



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

Case No: UI-2024-000784

First-tier Tribunal No: PA/54841/2023  
and LP/02494/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 25<sup>th</sup> of September 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SKINNER**

**Between**

**AHMA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mrs C. Johnrose, solicitor, Broudie Jackson Canter Solicitors  
For the Respondent: Mrs A. Nolan, Senior Home Office Presenting Officer

**Heard at Field House on 4 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**

**Introduction**

1. The Appellant is a citizen of Iraq. He appeals against the decision of First-tier Tribunal Judge Power (“the Judge”) dated 7 December 2023 dismissing his appeal on protection and Article 3 grounds.

2. The hearing before me took place via video link. There were no significant technical problems, although there was a slight delay in transmission. While this rendered interactions between the Tribunal and the parties' representatives somewhat 'clunky', I was satisfied that both parties were able to make all the submissions they wished to and did not detract from the fairness of the hearing. Neither party suggested to the contrary.
3. The Judge made an anonymity order "*because the appellant has made a protection claim*". That is an insufficient basis for interfering with open justice: see Kambadzi v SSHD [2011] UKSC 23. However, I am satisfied that the naming of the Appellant may give rise to an increased risk to him on return to Iraq and that anonymisation therefore remains appropriate. I have therefore made an anonymity order in the terms set out above.

### **The FTT appeal**

4. The Appellant's claim was that he was at risk on return because, in essence, he was suspected of being a recruiter for ISIS and/or was at risk from ISIS and/or by virtue of a lack of necessary ID documentation. The Judge rejected these claims on the basis that he did not find the Appellant to be a credible witness in material respects.
5. In particular, after having set out the legal framework, including the burden and standard of proof, the Judge made the following findings:
  - a. The Appellant attended Mosque with his friend, Ahmed, where a cleric had encouraged boys from the area to join ISIS, that the Appellant had left his home and relocated to Sheikhan Camp, as a result of ISIS attacks in the area (paras. 16-19);
  - b. The Appellant had not come to the attention of the Iraqi authorities and he was not at risk as a result of the alleged status or influence held by Ahmed's family. This was because there was a fundamental and unexplained inconsistency in his account, namely why Ahmed's cousins would have considered that the Appellant would be responsible for Ahmed having joined ISIS when they knew that he was not religious and had not himself joined ISIS, in circumstances when it was known in the camp that the cleric had encouraged the boys to join Jihad and had gone missing (paras. 20-21).
  - c. The Appellant had access to a CSID in Iraq and his family had his identity documents in Sheikhan Camp. The Judge did not accept the Appellant's account that they did not have a chance to pack belongings and take things with them when they left home for the camp, as his mother had \$500 dollars available to provide the Appellant so that he could leave the camp. There was no explanation as to how she could provide him with this if they had left home without taking anything with them (paras. 22-24).
  - d. The Appellant remains in contact with his family in Iraq. It was not credible that the Appellant's family members would leave the camp without finding a means of maintaining contact with him, his account of not having contacted the Red Cross or other organisations that could assist him to look for his family was inconsistent with his claim to be making efforts to search for them; the lack of detail provided was a significant omission (paras. 25-28).

- e. The Appellant's credibility was also damaged by virtue of his having had a reasonable opportunity to make an asylum claim in a safe country (para. 29)
- f. The Respondent's position, that the Appellant would be returned to Mosul, was not in breach of the Country Guidance or the Respondent's policy (paras. 31-40).

### **Appeal to the Upper Tribunal**

6. The Appellant sought permission on four grounds of appeal, in summary as follows:
  - a. Ground 1: Failure to follow Country Guidance in finding that the Appellant can be returned to Mosul;
  - b. Ground 2: Applying too high a standard of proof;
  - c. Ground 3: Unfairness (a) in relying on the Appellant's opportunity to have rehearsed his account, (b) in rejecting the Appellant's claim that Ahmed's family accused him of encouraging Ahmed to join ISIS; (c) in relying on the mother having given the Appellant \$500.
  - d. Ground 4: Speculation as to what Ahmed's family would or would not do and as to what the Appellant's mother would have done prior to leaving the camp.
7. Permission to appeal was refused by First-tier Tribunal Judge Lester on 21 February 2024, but subsequently granted by Upper Tribunal Judge Perkins on 7 June 2024. He considered it to be a finely balanced application but granted permission on all grounds, noting that the renewal grounds did not add significantly to the grounds supporting the initial application to the First-tier Tribunal. He considered Ground 1 to be the most promising.
8. The Respondent did not file a response to the appeal pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Procedure rules.

#### *Ground 1*

9. Paragraph 7 of the headnote of SMO and KSP (Civil Status documentation, article 15) (GC) Iraq [2022] UKUT 110 (IAC) ("SMO") provides that *"Return of former residents of the Iraqi Kurdish Region (IKR) will be to the KIR and all other Iraqis will be to Baghdad."* This was, it appears, based on what was said at para.26 of the substantive decision that *"There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah."*
10. The Respondent at the hearing informed the Judge that the Appellant would be removed to Mosul, his home town. The evidence before the Judge was contained in the Respondent's CPIN of October 2023, on Internal Relocation, Documentation and Returns, Iraq, to which both parties referred. That provided at para.3.6.2 that *"failed asylum seekers can now be returned to any airport in Federal Iraq (other than Kirkuk) and to Erbil and Sulaymaniyah airports in the KRI"*. That assessment is supported by a statement from Ms Mairead Peronius, Country Manager within the Returns Logistics part of the Home Office, set out at Annex C to the CPIN. Her main duties, she states, include managing a team within RLO who engage with diplomatic missions in the UK and representatives of overseas governments to

obtain travel documentation and agree returns processes to facilitate returns. She notes at para. 2 that *“Failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the Iraqi Kurdistan Region, as stated in section 3.1.1 of the [earlier CPIN]”*. At para.3 she states that *“Between 30/09/2020 and 05/10/2022 the Home Office successfully enforced the removal of 8 Iraqi nationals to Erbil and 9 to Sulaymaniyah. There were no flights between the UK and Iraq from 17/03/2020 and March 2021 due to the Covid pandemic.”*

11. After the hearing before the Judge, the Appellant’s solicitors uploaded an article to MyHMCTS which indicated that Mosul airport was not yet operational. I can see from MyHMCTS that this was done on 22 November 2023, 2 days after the hearing and before the decision was written. However, in simply uploading the evidence, the Appellant’s solicitors failed to comply with Annex A of the First-tier Tribunal President’s Practice Statement No 1 of 2022. A party may not rely on late evidence without the Tribunal’s leave although it is open to a party to make an application to rely on late evidence. Paragraph A.17 states as follows:

*“A party may apply to adduce material evidence after the hearing has concluded but only in exceptional circumstances. Such material will only be admissible upon application unless the Judge has directed the provision of that material. The application must be made using the online procedure, unless it is made orally at the hearing. Any material ruled admissible must be uploaded”*.

12. The Appellant’s solicitors did not make an application to admit the late evidence. There was no direction by the Judge to provide any further evidence. The Appellant’s solicitors did not use the “online procedure”. The article was simply uploaded onto the platform. This article was accordingly not in evidence before the Judge.
13. Mrs Johnrose submitted that there was *“no evidence”* before the Judge that the Appellant was removable to Mosul. I do not accept that. The evidence from Ms Peronius at Annex C of the CPIN, to which the Judge records both parties referred, was evidence. It was in effect a witness statement and was verified by a statement of truth. There can be no reason to doubt that Ms Peronius had the requisite knowledge of the facts of which she gave evidence.
14. The question then is whether that evidence was properly capable of allowing the Judge to depart from the position set out in SMO. In my judgment it was. The evidence from Ms Peronius indicated that there had been a change in the practice of returns and that the Appellant could therefore be returned to any airport in Federal Iraq (which includes Mosul) apart from Kirkuk. While the standard of evidence required to depart from Country Guidance must be cogent in light of the strong presumption of fact which Country Guidance decisions impose, what is required to meet that threshold is necessarily context dependent. Here, the Home Office’s ability to remove someone to a particular airport is something which is within the Home Office’s own knowledge. While it is right that Ms Peronius’ statement does not refer to Mosul airport in terms, that statement coupled with the Presenting Officer’s assertion that the Home Office would be removing the Appellant to Mosul (in which must implicitly be a statement that the airport is one to which it is possible to remove him) was sufficient to enable the Judge to find that the position set out in SMO had in effect moved on. I am not satisfied that

there is any basis on which I can interfere with the Judge's finding of fact in that regard. Ground 1 accordingly fails.

15. For completeness, although there was no application pursuant to rule 15(2A) of the Procedure Rules to admit the article that had been uploaded to myHMCTS into evidence before me, I considered it myself *de bene esse*. It does not however demonstrate that the Appellant will not be removable to Mosul, only that he cannot yet be so removed. According to the article, as at July 2023, the airport remained under redevelopment, the runway was operational and the construction of the service facilities, control towers and outer walls was underway and would be completed by the end of 2024.
16. Given that in reality the Appellant would be very unlikely to be removed by the end of the year in, if, contrary to my conclusions, the Judge erred in departing from the Country Guidance and as at the date of the hearing before the Judge it was not possible to remove the Appellant to Mosul, I would not exercise my discretion to set aside the decision under s.12(2)(a) of the Tribunals, Courts and Enforcement Act 2007, as, by the time any remaking hearing were determined and the Appellant in a position to be removed, he will, on the basis of this article, very likely be removeable to Mosul. In other words, by the time of his removal, this issue would have become academic.

## Ground 2

17. By ground 2, the Appellant submits that the Judge adopted a higher standard of proof when assessing the appeal. This is in particular because in para.28, the Judge finds that the Appellant is in contact with his family "*on balance*". Mrs Johnrose accepted that the Judge had correctly directed himself at para. 15 when setting out the burden and standard of proof, but submitted that when the decision is looked at as a whole, it was clear that the correct standard had not been applied. She referred me in her oral submissions, in particular, to paras. 21, 24, 25 and 28.
18. In assessing this ground I must assume, unless I detect an express misdirection, or unless I am confident, from the Judge's express reasoning, that the Judge's decision must be based on an implicit misdirection, that the FTT, as a specialist tribunal, knows, and has applied, the relevant law: ASO (Iraq) v Secretary of State for the Home Department [2023] EWCA Civ 1282 at [41].
19. The only express reasoning on which Mrs Johnrose was able to rely was the reference to "*on balance*" in para.28. That phrase in this context plainly meant "*weighing up both sides of the argument*", not applying a balance of probabilities test. It is accordingly not indicative of the Judge having applied too high a standard of proof.
20. As to the other paragraphs in which the Judge is said implicitly to have applied the wrong standard, I am not confident that he has done so - indeed, I am confident that he has not. There is nothing in these passages about the standard of proof and there is nothing in them which is inconsistent with an application of the correct, lower, standard applicable in protection claims or which might otherwise indicate that a different standard was being applied. For example, the Appellant seeks to suggest that the Judge, in not giving the Appellant credit for consistency in para.21, is applying a different standard. I do not agree. The Judge is simply assessing the Appellant's evidence and his consistency in the context of

his having recounted the basis of his asylum claim a number of times previously. This is a logical process of reasoning which is consistent with the lower standard.

21. Ground 2 accordingly fails.

### *Ground 3*

22. Ground 3 in fact consists of a number of disparate submissions grouped together under the heading of “unfairness”.

23. First, the Appellant suggests that it was unfair in para.21 for the Judge to “*penalise and discredit*” the Appellant for having given a consistent account of the events claimed. This is not in my judgment a fair characterisation of the approach which the Judge took. Rather, at para.21, the Judge noted that the Appellant’s account had been consistent, but observed that he had already claimed asylum in Sweden and Italy and had therefore had the opportunity for this account to have been rehearsed. What the Judge does not then do is suggest that this consistency is therefore a factor undermining his credibility. It simply meant that this was not a matter in his favour in the way it might otherwise have been. When the Judge proceeds to find that the Appellant has not been credible, this is on the basis, notwithstanding the general consistency of his account, of a “*fundamental inconsistency*” [emphasis added]. I therefore do not accept that the Judge’s approach to the Appellant’s consistency was unfair.

24. Second, the Appellant complains of the Judge’s rejection of the Appellant’s claim that Ahmed’s family accused him of encouraging Ahmed to join ISIS. This is said to be wrong because (a) it was incorrect that the Appellant had not provided the reason why he believed this to be the case; (b) the Appellant cannot be expected to know what exactly was in the mind of Ahmed’s family; and (c) there was no evidence before the Judge that Ahmed had actually joined ISIS.

25. The Judge’s reason for rejecting the Appellant’s claim in this respect was that there was a fundamental inconsistency in the Appellant’s account which had not been explained in the evidence before the Judge, namely why Ahmed’s cousins – knowing that the appellant was not religious and that he himself had not joined ISIS, as he was in the Skeikhan Camp – considered that the appellant would be responsible for Ahmed having joined ISIS. As to the Appellant’s reasons why this reasoning is said to be flawed:

- a. The Appellant suggests that there was an explanation given by the Appellant, and recorded by the Judge in para.16, why he believed Ahmed’s family accused him of encouraging Ahmed to join ISIS. The Appellant’s evidence recorded there is that they disapproved of the Appellant as he was “*looking at girls, drinking alcohol and smoking... They kept saying that I am...not following the Muslim faith.*” There are in my judgment two difficulties with the Appellant’s submission. First, it is tolerably clear from the Judge’s description of Ahmed’s family’s knowledge that the Appellant was “*not religious*” that he was referring to this very evidence, but nonetheless did not consider it to be a proper explanation. Second, and in any event, I struggle to understand how this assists the Appellant. The evidence on which the Appellant relies that Ahmed’s family kept saying that the Appellant was not following the Muslim faith, is hardly consistent with them also thinking that he was a recruiter for ISIS, an organisation for which following the Muslim faith (or

at least a particular version of it) is central to its identity. This accordingly does nothing to resolve the inconsistency identified by the Judge, indeed it emphasises it.

- b. I do not accept that the Judge was unjustifiably expecting the Appellant to know what was in the mind of the Appellant's family. The Judge was, quite properly, noting an inconsistency between the Appellant's evidence of what Ahmed's family knew about him and what he said they thought about him.
- c. The Appellant's third point does not arise as the Judge did not in my view make any finding as to whether Ahmed in fact joined ISIS or not. This paragraph of the Judge's decision is all about what Ahmed's family thought the Appellant had done (encouraged Ahmed to join ISIS), not whether it had in fact happened (either the encouragement or the joining of ISIS).

26. Third, the Appellant complains that the Judge acted unfairly in respect of the finding that the mother paid for the Appellant's departure from the camp. It is said that there was no evidence about the provenance of the \$500 the Appellant's mother gave him. I do not accept this. In the absence of any evidence from the Appellant that his mother had obtained the money from somewhere other than savings at home, the obvious inference is that his mother brought it from home with them when they fled. Mrs Johnrose said that this was not put in cross-examination, but I do not consider that it needed to be. Cross-examination is not an opportunity for the Appellant to improve his evidence and it would in my view be obvious that, if he was also going to maintain that he left his home without time for any belongings to be taken with them, he would need to explain where belongings were obtained, which he did not do.

27. It follows that Ground 3 falls to be rejected.

#### Ground 4

28. By Ground 4, the Appellant submits that in paras. 21 and 25 the Judge fell into impermissible speculation in relation to what Ahmed's family and the Appellant's mother would or would not have done.

29. The line between permissible inferences and impermissible speculation is one of ordinary rationality: see *Royal Mail Group Ltd v Efofi* [2021] UKSC 33 at [41]. In my judgment both of the inferences drawn by the Judge were rational, essentially for the reasons which he gave. In para.21 there was a contradiction between what the Appellant said Ahmed's family had said about why they did not want Ahmed to spend time with him (not following the Muslim faith) and the Appellant account that Ahmed's family considered he had encouraged Ahmed to join ISIS. This contradiction was unresolved and the Judge was accordingly entitled to disbelieve the Appellant's account in this respect. As to para.25, the Judge explained that he considered it incredible that, having maintained contact with the Appellant for many months, the family would depart from the camp without identifying a way to continue to stay in contact. That is in my view a rational finding. In the grounds, the Appellant prayed in aid the CPIN of July 2022, which stated that "*The IOM reported as of June 30<sup>th</sup> a total of 4.97 million IDPS had returned to their areas of origin across the country as areas became liberated from ISIS starting from 2015.*" However, the Judge did not find it incredible that the Appellant's family had left the camp, merely that they did so without first

ensuring they had a way to maintain contact with the Appellant. This evidence does not therefore take the matter any further.

30. It follows that Ground 4 fails and the appeal must be dismissed.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error of law and shall stand.

**Paul Skinner**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

21 September 2024