in Erbil.
  17. As the appellant believed he could not stay in Erbil they sold his wife's gold to fund their journey out of Iraq, travelling to the border where he met an agent to help them cross into Turkey, whom the appellant claims took his Iraqi ID card and passport from him.
  18. The appellant claims that he and his wife were separated by the agent in Turkey and that he has not seen his wife since.
  19. It is not disputed that ISIS began an offensive in northern Iraq and attacked Kirkuk in 2014. It is not disputed that ISIS were defeated by the Iraqi and Kurdish security forces, with assistance, although they have continued with their insurgency campaign in some places.
  20. In relation to the core of the appellant's case the Secretary of State rejected the same for the reasons set out at [18]-[19] of the Reasons for Refusal letter dated 25<sup>th</sup> February 2022 which are in the following terms:
    18. When questioned about how you knew that your customer was a member of the ISIS you replied *'I saw other ISIS members, there was a flag in the photos and they were armed and that is how I became suspicious'* (AIR Q70). By your own account you became suspicious that you did nothing further to confirm your suspicion. It would not be unreasonable to expect you to confirm your suspicion by speaking to your friend or wife especially as you state that you knew that the Daesh (ISIS) can kill or kidnap people (AIR Q72) and that they have sleeper cells in the area you lived (AIR Q72). It is considered your claim that your customer belonged to ISIS is based simply on seeing a flag and people armed in the photographs and is therefore purely speculative.
    19. You claimed that when you told the police about your suspicion, they came to your shop and gave you instructions on what you should do, so that they could make an arrest. It is not reasonably likely that the police put to you and your livelihood at risk by involving you in the operation to arrest and ISIS member. You claim that on the evening after the arrest of your customer, while you were at your friend's house, you received a telephone call. When questioned further, about who called you, you claimed that the caller introduced himself as Abu Hamza (AIR Q77). In a further submission dated 05/02/2022, you claim that the caller introduced himself as Abu Hamza of the Islamic State. It is noted that you had ample opportunity in your interview to disclose who called you whilst you are at your friend's home however you failed to do so. It was only after the interview did you decide to disclose that the person who threatened you at your friend's home identified himself as belonging to ISIS. Given that you claim the customer from your shop had just been arrested it is unclear how ISIS knew he had been arrested, how they connected his arrest to you or how they obtained your contact details.
  21. I accept that in relation to the core of his claim the appellant has been consistent.
  22. It is not inconsistent for example that if the appellant worked in a mobile phone shop, was asked by a customer to fix a fault with his phone, that having fixed the

fault and whilst viewing photographs to check the phone was working properly, and seeing what appeared to be evidence of a link between that individual and ISIS at that time in Iraq's history, that the appellant would have contacted the police for guidance. The suggestion at [18] that the appellant's claim was not credible because he did not check his suspicions with family members or friends does nothing to undermine his claim of what he actually did. There is nothing to show it is unreasonable or irrational for a person who discovered a potential link to a terrorist organisation which had killed numerous people and taken over swathes of territory in Iraq in the past, including in areas not far from the appellant's hometown, for them to seek assistance from the authorities rather than lay members of his family or associates.

23. However, the appellant claims the events with the telephone unfolded in 2020 yet on 9 December 2017 Iraqi forces confirmed that ISIS had been defeated in Iraq and would no longer pose a threat to him per se at that time.
24. I accept that those found to be associated with that terrorist group will be arrested by the authorities, detained and are likely to face serious ill treatment on the basis of the country information. The risk of such individuals is the basis of Mr McVeety's submission that it was implausible a person who had a photograph on their phone of them being with an ISIS member with a beard and holding a gun would hand it to a complete stranger given the risk of discovery and the serious consequences of the same. Human Rights Watch in their report dated 5 December 2017 entitled 'Flawed Justice, Accountability for ISIS Crimes in Iraq' wrote:

Conditions in detention and during interrogation are also problematic. Our research found that Iraqi authorities are detaining ISIS suspects in overcrowded and in some cases inhuman conditions; are failing to segregate children from adult detainees; and are systematically violating the due process rights of ISIS suspects. These violations of due process rights include ignoring guarantees in Iraqi law to bring detainees before a judge within 24 hours, to grant access to a lawyer throughout interrogations, and to notify families of their detention and allow families communication with them. Furthermore, numerous detainees have alleged that authorities tortured them to confess to membership in ISIS. When asked about such allegations, Iraqi authorities said they have investigated them but have not provided evidence of any such investigations.

25. I accept the country information refers to sleeper cells and some evidence of sporadic activity by ISIS and its supporters, but the appellant's evidence fails to deal with a key issue raised in the refusal letter of how anybody claiming to be associated with ISIS would have been aware of the arrest of the man who owned the phone and his detention by the security forces, how they would have been aware of the appellant's involvement in those events, and how they had details of how to contact the appellant which must have been on his private phone as he was with a friend at the time, in light of the evidence of those suspected of being associated with ISIS being held incommunicado on arrest pending interrogation. The appellant claims that call occurred on the same day as the arrest.
26. Although raised in the refusal letter, hence putting the appellant on notice of such concerns, the appellant has provided no rational credible explanation for how these events could have occurred.
27. The country information also demonstrates the effectiveness of the security forces in Iraq in dealing with ISIS. The appellant's evidence is that he sought a sufficiency of protection from the police in his home area but considered it insufficient. The reality is that in his home area the police did say they will protect him but he claims he did not believe that he will be protected by the local police or security forces and so he went to Erbil. That was a personal

- choice. It is not made out a sufficiency of protection is not available to the Horvath standard.
28. The appellant claims he went to Erbil and approached the Peshmerga forces there but they said they could not provide him with protection from ISIS even though at that time, and since, there was no evidence ISIS had a presence within Erbil sufficient to create a credible real risk or to warrant a finding there was an insufficiency of protection. It must be remembered that the Peshmerga proved themselves a very effective fighting unit in dealing with ISIS previously in Kirkuk. I do not find it credible that the appellant, an Iraq Kurd, was told the Peshmerga could not provide him with protection from ISIS.
  29. Although the appellant has provided evidence of the existence of ISIS sleeper cells in parts of Iraq, it is not made out local cells would have any means of knowing if the appellant had returned to Iraq.
  30. I find that although the appellant has been consistent there are material elements of his claim that are not made out when one looks at the country information and examines the credibility of individual aspects of the claim. I find some aspects of the appellant's claim are irrational, for example the point in the refusal letter regarding contact on the day of the alleged arrest and Mr McVeety's point about the provision of a photograph, which will create a real risk to the individual concerned, to a stranger.
  31. A further issue is that the appellant claims that his profession was to sell and repair mobile phones. He states the phone was brought in to be repaired. He mentioned an update. If his claim was credible, both in terms of his profession and what he was asked to do, he would have been aware of what he would need to log onto the phone after the repair had been undertaken and would have obtained this information when the phone was handed in. His evidence suggests the contrary, in that he had to telephone the man concerned to get his Apple ID and password once the repair had been completed. I find this cast further doubt upon the credibility of the claim.
  32. I find that even to the lower standard the appellant has not established his claim as to risk is credible, although there is a second issue relating to the appellant's documentation that needs to be considered.
  33. The point of return is now to any airport within Iraq. The nearest international to the appellant's hometown is Kirkuk international airport.
  34. The appellant has been consistent both in interview, oral evidence, and his witness statements that his documents were taken from him by the agent in Turkey. I agree with Mr Holmes submissions that the appellant's evidence to that effect was not challenged by way of cross-examination before me today.
  35. At [37] of the reasons for refusal letter this account is not challenged either where it is written:
    37. Consideration has been given to paragraph 11 to 16 with the CSID. It is noted that by your own evidence you had a CSID in Iraq and that this was taken away by the agents. Given that your claimed problems in Iraq have not been accepted, it is not accepted that you have lost contact with your family. It is considered that you could seek assistance from your family in Iraq to help re-establish yourself there, including with the relevant CSID documentation. Therefore, it is considered that on return to Iraq, you will have a support system that can assist you in readjusting to life in Iraq.
  36. Mr McVeety in his submissions stated the appellant will be returned to Kirkuk where he has family and that he could get documents and resettle with their assistance. I do not find the appellant has made out that he does not have contact with his family members in Iraq.
  37. It is not disputed the appellant cannot redocument himself in the UK. Within Iraq CSID's are no longer being issued, the only effective identity document being an INID for which biometrics will have to be provided.

38. Even though the appellant is likely to be able to secure a laissez passer from the Iraqi Embassy in the UK, which will enable him to fly into Iraq, that will be taken from him at the airport, and if undocumented he is likely to be arrested by the security forces and questioned.
39. It is settled law that a lack of documentation in itself is not sufficient to enable the appellant to be granted Humanitarian Protection, it is only where a person will be at risk of serious harm because of lack of documentation that such a grant would be appropriate.
40. As mentioned at the hearing, I have considered section paragraph 5.1.3 of the Country Policy and Information Note Iraq: Internal relocation, civil documentation and returns, Version 14.0, October 2023 which reads:
- 5.1.3 The Inspection Report on Country of Origin information, Iraq and Myanmar (Burma) undertaken by the Independent Chief Inspector of Borders and Immigration (ICIBI), published June 2023 (ICIBI report June 2023), quoting Dr Rebwar Fateh, an expert witness on the Middle East, stated: 'If a failed asylum seeker is returned to Iraq without an ID document, they will be detained at the airport.
- a) The returnee will then be interviewed to give some indication of whether they are from their claimed governorate or region (through dialect, accent etc.). From the returnee's Kurdish or Arabic dialect, the officer will be able to tell whether the returnee is from Iraq or not.
  - b) At this time, the returnee's claimed name and address will also be cross referenced against suspect names in possession of the security services.
  - c) Next, the returnee will be asked to phone their immediate family to bring their ID.
  - d) If they claim to have no immediate family, the returnee will be asked to contact a paternal uncle or cousin for their ID.
  - e) If this is negative too, another relative will come to the airport with their own IDs to act as a guarantor for the returnee. This would allow the returnee a seven-day residency permit pending proof of identity.
  - f) During this period, the returnee needs to obtain their own ID or provide evidence that they are in the process of obtaining an ID - such as a letter from the nationality department to show that their ID is pending via the usual procedure.
  - g) If the returnee has no such luck, they must find a local Mukhtar [local chief or village elder] by the seventh day who can provide a letter in exchange for a small fee which states that the person is who they say that they are, that they are from the claimed neighbourhood, and that they are in the process of obtaining an ID.
  - h) If the Mukhtar cannot identify the returnee, they will need two witnesses to come forward who know them and can provide evidence on their identity.
  - i) The returnee then needs to apply in writing to the nationality department. Here, they will be interviewed by the chief and the witnesses will need [sic] to give evidence under oath, stating how they know the returnee.
  - j) Once the chief has been convinced, the process of obtaining the ID will start. Once these steps have been completed, the returnee needs to communicate back to the security services at the airport, or their guarantor will face legal consequences.'
41. The purpose of the Inspection Report on Country-of-Origin information is said to help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspections. The Independent Advisory Group on Country Information (IAGCI) is a panel of experts and practitioners created to assist the Chief Inspector of Borders and Immigration in fulfilling the powers set out in section 48(2)(j) of the UK Borders Act 2007. The review is said to cover matters discussed by the IAGCI at its meeting on 25 January 2023.

42. In relation to the review of the country of information concerning Iraq it is recorded that Dr Rebwar Fatah presented an overview to the committee of his comments on the Iraq country information that he had reviewed, recommended that the country policy and information note (CPIN) provide a summary and an introduction for each section, cautioned against an uncritical reliance on media reports from Iraq, as outlets are associated with particular political groups, advocated greater attention to specific regional conditions within Iraq as there is considerable variation in conditions across the regions, and suggested a more nuanced approach in discussing opposition to the government in Iraqi Kurdistan as not all parts of the region are under the control of the Kurdish Regional Government (KRG).
43. The information contained within the 2023 CPIN, which originated from Dr Fatah, is said to have been obtained from an Iraqi government official in the Erbil nationality department in June 2020 but makes no distinction between the process in the IKR and the rest of Iraq.
44. I accept the CPIN is not country guidance and that a country guidance decision must be followed unless there is good reason to depart from it on the available evidence, but the opinion of Dr Fatah deserves proper weight being given to it. His bibliography reads:

‘Dr Rebwar Fatah is the director of Middle East Consultancy Services (MECS). He has been working as an expert witness since 2000, focusing on issues across the Middle East and North Africa (MENA), as well as Afghanistan, Iran, and Turkey. Dr Fatah has produced over 3,000 expert reports which have been commissioned for and cited in a number of immigration appeals, as well as family and criminal cases. He has also examined a large number of people from the Middle East whose nationality and/or ethnicity has been disputed. Dr Fatah has also examined and authenticated thousands of documents from the MENA region. From 2016 to 2019, Dr Fatah produced 126 reports on Iran, including Country Expert Reports, document authentications, and nationality assessments.’

45. Dealing with step-by-step approach outlined by Dr Fatah:

- a) The returnee will then be interviewed to give some indication of whether they are from their claimed governorate or region (through dialect, accent etc.). From the returnee’s Kurdish or Arabic dialect, the officer will be able to tell whether the returnee is from Iraq or not.

It is not disputed before me the appellant is an Iraqi national from Kirkuk governorate.

- b) At this time, the returnee’s claimed name and address will also be cross referenced against suspect names in possession of the security services

There is no credible evidence the appellant will be suspected of being of interest to the security services in Iraq, he does not claim this is the case.

It is not made out the appellant will be unable to receive a positive federal government security vetting as there is nothing in any of the evidence to show finding to the contrary is warranted.

- c) Next, the returnee will be asked to phone their immediate family to bring their ID

I have found the appellant is in contact with family members and it is not made out he will be unable to ask them to do so.

Although the appellant has produced documents from the Red Cross they specifically state those documents should not be relied upon and should not be provided as evidence in any legal proceedings as proof or otherwise of the ability of the Red Cross to trace the applicants relative. Such an endorsement by the Red Cross themselves warrants no weight being placed upon that evidence in support of the appellant’s claim that family members cannot be traced. I accept that if the

appellant was separated from his wife in Turkey he may not be in contact with her, however it is his family members in Iraq who are important in terms of establishing his identity at the airport, not a wife who may be elsewhere in Europe.

- d) If they claim to have no immediate family, the returnee will be asked to contact a paternal uncle or cousin for their ID

I have found the appellant is in contact with his immediate family members. In his original witness statement at [39] he refers to a mother and brother in his home area with no evidence that they no longer remain there or would not be able to assist him.

- e) If this is negative too, another relative will come to the airport with their own IDs to act as a guarantor for the returnee. This would allow the returnee a seven-day residency permit pending proof of identity

Not applicable as there is a male relative and other family members to whom the appellant can turn.

- f) During this period, the returnee needs to obtain their own ID or provide evidence that they are in the process of obtaining an ID - such as a letter from the nationality department to show that their ID is pending via the usual procedure. - Is not made out that the appellant would not be able to make an appointment with a local CSA office to obtain the required ID documents within a reasonable period of time and to provide evidence of this to the security office at the airport.
- g) If the returnee has no such luck, they must find a local Mukhtar [local chief or village elder] by the seventh day who can provide a letter in exchange for a small fee which states that the person is who they say that they are, that they are from the claimed neighbourhood, and that they are in the process of obtaining an ID. - Not applicable for the reasons set out above, although it is not established the appellant would be unable to satisfy this requirement if required.
- h) If the Mukhtar cannot identify the returnee, they will need two witnesses to come forward who know them and can provide evidence on their identity. - Not applicable for the reasons set out above.
- i) The returnee then needs to apply in writing to the nationality department. Here, they will be interviewed by the chief and the witnesses will need [sic] to give evidence under oath, stating how they know the returnee.
- j) Once the chief has been convinced, the process of obtaining the ID will start. Once these steps have been completed, the returnee needs to communicate back to the security services at the airport, or their guarantor will face legal consequences.'

46. It is not made out the appellant will be able to confirm his identity as a border or other officials at the airport that is likely to be granted a seven-day residency permit which will enable him to leave the airport and travel to his home area. Once arrangements can be made for him to attend at his local CSA office to provided biometrics and provide evidence of the fact he has done so to the authorities as required.

47. I find the appellant's objective fear in his home area is not objectively well-founded as his claim lacks credibility.

48. Even if it was credible, in the alternative, in his own evidence he had not remained in his home area for a sufficient period to establish there was no sufficiency of protection available to him from the authorities. It must remember that his timeline when he claimed these events occurred was significantly after the time ISIS was defeated in Iraq. I have found a sufficiency of protection does exist if required in his home area.

49. The Iraqi army has overseen security in Kirkuk since 2017 following the controversial independence referendum conducted by the Kurdistan Region. Iraqi forces in cooperation with Hashd-al-Shaabi militia moved into Kirkuk and of



the disputed areas prompting the withdrawal of the Kurdish Peshmerga forces who, together with the U.S.-led coalition, had liberated those regions from ISIS militants.

50. In May 2024 the Iraqi army withdrew from all checkpoints in the disputed Kurdish province of Kirkuk following an order from the Iraqi Prime Minister Mohammed Shia'al--Sudani, transferring security responsibility to local police forces. It is therefore the local police forces that will occupy any checkpoints in that area including, for example, the main checkpoint on the Kirkuk- Erbil highway.
51. Although the appellant claims in his statement that there were checkpoints outside his home area sufficient evidence has been provided to corroborate that claim at the date of this hearing, which must be considered in light of the lack of credibility in his claim. It has also not been established that if issued with a residence permit/ security pass by the authorities at the airport that would not be sufficient to enable him to pass through a checkpoint manned by the local police to enable him to return to his home area.
52. I find that the appellant, whilst not proving he faces a real risk for the reason he claims in his home area relating to the telephone, the photograph, and ISIS, to the lower standard, he has made out his claim that he is currently undocumented. However, I find he has not adequately established his claim, even to lower standard, to show that he will not be readmitted to Iraq or that he will be unable to redocument himself within a reasonable period of time to enable him to live a normal life within Iraq.
53. On that basis the appeal is dismissed.

### **Notice of Decision**

54. Appeal dismissed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 September 2024**