



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

Case No: UI-2024-000776

First-tier Tribunal No: PA/01256/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 10<sup>th</sup> of July 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**HAA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Mohammed Moksud, Counsel, Kenneth Jones Solicitors  
For the Respondent: Mr Stephen Walker, Home Office Presenting Officer

**Heard at Field House on 7 June 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.**

**Appearances**

Mr Moksud for the respondent in the Upper Tribunal, the appellant below

Mr Stephen Walker, a Home Office Presenting Officer, appeared for the Home Office, the appellant before the Upper Tribunal-the respondent in the appeal below

## **DECISION AND REASONS**

### **Introduction and background**

1. This is an appeal by the Secretary of State for the Home Office (the Home Office ) against the decision of First-tier Tribunal (FTT) JUDGE ANDREW DAVIES (the judge), following a hearing on 4 January 2024, in which the First-tier Tribunal allowed the appellant's appeal on the ground that his rights under Article 3 of the European Convention on Human Rights (article 3) would be unlawfully interfered with. The judge dismissed the asylum appeal and there is no appeal against that decision by the appellant, who will continued to be so referred, notwithstanding that he is the respondent in the current appeal. The sole extant ground of appeal relates to the lawfulness of the decision to allow the appeal under article 3 therefore.
2. The Home Office appeals against the decision of the FTT on the basis that there are no adequate reasons given for the conclusion reached that the appellant could not obtain suitable documents to allow his passage back into Kurdish-speaking Iraq. The appellant was born on 19th August or September 1999 and is a citizen of Iraq, having been born in Sulaymaniyah in the North of that country.
3. Judge Chohan gave permission to appeal on the 14 February 2024 because he observed that the judge had found the appellant's account to be incredible. Given that the appellant had been in touch with family members, who the judge considered could provide him with documents, it was arguably wrong to allow the appellant to succeed under Article 3 in the circumstances outlined.

### **The hearing before the Upper Tribunal**

4. Mr Walker has referred to the case of **SA (Removal destination, Iraq) [2022] UKUT 37 (IAC)**. In that case, the Upper Tribunal confirmed that removal for the purposes of Section 84 of the Nationality, Immigration and Asylum Act 2002 referred to enforced removal and not the possibility of an individual making a voluntary return to the country.
5. Mr Walker said that the case of **SA** placed him in difficulty, in that the appellant would not be in possession of what is known as a "CSID card" and he has been away from Kurdish Iraq for eight years. Therefore, he conceded that the appellant would face significant obstacles in returning to Kurdish-speaking Iraq. Mr Walker considered himself in difficulty in advancing orally the written grounds of appeal for which permission to appeal had been given.

### **Discussion**

6. The respondent appealed the decision of the FTT because he argued that the judge had failed to give adequate reasons for this finding:  

"....in light of the fact that it is found that he left his documents in Iraq and that there is no reason why they would not be available to him [51]. The appellant claims to have lost contact with his family, however the FTT] finds that this is unlikely and that there is no evidence that his father is deceased and his mother is missing [52] and [53] (sic) and that the claim is fabricated in order to frustrate his removal".

7. The grounds of appeal to the Upper Tribunal go on to state that if the appellant could obtain the documents that he needs, but he chooses not to do so, this is not treatment that would render the respondent's decision contrary to article 3. Accordingly, it would have been an error of law for the FTT to decide otherwise.
8. FTT judge Chauhan thought these grounds to be at least arguable as the judge may have erred in his findings and/or conclusion that the appellant could not be safely removed. As he said, "this matter must be explored further".
9. At paragraph [54] of his decision, the Judge finds that the appellant could retrieve his CSID and other documents but "chooses not to do so". The appellant's uncle could meet him at Baghdad International Airport, give him his CSID and therefore he could return safely to his home area. However, because the appellant will not return on a voluntary basis and his removal would be forcible, the judge considered himself bound by **SMO** and **SA** and those cases prevented his enforced removal. The possibility of making a voluntary return was insufficient reason to find article 3 not to have been engaged. The Judge briefly explained his reasoning at paragraphs 59 - 61 of his decision.
10. Mr Walker no longer advanced the grounds. This was surprising in the light of the permission and the invitation by Judge Chohan to expand on them orally. Without that oral expansion of the grounds it is difficult to see how the Upper Tribunal could conclude that the judge had erred in law. The judge gave brief but clear findings based on his assessment of the evidence. He applied the law to the facts, which, in respect of the conditions on his return, did not seem to be seriously in issue. Such findings and such conclusions could not be said to be material errors of law.

### **Conclusion**

11. In the circumstances I have decided to dismiss the appeal to the Upper Tribunal.

### **Decision**

12. I find that there was no material error of law in the decision of the First-tier Tribunal.
13. The respondent's appeal is dismissed.

**Dated the 7<sup>th</sup> June 2024**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

