



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

Case No: UI-2023-002277

First-tier Tribunal No:/ PA/50547/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

13<sup>th</sup> October 2023

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE AND DEPUTY UT JUDGE FARRELLY**

**Between**

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

Appellant

OA  
(anonymity order made)

Respondent

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer  
For the Respondent: Mr H Pratt of Kirklees Citizens Advice and Law Centre

Heard at Field House via CVP on 11<sup>th</sup> September 2023

**Order Regarding Anonymity**

*Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent and any member of her family or other person the Tribunal considers should not be identified is granted anonymity.*

*No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent nor other person. Failure to comply with this order could amount to a contempt of court.*

**DECISION AND REASONS**

## **Introduction**

1. The parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The appellant is an Iraqi national of Kurdish ethnicity. He came to the United Kingdom on 5 July 2022, claiming protection that day. Dependent upon his claim are his wife and their three children.
3. He claimed he ran a gas distribution business near Sulaimaniyah and was the victim of extortion attempts. Demands for money were made in March 2022 over the telephone, followed up by a visit by two men the next month. On 19 April 2022 he was interviewed for Kurdish television about gas shortages and was critical of the government. He said he was unaware if this was connected with his difficulties. He suggested the threats came from either the PUK or the KDP. On 20 June 2022 armed uniformed men came to his business demanding money. A fight broke out and shots fired, injuring his business partner. The appellant managed to flee and went to Erbil where he was joined by his family. From there they left Iraq.
4. The appellant's claim was refused on 13 January 2023. The respondent did not find the account credible. There were inconsistencies, including when the demands were made, the amounts sought, the number of people involved and whether it was on behalf of the PUK or KDP.
5. The respondent also concluded that he could obtain the documentation required for his return. The respondent did not accept he had lost contact with his family in the IKR who could help in relation to documentation.
6. The appellant's appeal was listed at Bradford on 1 June 2023 and heard remotely before First-tier Tribunal Judge Suffield-Thompson. He was represented then, as he is now, by Mr Pratt. The judge accepted he had some involvement in the gas distribution business, but he had not demonstrated he was the victim of extortion. Consequently, his asylum claim was dismissed.
7. The judge then considered the question of documentation, concluding this could not be obtained. If returned without documentation he and his family would not be able to access support or services. Consequently, his appeal was allowed on humanitarian protection grounds.

## **The Upper Tribunal**

8. The respondent was granted permission to appeal to the Upper Tribunal by First-tier Tribunal Judge O'Garro. The application was made on the basis that the judge had erred in her findings on re-documentation and by concluding that the appellant would be unable to obtain the required documentation. It was pointed out the judge had rejected the appellant's claim of having lost contact with his family. He only left his home country fairly recently, namely 28<sup>th</sup> of June 2022. He had been able to provide the respondent with his national identity card number and copy passport. He said he had an INID card, but this was at the family home. The respondent pointed out that as this is a biometric document the IKR authorities would have a record of his details. It was suggested the First-tier Tribunal judge was speculating when referring to the possibility his family may

have moved. Removals are now taking place on flights going directly to the IKR. Consequently, he would not have to pass through controlled checkpoints.

9. At the hearing in the Upper Tribunal Mr Pratt confirmed there was no rule 24 response. He indicated there was no challenge on behalf of the appellant to the dismissal of the protection claim. He also confirmed there were no article 8 claims being relied upon. He frankly said that the appeal had been allowed on grounds he had not advanced.

### **Consideration.**

10. The only issue in contention relates to the judge's finding on documentation. It is our conclusion the judge materially erred in the approach taken to this.
11. The practicalities of documentation and return to Iraq, bearing in mind the complicated country conditions, has been an ongoing and difficult issue for immigration tribunals. Some assistance has been provided with the country guidance decisions with judges required to make appropriate findings of fact.
12. The judge does not appear to have appreciated the distinction between returns of ethnic Kurds to the IKR and returns to the rest of Iraq, principally via Baghdad. This may have come about because of the confusing template refusal decision referring to the specifics for appellants but also covering all other situations. At the very end of the review, Ms Peronius for the respondent, sets out the position on return to the IKR but again this is a generic statement. The intention would be for the appellant and his family to be returned to the IKR and this can now be done directly from the United Kingdom to either Sulaimaniyah or Erbil. Consequently, they would not face the acknowledged difficulties of leaving Baghdad airport and travelling overland to the IKR.
13. One issue arising is the claim that contact with family in Iraq has been lost. It is necessary for the judge to consider why this should be and assess the credibility of this claim. At paragraph 47 the judge pointed out the appellant had said he had his mobile phone with him when he left and rejected his claim that from the moment he fled he had no contact with either his father, his two brothers or his injured friend. This is a realistic observation. The judge went on to state at paragraph 48 there was no logical reason why he would not contact them to see if they were safe and well and whether there had been any reprisals and also to advise them how he and his family were fairing.
14. In the same paragraph the judge goes on to state that his family may not necessarily be living in their previous home. The significance of his family being in their original homes is that is where the appellant said his documentation was, with the respondent suggesting they could forward them. The judge refers to many people having been displaced. The difficulties Iraq has faced has been widely reported in the public domain. However, the judge does not appear to appreciate the country information indicates that the IKR is a much more stable region than other parts. It is our conclusion that the judge's comments amount to speculation based on the generality that many people in other parts of Iraq have been displaced.
15. The judge continues this at paragraph 50. This is in relation to the appellant's evidence at interview that his identity card was at the family home albeit he did not know precisely where. The judge had found he did have contact with family

but then went on to state 'I do accept that after all this time it is highly unlikely that his family will still have his card due to the situation in Iraq, the time that has passed since the Appellant left and the fact that the remaining family may well not be living at the same address.' Such a statement does not stand up to scrutiny. It has to be remembered the appellant only left Iraq on 28 June 2022. Again, the judge is relying on the generality of the situation and is speculating that remaining family may no longer be living there. Given the known importance of documentation in Iraq some care over custody can be expected.

16. A significant piece of evidence was the appellant's account at interview that he had been issued with the new biometric card and knew his national card number. The respondent had a copy of his passport. The respondent made the point this information would facilitate the Iraqi authorities in addition to their own records on the issue of replacement documentation.
17. We find a material error of law has been demonstrated in the way First-tier Tribunal Judge Suffield-Thompson dealt with the issue of documentation. The decision of First-tier Tribunal Judge is set aside for this reason. We are in a position to remake the decision from the papers before us, given the specific issue arising. It is our conclusion that in the circumstance the necessary documentation can reasonably be obtained for the appellant and his family to facilitate his return. There being no other basis upon which they can remain the appeal is dismissed.

### Decision

A material error of law has been established. We remake the decision dismissing the appeal.

Francis J Farrelly  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber