



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

**Case No: UI-2022-006622**  
**First-tier Tribunal No:**  
**PA/54398/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 14 June 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**JAH**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs Khan, instructed by Jackson Lees Group Limited  
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 3 June 2024**

**DECISION AND REASONS**

1. This is the re-making of the decision in the appellant's appeal, following the setting aside, in a decision promulgated on 26 March 2024, of the decision of First-tier Tribunal Judge O'Rourke.
2. The appellant is a national of Iraq born in Daquq district in Kirkuk Governate, whose date of birth is recorded as 1 January 1998. He entered the UK illegally, by lorry, on 31 March 2019, having left Iraq on 21 January 2019 and travelled to Turkey and then France and the UK. He was arrested by the police for illegal entry and he claimed asylum on 1 April 2019. His claim was refused on 27 August 2021.

3. The appellant's claim was that he feared persecution in his home area in Kirkuk Governate, from a Shia militia, Hashd al-Shaabi/ Popular Mobilisation Forces (PMF), as a result of a land dispute and because of his Kurdish ethnicity and his Sunni religion. He claimed that in 2003, as a child, he went to live with his grandfather in Mansoor village in the south of Daquq because his father was a policeman and Shia groups had started attacking families with links to the previous regime, following the toppling of the Saddam Hussein regime. His grandfather had been awarded agricultural land by the Iraqi government which was previously rented to Shia Turkmen and his grandfather continued to rent it to them. Between 2005 and June 2014, the area was ruled by Kurds and there were disputes about who owned the land from Shia armed groups who threatened to kill him and his family if the land was not returned. In June 2014 ISIS came to Mansoor. Shia Turkmen joined Hashd Al Shaabi to fight ISIS. They invaded the village and killed his father and they beat him up and occupied the land. The situation improved when the peshmerga came into the area until 2017, but after they left his family was targeted by Shia Turkmen who accused them of being ISIS sympathisers and occupying Shia land. Between 2017 and 2019 Hashd Al Shaabi were attacking and threatening his family. On 17 January 2019 his grandfather heard that there was a conflict in the neighbouring village and told him to go to his aunt's house in Kirkuk for his safety. He went there with his mother and grandmother and his uncle then took him to stay at his brother's house. A fight then happened between Kurds and Hashd Al Shaabi in the village in Mansoor and they killed his grandfather. Hashd Al Shaabi came to his uncle's house with a written order to arrest him and his uncle then arranged for him to leave the country. He fled with his mother to Turkey on 21 January 2019. He was in danger from Hashd Al Shaabi who would arrest or kill him if he returned to Iraq because there was an order for his arrest for occupying land, supporting ISIS and being Sunni Kurd.

4. In the decision refusing the appellant's claim, the respondent accepted that the appellant was of Kurdish ethnicity and a Sunni Muslim but did not accept his account of the land dispute and the problems with Shia militia groups and considered his account to be inconsistent and lacking in credibility. The respondent did not accept that the appellant was at any risk on return to Iraq. The respondent noted that the appellant had previously held a birth certificate and CSID which he claimed to have left in Iraq and considered that he would be able to contact his family in Iraq and obtain the documents in order to return there. The respondent considered that the appellant could safely return to the IKR and that his removal would not breach his human rights.

### **First-tier Tribunal**

5. The appellant's appeal against that decision was heard on 30 May 2022 in the First-tier Tribunal by Judge O'Rourke. The appellant gave oral evidence before the judge. Judge O'Rourke accepted the appellant's basic account of events in Iraq but did not accept that he was specifically targeted by Shia militia or that there was an arrest warrant in his name. He considered that the appellant's evidence about the contents of the arrest warrant was inconsistent and he did not believe that the appellant had no contact with his family in Iraq, so that there was no reason why he could not have obtained a copy of the arrest warrant. He considered it implausible that the Turkmen had not seized the land at an earlier stage and he considered that even if there was some land dispute there was little incentive for those who possessed the land to pursue the appellant. The judge rejected the appellant's account of being accused of being an ISIS/ Ba'athist supporter and did not accept that he would be at risk solely on the basis of his Kurdish ethnicity. The judge considered that, since he had found that the appellant had contact with his family in Iraq, they could either locate his

documents for him or assist in obtaining replacements, so permitting him to return to Iraq via Baghdad and continue the life he led in Kirkuk. He accordingly dismissed the appeal on asylum and humanitarian protection grounds. However he allowed the appeal on human rights grounds, finding that if the appellant maintained his current position as to having no documents or access to them and was forcibly returned to Baghdad, his Article 2 or 3 rights would be infringed.

6. The SSHD sought permission to appeal to the Upper Tribunal against that decision on the ground that, having found that the appellant had fabricated his account and having rejected his claim not to be in contact with his family, it was unclear why the Tribunal found that he would be unable to contact his family to assist with documentation to assist his return.

7. The appellant also sought permission to appeal to the Upper Tribunal, on four grounds: firstly, that the judge had given inadequate reasons/ made a mistake of fact when finding that the appellant had given an inconsistent account of the charges issues against him; secondly, that the judge's reasoning as to the plausibility of the appellant's account of the risks arising out of the land dispute was inadequate; thirdly, that the judge's rejection of the appellant's claim to have no contact with his family in Iraq lacked proper reasoning; and fourthly, that the judge's requirement for corroboration of the appellant's account of an arrest warrant being issued against him was wrong in law.

8. In a decision dated 12 July 2022 First-tier Tribunal Judge Brannan refused permission to the appellant. That decision was incorporated into a separate decision dated 13 July 2022, also from First-tier Tribunal Judge Brannan, in which permission was granted to the Secretary of State. The appellant did not renew his application for permission to appeal to the Upper Tribunal.

9. The matter then came before Upper Tribunal Judge (UTJ) Pickup for a hearing on 5 October 2023. UTJ Pickup noted that the Upper Tribunal had received by email dated 21.9.23, more than a year after permission was refused, a document from the appellant drafted by Mr Greer, dated 24.6.22, and described on the face of the document as 'Grounds of Appeal and Rule 24 Reply,' but that no IAUT-1 application had ever been lodged. UTJ Pickup considered that there had therefore been no valid renewal of the application for permission to appeal to the Upper Tribunal, a matter which seemed to have taken counsel representing the appellant, Mr Brown, by surprise, as he had prepared for the hearing on the basis that permission had been granted to the appellant. In the circumstances the matter was adjourned in order to enable the appellant's representatives to consider their position and lodge a skeleton argument supporting any claim to a right to pursue an appeal against Judge O'Rourke's decision.

10. On 6 October 2023, Mr Greer made an application to the Upper Tribunal for an extension of time to make an application for permission to appeal to the Upper Tribunal.

### **Error of Law Hearing**

11. The matter then came before me on 4 March 2024, where submissions were made on the substance of the appellant's grounds as well as the appellant's entitlement to pursue those grounds, given the timeliness issue. Mr Bates represented the Secretary of State and Mr Greer represented the appellant.

12. In a decision issued on 26 March 2024 I refused the appellant's application to extend time to appeal Judge O'Rourke's decision, but in any event found no errors of law in his decision on the appellant's asylum and humanitarian protection claim and therefore upheld his decision in that respect. However I set aside the judge's decision allowing the appeal on human rights grounds.

13. The following is the relevant part of my decision of 26 March 2024, with [15] to [20] relating to the appellant's application to extend time and grounds of appeal and [21] to [23] relating to the respondent's appeal:

**“ Discussion**

15. I am in agreement with Mr Bates that this is not a case where an extension of time can be justified for the appellant to rely upon his grounds of appeal. The extent of the delay is significant. The only explanation given for the delay is that the appellant's solicitor was confused about the relevant procedure rules. That cannot be a sufficient basis upon which to admit an application made over a year out of time. Mr Bates properly emphasised the permission-based jurisdiction of the Upper Tribunal, as discussed in Joseph and it is clear in this case that there has been no application for permission to appeal made to the Upper Tribunal. The argument that the appellant's solicitor was confused as to whether a cross-appeal was necessary holds no weight when an application had in fact been made, on the correct form, to the First-tier Tribunal. That application was unsuccessful and was never renewed, on the correct form, to the Upper Tribunal. The appellant is not assisted by the guidance in Smith (appealable decisions: PTA requirements; anonymity : Belgium) [2019] UKUT 216 as he was unsuccessful on his asylum grounds and was therefore required to apply for permission to appeal in relation to those grounds which he has not done. In any event, even if it was accepted that a rule 24 response was a sufficient vehicle to enable him to argue his grounds (which it is not), that was also filed over a year out of time, without any explanation for the delay. In such circumstances, and considering that the appellant has never been given permission to argue his grounds, the fact that the respondent had by this stage had prior notice of the grounds and that Mr Bates was present at the hearing and in a position to respond to the grounds, was not a reason to permit the appellant to rely on his grounds.

16. Whilst the Court of Appeal in Hysaj made clear that the merits of the grounds, in most cases, would have little to do with whether it was appropriate to grant an extension of time, I have nevertheless given consideration to the substance of the grounds which I permitted to be argued before me for the sake of completeness. It seems to me that there is nothing of any merit in those grounds and I agree with Mr Bates that they are essentially little more than a disagreement with the judge's findings and conclusions and an attempt to re-argue the matters.

17. The first ground challenges the judge's findings at [25(i)] on the inconsistency of the evidence as to the contents of the arrest warrant which the appellant claimed had been issued against him. The assertion is that there is nothing recorded in the screening interview about the charges in the arrest warrant and that the judge therefore made a mistake of fact in relying upon what the appellant had said at that interview about the charges against him. However, as said in the decision refusing permission in the First-tier Tribunal, that completely ignores what was said by the judge at [19] about the reference being in the follow up to the interview which clarified paragraphs 5.3 and 5.5 of the screening interview. There clearly was an inconsistency between the appellant's evidence arising from the screening interview and the evidence he subsequently gave in cross-examination and the judge properly identified that inconsistency at [25(i)]. The second part of ground one asserting that the Tribunal may have misheard the appellant's evidence on that point, was quite properly abandoned by Mr Greer in the absence of any attempt by the appellant to obtain a transcript of the hearing.

18. The second ground asserts that the judge's findings at [25(iv)] on the plausibility of the appellant's account of being at risk from the Turkmen given their previous lack of

action against him reflected the Tribunal's imposition of its own view which was not supported by the background information. However I agree with Mr Bates that the judge was making a finding on plausibility in the context of the situation in Iraq as opposed to imposing his own independent UK-centric view. In any event, as Mr Bates submitted, the judge went on to make a finding in the alternative, that there was no reason for the Turkmen to be interested in the appellant now that his family no longer possessed the land, a finding not specifically challenged in the grounds. Ground three challenges the judge's rejection at [25(ii)] of the appellant's claim to have no contact with his family owing to his failure to address the evidence that he had tried to contact them through the Red Cross. However the judge referred, at [20], to the appellant's claim to have made enquiries to the Red Cross and therefore clearly had that in mind. I reject any suggestion that the simple fact of the appellant having contacted the Red Cross was evidence that he did not know his family's whereabouts. Such tracing attempts are commonly relied upon by applicants as evidence to support such a claim and the judge was entitled to give it the weight that he did, particularly in view of his findings otherwise made about inconsistencies in the appellant's evidence about his ability to contact his family. Having effectively found that the appellant retained contact with his family in Iraq it seems to me that there was nothing erroneous in the judge considering the possibility of him seeking to obtain a copy of the arrest warrant said to have been given to his aunt's husband (see [19]) and I therefore reject the assertion in the fourth ground that the judge at [25(iii)] misapplied the principles in TK (Burundi) v Secretary of State for the Home Department [2009] EWCA Civ 40 in that regard.

19. In the circumstances the appellant's grounds, even if admitted, do not disclose any errors of law in Judge O'Rourke's decision on his asylum claim.

20. For all these reasons, I do not consider that the interests of justice require an extension of time and I do not admit the grounds, either by way of a grant of a grant of permission or through rule 24(3)(e) of The Tribunal Procedure (Upper Tribunal) Rules 2008.

21. As for the Secretary of State's grounds of appeal, it was Mr Greer's submission that the judge had not erred in law and had been entitled to find that there was an Article 2 or 3 risk to the appellant, as consistent with the guidance in SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 37, on the basis of the appellant not having access to his identity documents. However, as Mr Bates submitted, the judge had not found that the appellant had no access to his documents, and the basis upon which he allowed the appeal, at [28], was inconsistent with his previous findings in the first half of [27]. I agree with Mr Bates. It is difficult to understand why the judge, having rejected the appellant's narrative in regard to the risks in his home area, having found him to be an unreliable witness and having found that his documents remained in Iraq and that he had contact with his family in Iraq, then went on to find that he could succeed on Article 3 grounds simply by claiming to have no documents. It is perhaps a case of the judge misunderstanding the guidance in SA, but whatever the reason it seems to me that the judge's reasoning was inconsistent and erroneous and that his decision to allow the appeal on human rights grounds has to be set aside.

22. As for the onward disposal of the appeal, Mr Greer submitted that there needed to be a further hearing for findings of fact to be made about the current state of the appellant's contact with his family in Iraq and access to documentation. Mr Bates, however, submitted that the decision in the appeal should simply be re-made by dismissing it on the findings made by the judge, given the absence of any rule 15(2A) application and no evidence of any changed circumstances, and that there was no need for further oral evidence.

23. With some hesitation I agree to a resumed hearing, although there has been no Rule 15(2A) application, but being mindful of the passage of time since the last hearing. The case will therefore be listed for a resumed hearing in the Upper Tribunal for the decision to be re-made, on a date to be notified to the parties. The re-making will be on the sole

issue of the appellant's access to documentation, and any issue of risk on return in that regard, at the current time. All findings of the judge are otherwise preserved."

14. The matter was listed for a resumed hearing on 3 June 2024. An application to adjourn owing to the unavailability of Mr Greer was refused, on the grounds that there was ample time to instruct alternative counsel. In the event, alternative counsel was instructed, and Mrs Khan appeared for the appellant.

15. The appellant produced a bundle of documents for the hearing which included a rule 15(2A) application and a supplementary witness statement in which he maintained that he was not in contact with his family and had no way of contacting them and that he could not, therefore, obtain his documents from Iraq.

### **Hearing for the Re-making of the Decision**

16. As a preliminary matter at the commencement of the hearing Mrs Khan sought to clarify the preserved findings and the issues for the re-making of the decision in the appeal. She pointed out that Judge O'Rourke had, at [25], accepted the appellant's basic account of events and as such had accepted his account of the death of his father and grandfather. What was not accepted was the appellant's claim to have himself been specifically targeted by the militia and to have had an arrest warrant issued against him. She also suggested that the judge had not specified with which family members the appellant maintained contact and which documents were referred to at [16] that he claimed to have left behind in his grandfather's house. Those were matters she wished to explore by calling the appellant to give further evidence. Mr Bates was in agreement with those issues and the appeal proceeded on that basis.

17. The appellant gave oral evidence before me. He adopted his statement as his evidence and confirmed that the document to which he was referring at question 45 of his SEF interview, which he had left at his grandfather's house, was his CSID. He said that the document had been issued in Kirkuk. He did not know what happened to the document when his grandfather was killed. When referred to [23] of his statement of 13 December 2021 where he had stated that his grandfather had taken documents to his aunt's house, he said that that did not include his CSID, but they were just documents relating to the land. He did know if anyone went to find his CSID after his grandfather was killed. The appellant said that he had no siblings. He had no information about his mother's whereabouts. His father had had one brother who was murdered during the Kuwait war, and it was because of that that the Iraqi government had given his family land as compensation. His mother had one sister who was married with no children. His grandmother had been at his aunt's house before he left. He had no other family in Iraq.

18. When cross-examined by Mr Bates, the appellant said that he did not make any arrangements for contacting his aunt when he left Iraq and he did not know if his mother made any such arrangements. His CSID document was an important document. He did not, however, require it when he passed through checkpoints when travelling from Mansoor to Kirkuk with his mother and grandmother. The checkpoints were manned by Kurdish peshmerga forces and they did not stop them for identification. None of them had their documents with them. In response to my enquiry as to why they had not taken their CSID documents with them when they left Mansoor, the appellant said that they were in a panic and in a hurry and it was not normal circumstances.

19. Both parties then made submissions.

20. Mr Bates submitted that the matter came down to the solitary issue of whether the appellant was able to access his original CSID and that was a matter of credibility. He submitted that Judge O'Rourke, at [25(iv)], did not accept the imminent threat in 2019, owing to the lack of activity in the preceding 5 years, and that that went to the credibility of the appellant's account of the urgency with which he fled his grandfather's house leading him to leave his documents behind. He submitted that the likely situation was that the appellant would have taken his documents to his aunt's house. That then led on to the credibility of the appellant's account of having no contact with his family. He did not accept the appellant's account of having no means by which to contact his family as credible. The appellant was therefore able to contact his family and obtain his original CSID. His family could send the document to him or they could meet him on his arrival in Baghdad and hand it to him. He could then travel to the CSA office in Kirkuk and obtain a INID.

21. Mrs Khan submitted that the judge had made some positive credibility findings about the appellant's account which supported his claim to have left Mansoor for Kirkuk in a hurry and to have left his documents behind. His account was consistent with the expert evidence of Dr Fatah in the case of AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 where, at [30], he referred to people fleeing at short notice without documents owing to the turmoil in the area. It was also consistent with the judge's findings at [26] about the general instability in Kirkuk. There was therefore a plausible explanation from the appellant as to why he had left his document behind and that should be accepted, to the lower standard of proof. It was not realistic to conclude that documents left at his grandfather's house would still be there. The appellant could not travel to the CSA office without his CSID. Alternatively, if it was not accepted that the CSID had been left at his grandfather's house, the appellant's account of the loss of contact with his family should be accepted. The appeal should therefore be allowed.

## **Discussion**

22. As became clear from the preliminary matters raised by Mrs Khan at the commencement of the hearing, there were further issues which required clarification following on from Judge O'Rourke's preserved findings and this was not a matter of those findings being determinative of the case against the appellant, as perhaps it appeared to be at the previous hearing, as indicated at the end of my error of law decision. Indeed, having heard further from the appellant and having heard Mrs Khan's helpful submissions, I have determined the case in the appellant's favour. I set out my reasons for doing as follows.

23. As Mr Bates submitted, the sole issue for the re-making of the decision in the appellant's appeal is his ability to access his original CSID. Mr Bates asked me not to accept the appellant's account of having left his CSID at his grandfather's house when he fled there for Kirkuk. His principal reason for that was that Judge O'Rourke, at [25(iv)], had found it implausible that the Turkmen would not have seized the land earlier, in the five years since killing the appellant's father, and that that indicated a lack of urgency which in turn undermined the appellant's claim that he had fled his grandfather's home as a matter of urgency, leaving behind his documents.

24. However it seems to me that that was not an accurate view of the evidence which the appellant had given. The appellant's evidence, in his SEF interview at [104] to [109], was that the urgency arose from the news his grandfather had received on 17 January 2019 that the Shia Turkmen were attacking a neighbouring village following

their increase in power at the time and his grandfather's concern that they would come to their village next. That is consistent with the chronology in the appellant's appeal bundle before the First-tier Tribunal which refers to the appellant's grandfather learning that the Shia Turkmen were coming to forcibly evict Kurds from the Mansoor area, and with the appellant's evidence in his statement before the First-tier Tribunal, at [24] and [25] which provides the same account.

25. It is relevant to note that Judge O'Rourke, at [25], did not doubt those particular events recounted by the appellant and found that the appellant's account of fleeing Mansoor for Kirkuk at that time was consistent with the country background information. As such, there is nothing in Judge O'Rourke's findings of fact, as preserved, to suggest that the appellant's account of the urgency of his situation was not a genuine and credible one. As for the appellant's claim that he was able to pass through the checkpoint en route to Kirkuk from Mansoor without his documentation, that was not a matter specifically relied upon or challenged by Mr Bates. The point he made was limited to the question of the urgency of the appellant's departure. The appellant provided what seemed to me to be a plausible explanation for being able to make that journey, and pass through the checkpoint, without his CSID, namely that it was manned by Kurdish peshmerga forces at the time. Mrs Khan also helpfully pointed out that the appellant's account of leaving his documentation behind was supported by the evidence of Dr Fatah in AAH (Iraq), which is recorded at [30]: *"In addition many people lost their documents during the conflict when homes were destroyed or when fighting broke out, causing people to flee at short notice without them."*

26. It is also relevant to note that, whilst Judge O'Rourke found that the appellant could access his CSID because he had contact with his family in Iraq, he did not make any detailed findings in that respect and did not explain which family he was referring to specifically. Neither did he make any findings as to whether or not he accepted the appellant's account of having left his documents at his grandfather's house when he fled. I note that that was an account the appellant consistently maintained, in his response to question 45 of his SEF interview, at [27] of his statement of 13 December 2021, in his evidence before Judge O'Rourke (as recorded at [16]) and in his evidence before me, and was an account which Mrs Khan asked me to accept. I do accept that account. For the reasons set out above, the account is neither internally inconsistent nor is it inconsistent with the background information and, particularly considering the lower standard of proof, there is no real basis for rejecting it. Accordingly there is no reason to proceed on the basis proposed by Mr Bates, that the appellant took his documents with him to his aunt's house and that his CSID was left there. Rather, the accepted evidence is that he left his documents behind at his grandfather's house when he fled.

27. That then leaves the question of the relevance of Judge O'Rourke's finding that the appellant was in contact with his family and could access his documents. The judge did not specify which family members he was referring to. The only family referred to at any point by the appellant was his aunt and her husband and presumably that was who Judge O'Rourke was referring to when he found that the appellant had contact with his family. As Mrs Khan submitted, it is apparent from the judge's positive finding at [25] accepting the appellant's basic account of events in Iraq, that he accepted that the appellant's father had been killed in 2014, that his grandfather was killed in 2019 and that his mother had left Iraq. The appellant has since explained, in his evidence before me, that there was no other family, and I see no reason to reject that account.

28. That in turn leads to the question of whether the appellant's aunt could have, in the meantime, retrieved the appellant's CSID document from his grandfather's house



and retained it herself so that the appellant could contact her and obtain it. However it seems to me that that requires undue speculation, particularly given that it was accepted by Judge O'Rourke, in light of the background information, that there was a situation of some turmoil in Mansoor at the time the appellant fled his grandfather's house and presumably for some time thereafter. Further, the appellant's evidence before me was that he was not aware of anyone going to his grandfather's house to find the document and he did not know if his grandfather's house had been destroyed. In addition it is relevant to consider that the appellant's aunt was, of course, aware that the appellant had since left Iraq and so it is questionable why she would consider going to retrieve the document. Mrs Khan submitted that accordingly, even if the appellant retained contact with his aunt, it is highly unlikely that his CSID could now be retrieved from his grandfather's house, given the passage of time. I have to accept that that is the case.

29. Drawing all of this together, I accept the appellant's claim that he is not able to access his original CSID document. I take note of Mrs Khan's submission that this was not a case where the First-tier Tribunal found against the appellant on all matters. He accepted the appellant's basic account of events in Iraq, rejecting only his account of being specifically targeted by the militia and being the subject of an arrest warrant, and his account of having no contact with his family in Iraq. On the basis of the facts accepted by the judge, and in light of the discussion above, it is reasonably likely that the appellant's account of having left his documents behind and not being able to retrieve them is a true and credible one. I am less persuaded of the credibility of the appellant's explanation as to his loss of contact with his aunt and uncle and his inability to contact them. I agree with Mr Bates that his claim not to have put in place arrangements to contact his family upon arrival in the UK is somewhat lacking in credibility. However I do not consider that to be determinative of the issue before me and I maintain that the account of not being able to access his documentation from the last place he had it, his grandfather's house, is one that I am able to accept to the lower standard of proof.

30. Accordingly, I accept that the appellant is unable to access his original CSID. As Mr Bates submitted, that is the solitary issue before me. He accepted that without producing his original CSID the appellant could not obtain an INID card. In order to obtain an INID card the appellant would have to present himself, in person, at the Civil Status Affairs ("CSA") office in Kirkuk to enrol his biometrics. There is, however, no way of him travelling to his home area to obtain the INID card without his CSID. In the absence of one of those documents he was, and is, unable to travel within Iraq without encountering treatment or conditions contrary to Article 3 ECHR, as established by the guidance in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC). In the circumstances, his removal to Iraq would be in breach of Article 3 of the ECHR.

31. The appellant therefore succeeds in his appeal on Article 3 human rights grounds. I have, therefore, ultimately reached the same decision as Judge O'Rourke, albeit by a different route.

## **DECISION**

32. The decision of the First-tier Tribunal having been set aside, the decision is re-made by allowing the appellant's Article 3 human rights appeal.

Signed: S Kebede  
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

6 June 2024