



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number PA/11012/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard by *Skype for Business*  
On 14 April 2021**

**Decision & Reasons Promulgated  
On 22 April 2021**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**TWANA ABDULKADER JALAL**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr S Martin, of Jain, Neil & Ruddy, Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a Kurdish citizen of Iraq. FtT Judge Cox dismissed his appeal by a decision promulgated on 31 December 2019.
2. The appellant sought permission to appeal on 3 grounds:
  - (1) absence of a finding on risk that a young man from a disputed area might be perceived as an associate or collaborator of ISIS;
  - (2) failure to apply country guidance stated in *AAH* [2018] UKUT 00212, and subsequently in *SMO* [2019] UKUT 00400; and

- (3) finding no risk from Hashd Al Shaabi, contrary to “objective evidence”.
3. On 27 January 2020 the FtT granted permission, on the view that while the matter in ground 1 was not at the forefront of the appellant’s case, omission to consider it might arguably be material.
  4. A response by the SSHD, of 7 May 2020, focuses on *AAH* at paragraph 120, to the effect that returnees should be able to show that they have recently arrived from the UK, dispelling any suggestion of having come straight from ISIS territory.
  5. A response for the appellant, of 19 May 2020, says that the FtT did not address the point relied upon by the SSHD, and that the SSHD has not addressed the rest of the grounds.
  6. Mr Martin relied upon the grounds and response above. He submitted that the FtT erred materially, and that applying *SMO*, the findings which were reached were sufficient for the outcome to be reversed. Alternatively, he sought a remit for a fresh hearing.
  7. Mr Martin took as his starting point that the appellant is a young Sunni Kurd, undocumented, from Mosul, an area where the situation is no longer “contested” was at least not finally resolved. He argued that the FtT failed to make findings on the reality of his family contacts and ability to re-document himself, and was required to have done so with much more precision. Absent such findings, he founded on the complexities of the background evidence and of the risk factors identified in *SMO*, to demonstrate that the appellant could only be returned to Baghdad, could not live there, could not obtain documentation, could not travel by land or air to the IKR, and if he did arrive there could not find accommodation, employment, or otherwise establish himself.
  8. On ground 3, Mr Martin said that the FtT failed to deal with background evidence which shows that the power of Hashd Al Shaabi in Mosul is such that the appellant could not return there.
  9. Ms Everett accepted that the judge failed to deal with the point in ground 1. She relied on the response to the effect that the omission was immaterial, there being no reason for the appellant to be unable to show that he had arrived from the UK, not from ISIS territory. She also accepted that the judge had not applied *SMO* (which, as Mr Martin had pointed out, was reported on the day the judge signed his decision). Her reply to the rest of the appellant’s case was that it turned on whether the judge should have made any further findings on family contacts and the possibilities of re-documentation. She said that on findings (by successive judges) that the appellant was not truthful and reliable on those matters, the FtT could go no further, so there was no error in holding that the appellant had not established his case.

10. I reserved my decision.
11. The FtT overlooked the case in terms of ground 1. However, the appellant left his home area almost 7 years ago. It is fanciful to suppose that he might now be perceived to come from ISIS controlled territory as an ISIS associate or collaborator. On return from the UK, either voluntarily (as is to be presumed) or involuntarily, there is no reason for the appellant to have any difficulty in demonstrating that fact. The omission identified by ground 1 is not capable of contributing to another outcome.
12. It is a fine question whether the FtT might have fallen into legal error by not applying country guidance published on the same date as its decision was signed; but nothing turns on any distinction between older and newer guidance.
13. The onus was on the appellant to establish the primary facts on which his case depended. He failed to do so. There is no onus on a tribunal to speculate on the reality of an appellant's family contacts, possession of documents, or ability to obtain fresh documents if necessary.
14. There was no basis for finding that the appellant is in any difficulty over documentation other than his own recalcitrance.
15. Ms Everett's succinct submission is a complete answer to the principal submissions for the appellant.
16. The absence of reference to evidence about the power of Hashd Al Shaabi in Mosul is irrelevant. The appellant need not return there. He failed to establish a case by which it might be unduly harsh to expect him to go elsewhere.
17. The decision of the First-tier Tribunal shall stand.
18. No anonymity direction has been requested or made.

Hugh Macleman

14 April 2021  
UT Judge Macleman

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#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.