



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003797
First-tier Tribunal No: PA-53806-2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

30th January 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

AWN

(NO ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr Timson

For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 18 July 2023

DECISION AND REASONS

1. The Appellant is an Iraqi national, born 26 February 1999, and he originally arrived in this country on 1 November 2019 having claimed he left Iraq illegally in August 2018. He claimed asylum on 1 November 2019. The respondent refused his claim in a decision letter dated 21 July 2021. The First-tier Tribunal, in a decision dated 9 April 2022, dismissed his subsequent appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The issues in this appeal are summarised in the grant of permission:

The judge identifies the issues at [4] of the decision. Risk from *sur place* activities is not identified as an issue. At [27] and [28] of the decision a brief description of the appellant's social media presence is set out. At [35] the respondent's submission includes a rebuttal of the *sur place* risk because of

social media presence. I have had sight of the appellant's skeleton argument that was before the judge, under sub heading 'Issue 2' is identified as 'Risk associated with political *sur place* activities in the UK'. The judge's findings are at [55] to [69]. The judge does not assess risk because of *sur place* activities in the UK. A failure to address a material issue before the judge is an arguable error of law.

3. Mr Timson, counsel for the appellant, submitted that the failure of the judge to address *sur place* activities against Hashd al-Shaabi forces (an Arab Shia militia which had been active in the appellant's home city of Kirkuk) in particular, a demonstration which the appellant had claimed to have attended in Manchester and to make findings of fact on that part of the appellant's appeal rendered the decision as a whole unsafe. Mr Tan, Senior Presenting Officer for the respondent, submitted that the judge had dealt with all the protest activities of the appellant in the decision at [56] and had comprehensively concluded that the appellant was not of interest to or at any risk from Hashd al-Shaabi in Iraq or the United Kingdom. In any event, the judge's findings on internal flight at [65] were determinative of the appeal; even if (which the judge did not accept) the appellant would at risk in his home area he could live safely in the IKR to which he could travel with the valid CSID identity document which he still possess [69].
4. Whilst it may have been helpful if the judge had made discreet findings in respect of the appellant's *sur place* activities, I find that the First-tier Tribunal's decision effectively deals with all the issues in the appeal. I find that the judge has not erred in law either as asserted in the grounds or at all.
5. First, it is clear that the judge was aware of the *sur place* element of the appeal. at [56] in the section of the decision titled 'FINDINGS' the judge writes: ' The Appellant's claim is based on his opposition to Hashd al-Shaabi who he say retain an interest in him as a result of his activities both in Iraq and in the United Kingdom [my emphasis]. I accept Mr Tan's submission that, having identified all elements of the appellant's claim at [56], it is reasonable to assume that the subsequent paragraphs address events in both Iraq and the United Kingdom.
6. Secondly, at [64] the judge writes: 'I do not find it credible Hashd al-Shaabi forces would have turned up at his home address [in Iraq] when there had been no visits in the previous six months. Accordingly, whilst I accept he may have been attacked by Hashd al-Shaabi forces I do not accept these were targeted attacks and I do not accept they had any interest in him.' I agree with Mr Tan that, if Hashd al-Shaabi had no interest in the appellant in Iraq, it is difficult if not inconceivable to accept that the group would have developed an interest in him from *sur place* activities in Manchester when the judge had found that the group could not even monitor and identify individuals taking part in protests in Iraq (at [59] the judge noted that 'there was no country evidence to support a claim that Hashd al-Shaabi had the ability to not only monitor the crowds but also identify people who attended'). Reading the decision as a whole, it is clear that the judge considered that

Hashd al-Shaabi could not and would not offer any threat to the appellant in Iraq on account of any activities of the appellant in Iraq or the United Kingdom.

7. Thirdly, I agree with Mr Tan that the judge's alternative findings on internal flight are, in any event, determinative of the appeal. The grounds of appeal do not take issue with the judge's findings at [65]:

If the Appellant felt unable to return to Kirkuk then it would be open to him to live in the IKR as he demonstrated he as able to live there for a month. He claimed he lived in hiding but given my rejection of his claim that he fled in fear I do not find it credible he was in hiding and in any event the KRG is a safe area for Kurds and if he 13 Appeal Number: PA/53806/2021 is returned to Iraq then he could either live with his family in Kirkuk or live in the KRG.

Even assuming, therefore, that the appellant had been monitored attending demonstrations in the United Kingdom, he would be able to live safe from harm in the IKR.

8. For the reasons I have given above, I dismiss the appeal.

Notice of Decision

This appeal is dismissed

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 12 November 2023