



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2021-001917

First-tier Tribunal Nos:
PA/51429/2020
IA/01068/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 3rd of May 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA
DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

HYR
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr F Ahmed (Counsel)

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 15 February 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

Background

1. This is an appeal, by way of a rehearing, against the decision of the Respondent dated 1 September 2020, refusing the Appellant's protection claim. The Appellant is a national of Iraq, of Kurdish ancestry, and comes from Tuz Khurmatu, which is in the Salah-Al-Din Governorate, a formerly contested area.
2. The Appellant's appeal against the respondent's decision was heard by Judge Parkes, who took as his starting point an earlier decision by Judge Taylor, but where the Appellant now relied upon documents that had been sent to him from Iraq. These included a "threatening letter," allegedly sent to him by ISIS, a letter from the "Tuz Police Directorate," confirming a complaint lodged by the Appellant after he had been threatened in the said manner, and a letter from the "Judicial Supreme Court Judge", which also confirmed that the Appellant had lodged a complaint. Judge Parkes did not find the documents now submitted by the Appellant to be reliable. He agreed with the previous decision of Judge Taylor, that the Appellant's account was not credible (paragraph 26). Judge Parkes additionally found that even if the documents now sent from Iraq were reliable, the Appellant was not from an area where there was any risk to him from ISIS or from the unrest that has beset the country. Judge Parkes found the appellant has family there and that he is in touch with them, as had previously been found, so that he "has the ability to obtain the documentation used in daily life or replacement and has access to his passport" (paragraph 27).
3. The appellant was granted permission to appeal to the Upper Tribunal by UTJ Kopieczek on one ground only concerning the judge's assessment of the appellant's ability to obtain a CSID or INID, and the potential risk in his being without one in Baghdad. In the Respondent's Rule 24 response of 11 January 2023, it was accepted that Judge Parkes' decision was vitiated by a material error of law in this respect.
4. The decision of Judge Parkes was set aside by UTJ Mandalia for reasons set out in his decision issued to the parties on 7 September 2023 ("the error of law decision"). In his error of law decision UTJ Mandalia directed the decision upon the discrete issue of the availability of a CSID/INID and redocumentation can be determined and the decision on the appeal will be remade in the Upper Tribunal. In paragraph [12] of the error of law decision UTJ Mandalia set out the findings made by Judge Parkes that are unchallenged and preserved: They are as follows:

- (i) The evidence provided further undermines the appellant's credibility and there is no basis for departing from the findings of First-tier Tribunal Judge Taylor; (paragraph 26)
 - (ii) The documents that are now relied upon by the Appellant cannot be regarded as reliable (at paragraph 26).
 - (iii) The Appellant is not in need of international protection and can safely return to his home area (at paragraph 27).
 - (iv) (iv) The Appellant is not from an area where there is any risk to him from ISIS, or from the unrest that has beset the country. The Appellant has family there, and he is in touch with them, and has the ability to obtain documentation (at paragraph 27).
 - (v) The Appellant has not been in the UK for long, and came with no expectation or being permitted to remain, with there being also no evidence that he had established a private life, or any connections of any durability, together with there being no real obstacles to his reintegration in Iraq if he were to return there.
5. The appeal was listed for a further hearing on 24 October 2023. On 18 October 2023, the appellant's representatives filed a bundle of documents with the Upper Tribunal. A copy of that bundle was provided to the Presenting Officers Unit, by email, on the same day. In paragraph [2] of a witness statement signed by the appellant on 18 October 2023, the appellant indicated that he wished to rely upon a new matter that had never formed part of his claim before. He claimed to be involved in *sur place activities* on Social Media and claimed to have attended various demonstrations between March 2023 and October 2023.
6. The parties attended the hearing on 24 October 2024 and the hearing was adjourned. The parties agreed that the sensible and pragmatic course was for the respondent to have a proper opportunity to consider whether to consent to the new matter being considered by the Upper Tribunal so that all relevant matters can then, as far as is possible, be considered comprehensively when the decision is remade.
7. Under cover of a letter dated 14 November 2023 the respondent provided the Tribunal with written confirmation that the respondent consented to the 'new matter' regarding the appellant's *sur place activities* being considered by the Upper Tribunal.

The Evidence

8. The evidence before us today is set out in the bundles that were previously relied upon by the parties before the FtT. In addition, the appellant's representatives had filed a further bundle in readiness for the hearing before the Upper Tribunal listed in October 2023. There is a considerable volume of evidence before us. It is entirely impractical for us to burden this decision with a reference to each piece of evidence, written or oral, but for the avoidance of doubt we have had regard to all the evidence before us in reaching our decision. We have had the advantage of hearing oral evidence from the appellant and of observing his evidence tested in cross-examination.
9. The appellant adopted his witness statement dated 18 October 2023 as his evidence in chief. In cross-examination the appellant confirmed he worked as a baker in Tuz Khurmatu where he lived, a district in the Salah-Al-Din Governorate. The appellant confirmed that he had no difficulty in being able to move around, going through checkpoints that were manned by government officials, although he pointed out that he had to prove that he lived in a particular area with his CSID. He went on to say that this was an important document and he confirmed that he kept the document safe. He accepted that if he lost his CSID card that could cause him problems travelling around.
10. The appellant confirmed that in his screening interview (*Q.1.8*) he had said he had an Iraqi passport that is currently in Iraq. He was referred to the asylum interview (*Q.18 and Q.19*) in which he was again asked about his passport and he claimed that the passport had been taken by the agent after he arrived in Turkey. The appellant explained that in Turkey, the agent had said to him that he was sending the passport back to Iraq. That is why the appellant had said in his screening interview that his passport is in Iraq. Asked whether he has checked that the passport was returned back to Iraq, the appellant said he had not checked because he cannot trust the agent and he cannot use his passport in the UK. When pressed, he said that he has not checked with his family, because he does not want to return to Iraq. To clarify, we asked the appellant why he had said in his screening interview that the passport is in Iraq, if he does not know whether it has in fact been returned to his family in Iraq. The appellant claimed that when he was asked about his passport during the screening interview, he had in fact said that he did not know where his passport is.
11. The appellant was asked about his CSID card. He was referred to the interview record in which he confirmed (*Q.79*) that he had an Iraqi nationality certificate. He accepted that was a CSID card and he said that the CSID card was kept inside the cover of his passport. He said the passport and CSID were kept together. The appellant said that his intention is not to go back to Iraq, and so he has made no attempt to check whether the documents were returned to his family. He also said that he is not in contact with his family.

12. The appellant confirmed that he was not engaged in any political activity in Iraq. He said that was because there is no freedom of speech or protest, but here in the UK, he wants people to hear his voice. He confirmed that he had only started attending demonstrations in March 2023 after previous refusals of his claim. He said that he began using his Facebook account in or about March 2023. The appellant was asked about the photographs that he relies upon to support his claim that he has attended demonstrations. When asked why photographs were taken, he said he wanted to show that he is protesting against the governments. He claimed the taking of photographs is a normal thing to do. The demonstrations took place in Victoria Square, Birmingham. The appellant confirmed he also attended a demonstration in London on 2 November 2023. That was a demonstration organised by 'Dakuk', against both regimes in Iraq and the arrest of journalists. The appellant said the photographs were taken by ordinary people attending the demonstration, including friends of the appellant. When asked whether he was simply trying to bolster a weak protection claim by attending demonstrations, the appellant said that was not true and that he will continue participating in demonstrations. He said the authorities would be able to identify him because there are photographs of him attending demonstrations and they will become aware of him. When it was suggested to him that he could close his Facebook account, the appellant claimed the reality is that the authorities are aware of his activities and they will question him about that.

Submissions

13. The submissions made by Mr Lawson and Mr Ahmed are a matter of record and there is nothing to be gained by repeating them at any length in this decision.
14. In summary, Mr Lawson submits that the Appellant claims to have lost his ID documentation, which is said to be kept with his passport. He has claimed previously that his passport is in Iraq, and his evidence now is that the passport was taken off him by the agent in Tukey and he was told the passport was being sent back to Iraq. The appellant claims he did not check whether his passport has been returned because he does not want to return to Iraq. The appellant has previously been found not to be a credible witness and the appellant only began attending demonstrations after his claim for international protection had failed. In fact, it was almost two years after the appellant's appeal was dismissed by Judge Parkes that the appellant began attending demonstrations. Mr Lawson submits the appellant was not known to the authorities in Iraq previously, and his participation at demonstrations is not of sufficiently high level that the authorities in Iraq would be interested in him.
15. For his part, Mr Ahmed adopted the appellant's skeleton argument. As set out the appellant's claim is based upon his *sur place* activities

and redocumentation. The issues in the appeal are identified in paragraph [6] of the skeleton argument. The appellant has been attending demonstrations and on his Facebook account, he has been actively preaching against the Iraqi authorities, the Kurdish authorities and the Shia militia. Mr Ahmed submits the appellant has provided a copy of his Facebook 'profile' page followed by extracts from the appellant's Facebook account. Mr Ahmed accepts the wider data relating to the appellant's Facebook account such as information, including the appellant's locations of access to Facebook and full timeline of social media activities as referred to in *XX (PJAK, sur place activities, Facebook) (CG)* [2022] UKUT 00023 (IAC) has not been provided. He accepts there is no evidence before us that the appellant has any association with someone that has a profile that might arouse the attention of the authorities in Iraq, whether in government controlled areas or in the IKR.

16. Mr Ahmed relies upon the decision of the Court of Appeal in *WAS (Pakistan)* [2023] EWCA Civ 894 and submits that direct evidence of covert monitoring is unlikely to be available.
17. Mr Ahmed drew our attention to an article published on 28 August 2021 titled "Iraqi Judicial Council's decision to form a committee monitoring social media raises fears amongst activists", which he submits, demonstrates the risk to which the Appellant would lay himself open if he were to be returned as someone who had demonstrated in the UK against the Iraqi government. He also referred us to the US State Department Report, "monitoring access" which deals with "internet freedom", and another document headed; "Does the government exercise technical or legal control over internet infrastructure for the purpose of restricting connectivity?", which he also asserted would put the Appellant at risk. An Amnesty International Report was also referred to by Mr Ahmed namely, "Amnesty International Report of joint statement: Iraqi Authorities must cease chilling crackdown on free speech", which Mr Ahmed maintained (by reference to paragraph 160) placed the Appellant at risk should he be returned.
18. Mr Ahmed referred the Tribunal to the decision in *SA (Removal destination; Iraq; Undertakings) Iraq* [2022] UKUT 37. He submitted that the Appellant has to pass through checkpoints upon his return and wherever the Appellant is returned, he will have to leave the airport and this is where he will be exposed to risk. He referred to the decision in *SMO & Others II*, which he submitted makes it clear (at paragraph 18) that the Appellant cannot in actual fact be returned. He submits the country expert, Dr Fatah, also makes it clear (at paragraph 91) that the Appellant is at risk of ill-treatment and persecution and cannot be returned.

Reasons and Decision

19. The appellant has appealed under s.82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the respondent to refuse his claim for asylum and humanitarian protection. The appellant bears the burden of establishing his claim to the lower standard.
20. In reaching our decision we have considered all of the evidence presented to us, whether we refer to it specifically in these findings and conclusions or not. We have also had regard to the submissions made by the representatives both in writing and orally before us although we do not consider it necessary to address everything that is said.
21. We have had the opportunity of hearing the appellant give evidence and seeing that evidence tested in cross-examination. Matters of credibility are never easy to determine, particularly, as here, where the evidence is received through an interpreter. We acknowledge that there may be a danger of misinterpretation, but we were satisfied that the appellant understood the questions asked, and the interpreter had a proper opportunity to translate the answers provided by him. In reaching our decision we have been careful not to find any part of the account relied upon, to be inherently incredible, because of our own views on what is or is not plausible. We have considered the claims made the appellant and the story as a whole, against the available country evidence and other familiar factors, such as consistency with what has been said before, and the documents relied upon.
22. We have had in mind throughout, the preserved findings that are set out at paragraph [4]. The appellant's account of events in Iraq has previously been rejected. We acknowledge that if a court or Tribunal concludes that a witness has lied about one matter, it does not follow that he has lied about everything. It does not follow from the adverse findings previously made about the core of the appellant's account that his account of the risk upon return on account of his *sur place* activities must also fail. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. That is because a person's motives may be different as respects different questions. We have borne that in mind in reaching our decision.
23. It is useful to begin by considering the appellant's claim that his *sur place* activities represent his genuinely held political beliefs. The evidence before us is very limited. We have considered the evidence of the appellant as set out in his witness statement and his oral evidence before us regarding his Facebook account and his attendance at demonstrations. The appellant claims in his witness statement that he can read and write Kurdish and that he also speaks and writes in English. He claims that he writes all of his own posts on his social media account. The appellant claims in his witness

statement that he is active in his political stand against the authorities in Iraq and that he has attended eight demonstrations in the UK. He lists eight demonstrations that he claims to have attended between 5 March 2023 and 16 October 2023 all of which took place in Victoria Square, Birmingham. He states that he raised slogans, posters, flags at the demonstrations and that he 'shouts with everyone'. He states he will continue to do this.

24. We accept the appellant has attended demonstrations and that he has posted photographs of his attendance at the demonstrations on his Facebook account. None of the photographs posted by the appellant indicates that he is standing alongside anyone of sufficiently high profile or authority, but instead shows him to be alongside other demonstrators, amidst whom he is going to be difficult to identify. The appellant did not on his own account, engage in any political activity in Iraq previously. His evidence is that he began using his Facebook account in or about March or April 2023. The first demonstration he attended was on 5 March 2023, several years after his arrival in the UK and as Mr Lawson submits, almost two years after the appellants' appeal was dismissed by FtT Judge Parkes. There is however no reliable evidence before us as to the what the demonstrations were about or why the appellant had chosen to attend those particular demonstrations. The appellant's evidence about the demonstrations is very general. The appellant was very vague in his evidence before us regarding his attendance at demonstration, and he simply claimed that he had attended demonstrations in the UK, but not in Iraq because in the UK, he wants to have his voice heard. He was unable to explain why he had not attended any demonstrations before 2023. There are posts made by the appellant which appear to be in the Kurdish language with English translations, which highlight events in Iraq and the reasons for demonstrations in the UK. However, the appellant was unable to articulate in his evidence before us, why he had attended a particular demonstration or what the demonstration was about. When pressed about the demonstrations he attended, all he was able to say that he attended the demonstration "against the governments" throughout Iraq. There are very vague references in his Facebook posts to opposition to the authorities in Iraq albeit we accept some of the posts appear to highlight human rights violations by the various regimes in Iraq. The appellant did not have any specific role at the demonstrations and he simply attended. We find his role in the demonstrations he attended was no more than as a member of the crowd holding a small picture/sign with no genuine belief in the cause such that, in the absence of any evidence that his presence was noticed or publicised, no risk will have arisen from this attendance.
25. In *XX (PJAK, sur place activities, Facebook) (CG)*, the Upper Tribunal provided some general guidance on social media evidence:

“127. Social media evidence is often limited to production of printed photographs, without full disclosure in electronic format. Production of a small part of a Facebook or social media account, for example, photocopied photographs, may be of very limited evidential value in a protection claim, when such a wealth of wider information, including a person’s locations of access to Facebook and full timeline of social media activities, readily available on the “Download Your Information” function of Facebook in a matter of moments, has not been disclosed.

128. It is easy for an apparent printout or electronic excerpt of an internet page to be manipulated by changing the page source data. For the same reason, where a decision maker does not have access to an actual account, purported printouts from such an account may also have very limited evidential value.”

26. We have had regard to all the extracts from the appellant’s Facebook account that are relied upon by the appellant. The production of the material in the format that it appears in the appellant’s bundle is unhelpful, and we cannot be satisfied that the extracts we have been provided with, are a complete and accurate reflection of the appellant’s Facebook account. The majority of the posts are in Kurdish without any certified translation. The appellant has failed to disclose the relevant ‘metadata’ including his ‘locations of access to Facebook’ and ‘full timeline of social media activities’, which would be readily available. The extracts from the appellant’s Facebook account do not in themselves assist us with when the relevant articles were posted or whether the posts, likes, or shares, are permanently visible to the public. It is hard to discern the meaning of some of the ‘posts’ and the pictures/photographs are not always self-explanatory.
27. Although we accept there are photographs of the appellant having attended demonstrations, the simple fact of attendance at demonstrations does not on its own demonstrate a real commitment to the Kurdish cause. We find the appellant attends demonstrations and simply takes the opportunity to be photographed by others attending, to bolster his claim. Standing back and taking all the evidence before us in the round, the appellant has failed to establish, even to the lower standard, that his posts on Facebook and his attendance at demonstrations reflect his genuine political opinion or his political beliefs. We find they are nothing more than a cynical attempt by the appellant to bolster his claim for international protection, in circumstances where the core of his account of events in Iraq has already been comprehensively rejected.
28. The ultimate question is whether the behaviour of the appellant, no matter how cynical or manufactured, would result in a risk of persecution on return, if so then he may establish his right to protection. Having established the particular behaviour, the next question to be asked is whether that behaviour does place the appellant at risk.

29. On our finding that the appellant's *sur place* activities, including the material on his Facebook account, do not reflect his genuine political opinion or his political beliefs, there is, in principle, no reason the appellant should not delete his Facebook account and not volunteer the fact of a previously closed Facebook account, prior to any return to Iraq. The deletion of the appellant's Facebook account, would not on the findings we have made, equate to persecution. As the appellant's *sur place* activities do not represent any genuinely held beliefs, the appellant would not be expected to lie if questioned. The deletion of the Facebook account will not therefore contravene the principles established and set out in *HJ (Iran) v SSHD* [2011] AC 596. The closure of the Facebook account will have the effect of removing all posts he has created.
30. We have nevertheless considered whether, to the lower standard, the appellant's *sur place* activities might already have already come to the attention of the Iraqi authorities and whether the appellant's Facebook account might, to the lower standard, have been targeted and whether that may place the appellant at risk before his Facebook account is deleted. There is no evidence before us that the appellant's Facebook account has previously been hacked. There is no evidence before us to establish whether the appellant's 'friends' have 'public' or 'private' settings. The appellant does not identify any post or photograph connecting the appellant to any individual that is likely to be of any interest to the Iraqi authorities or that has some form of official role, or profile.
31. There is no evidence that the Iraqi authorities are interested in identifying a person who is not committed to political activism. As the Appellant himself said in his evidence before us, he attended the demonstrations in Birmingham "to express my view and to show I attended" and that "I want people in the UK to know why we are here" and that "the reason is to tell the Iraqi Government I am in a safe country ...".
32. Mr Ahmed submits that it is reasonably likely that public demonstrations were monitored, putting the appellant at risk upon return. He refers to the decision of the Court of Appeal in *WAS (Pakistan)* [2023] Civ 894 (at paragraph 51). However, there is no evidence that Facebook accounts are hacked or scraped automatically by the authorities in Iraq. The Appellant has no genuine political beliefs and the Appellant has not identified any evidence or established any risk of the monitoring of individuals outside of Iraq that would put him at risk.
33. Mr Ahmed relies upon on a series of extracts from human rights reports. Not only are these citations not properly sourced, and not only do they carry no indication of who would be targeted, but they do not demonstrate any risk to the Appellant if he was returned to Iraq. For example, the article of 28th April 2021 (at page 136) which

refers to the Iraqi Judicial Council's decision to form a committee to monitor social media, does not indicate what has happened in the years since 2021 to those people who can properly be described as activists,. The appellant, we find, is not an activist. In the same way, the reference to the document, "Does the government exercise technical or legal control over internet infrastructure" actually goes on to explain how, "the score improved from 3 to 4 because no internet access restrictions were experienced amid protests ...", so that it flies in the face of what the Appellant would have the Tribunal decide in his case. Of no less an irrelevance is the Amnesty International Report, which refers to an intention to set up a new committee by the Ministry of Interior, "To monitor indecent or immoral content on social media platforms ...". The Appellant has not been involved in publishing indecent or immoral posts in any way whatsoever.

34. We find the Appellant's Facebook posts will not have come to the attention of the authorities in Iraq. He is not politically motivated and will not have to suppress his political opinions in Iraq because they are not genuinely held. In these circumstances, we find that the appellant will be of no interest whatsoever to the authorities on return to Iraq and find that he would not be known to the authorities, whether in government controlled areas or the IKR. He has no political profile and we find that the appellant does not face a well-founded fear of persecution on the basis of his *sur place* activity upon return to Iraq.
35. We then turn to the discrete issue of the availability of a CSID/INID and redocumentation. We find that what the Appellant said when he was first asked this question during his screening interview (at question 1.8), namely, that he "had an Iraqi passport but it is currently in Iraq" (at B1) is the truth of the matter. The appellant claimed in his asylum interview that his passport had been taken from him by an agent in Turkey. He did not say that the agent was going to return his passport to Iraq. We reject the appellant's oral evidence before us that he was told by the agent in Turkey that his passport would be returned to Iraq. That we find, was an attempt by the appellant to explain the inconsistency in his account. We find that the appellant's reluctance to accept that he had left his passport in Iraq is explained by the appellant's evidence that he has made no enquiries as to the current whereabouts of his passport because he does not want to return to Iraq. He does not need to make enquires, because as he said in the screening interview, his passport is in Iraq.
36. The appellant is clearly aware of the importance of his CSID. In his evidence before us the appellant confirmed that both his passport and his ID card were kept together inside the cover of his passport. Mr Ahmed submits the appellant's CSID was inside his passport which he lost. If the CSID card and the passport are together, and if we find as we have, that the appellant left his passport in Iraq and has been

left with his family, then it is plain that Appellant has access to his CSID through his family members. There is, as we have already set out, a preserved finding that the appellant has family in Iraq, he is in touch with them, and he has the ability to obtain documentation from them. There is no reason for us to go behind the previous findings and we reject his evidence before us that he does not have any contact with his family.

37. The Appellant's claim that he has no contact with his family has been rejected by two previous judges. His credibility has been severely criticised. He is not from an area which is contested or where he faces a risk upon return. Given that it has been established that the Appellant has a family in Iraq with whom he is in contact it is relevant to note that Iraq is a collectivist society in which the family is all important (see SMO, KSP and IM (Article 15(c); identity documents) (CG) [2019] UKUT 00400 (IAC).
38. We take into account the decision of the Upper Tribunal in *SMO & Others II* which points out that although there continues to be an internal armed conflict in certain parts of Iraq, which involves government forces and various militia and the remnants of ISIL, the fact is that the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, would face a real risk of being subjected to indiscriminate violence, which amounts to serious harm within the scope of Article 15(c) QD.
39. The Appellant is from Tuz Khurmatu. The Appellant's core account has been rejected. He has no actual or perceived association with any political movement and neither is he a person who is politically committed in any way. He does not have any of the characteristics that have been identified in the headnote of *SMO & Others* at paragraph 5).
40. The appellant can, we find, obtain his CSID from his family, with whom he is in contact. The question of obtaining a replacement does not therefore arise. There is no reason why the appellant cannot take immediate steps, with the assistance of his family to have his CSID sent to him here in the UK or why the appellant could not be met by his family or relatives, in Baghdad, with the CSID, within a reasonable time of the appellant's arrival to facilitate safe travel between Baghdad and Tuz Khurmatu. On the findings made, we reject the claim that the appellant will be at risk in making the journey from Baghdad to his home area and we find there will not be a breach of Article 3.
41. It follows that we dismiss the appeal on asylum, humanitarian protection, and Article 3 grounds.

Notice of Decision

42. The Appellant's appeal is dismissed on asylum, Article 3 and humanitarian protection grounds.

Satvinder S. Juss
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29th April 2024