



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

**Case No: UI-2024-001296**

**First-tier Tribunal No:  
PA/50478/2023  
LP/02792/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 10 September 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**AZ  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Sowerby, Counsel  
For the Respondent: Mr Wain, Senior Home Office Presenting Officer  
Interpreter: Mr Kider

**Heard at Field House on 14 August 2024**

**DECISION AND REASONS**

1. The Appellant is a national of Iraq. He arrived in this country in 2016 and claimed asylum for reasons unconnected to his current appeal. His current appeal was based on his fear the authorities were treating him as a "Turkish" spy and an arrest warrant had been issued for his arrest by the Iraqi authorities. He claimed that if he were returned to Iraq he would be arrested, questioned and he would face persecution.

2. The Respondent refused his application in a decision sent out on 12 January 2023 stating that whilst the Respondent accepted the arrest warrant he had produced was genuine the Respondent submitted it had been obtained through corruption.
3. The Appellant appealed this decision arguing that he would be at risk of persecution or alternatively the prison conditions would breach article 3 ECHR.
4. His appeal originally came before Judge of the First-tier Tribunal Joshi (hereinafter called the FTT Judge) who in a decision promulgated on or around 22 December 2023 dismissed his appeal. Permission to appeal that decision was granted by First-tier Tribunal Judge Seelhof on 20 March 2024 and the matter came before me on 16 May 2024.
5. On 16 May 2024 I found merit in Mr Sowerby's submission that the FTT Judge should have considered why no action would be taken by the authorities on the warrant once it and associated proceedings had been created at the courts. The permission identified issues that should have been considered given there is a difference between persecution and prosecution.
6. In doing so I preserved the following findings of FTT Judge:
  - a. The Appellant was a witness who lacked credibility for the reasons contained in paragraph [43] and [45] of the FTT Judge's decision.
  - b. The FTT Judge found the arrest warrant would not have been handed to the Appellant's brother and the account of how it came to be handed to the Appellant's brother lacked credibility because either the Appellant or his brother would have more details about the person who delivered the arrest warrant to the Appellant. The FTT Judge concluded the arrest warrant was genuine but was obtained through corruption.
  - c. The Appellant's claim he was originally told to claim he had left through Erbil airport was not true. The Tribunal accepted the Appellant had left through Erbil airport.
  - d. The fact the Appellant's brother had not been arrested or questioned about the Appellant's whereabouts undermined the Appellant's claim.
  - e. As the arrest warrant was obtained through corruption the Appellant would not be at risk of prosecution.
  - f. In respect of the Appellant's identity documents the FTT Judge found that the originals were with his brother and that as he is in

touch with his brother the original document could be sent to the Appellant and there was no breach of SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC).

7. I further directed that the matter be listed to address the following issues:
  - a. With regard to the arrest warrant the Tribunal needed to decide whether the corruption was in obtaining a document the Appellant should not have been able to get a copy of, or whether the corruption was arranging for a warrant to be issued by the court on a fraudulent basis.
  - b. In either event, why would the authorities take no action on the warrant given it was accepted it had been created by the courts.
  - c. Whether this would place the Appellant at risk of persecution upon return.
8. I had before me a bundle consisting of 357 pages and I heard oral evidence from the Appellant who adopted his statement on page 214 of the consolidated bundle.
9. The Appellant stated the arrest warrant was obtained from his brother who had sent it to a third party who had then brought the document back to the United Kingdom. He stated that his brother knew the person who brought the document to the United Kingdom as they were from the same tribe and his brother gave this male his telephone number. He could not say how this document came to be issued as it had simply been left at his brother's house.
10. The Appellant confirmed that he remained in contact with his brother but had never clarified with his brother how he came into possession of the warrant save he spoke to someone who handed him the document. He acknowledged his brother had not been contacted or harassed by the authorities since the warrant was issued.

## **SUBMISSIONS**

11. Mr Wain submitted that the issue for this hearing concerned the arrest warrant. Whilst the Respondent accepted the document was genuine he nevertheless argued the reasons for the warrant being issued were not genuine and Mr Wain relied on the background evidence to support his argument.
12. Mr Wain submitted there was no supporting statement from the brother and the background evidence (a report from Dr Ghobadi between pages 329 to 333 of the consolidated bundle and 2020 CPIN) confirmed corruption was widespread within judiciary. The expert report (paragraph

- 12) makes it clear that neither the original nor a photocopy of an arrest is given to the defendant contradicts his claim that it would have simply been left at his brother's house. Mr Wain submitted the document could not have been served by the police and in any event there was a preserved finding that the arrest warrant was not left at the house as had been claimed.
13. Mr Wain argued that if it was accepted this document was issued through corruption then it was not reasonably likely the authorities would act on it. The fact warrant had been issued in 2015 and there had been no visits in nine years added further weight to this argument and to the Respondent's submission the authorities had no interest in the Appellant.
  14. There was evidence in the latest CPIN (Paragraphs 7.3.5 and 7.5.1) steps were being taken to fight corruption especially in the IKR which is where the Appellant would be returned. Mr Wain submitted that in the circumstances it was not reasonably likely that action would therefore be taken against the Appellant despite it being a genuine document.
  15. Mr Sowerby submitted that the Respondent accepted the document was genuine and he submitted it was likely the warrant was issued by the police. Whether it had been obtained through corruption or even created though unlawful means did not change the fact a check would reveal the document was genuine.
  16. There was no evidence the authorities would not take action on the document and the reality was the Appellant would be questioned on arrival (paragraph 5.1.3 of the CPIN) and the document would then come to light. Therefore, Mr Sowerby submitted this document would place him at risk regardless of how or why it came to be issued. There would be a real risk of a breach of article 3 ECHR.
  17. As for risk on return his details will have been passed to the security services and he would be suspected of being a spy as he fell within the first category in paragraph [5] of SMO.
  18. As to risk Mr Sowerby referred to page 70 of the bundle which made it clear that he Appellant could be detained for months or years before his case was heard and this would breach article 3 ECHR.
  19. On page 71 (last paragraph) of the bundle there was evidence of a real risk of a fair trial and page 62 confirmed there was no law setting out procedural safeguards to prevent torture.
  20. Mr Sowerby invited the appeal to be allowed under article 3 based on his anti-government slant.

## **DISCUSSION AND FINDINGS**

21. This was a resumed hearing following the previous hearing on 16 May 2024 when I found there had been an error in law. I adjourned the hearing to enable the parties to assess their respective positions against the background that the Respondent had accepted the arrest warrant in these proceedings was a genuine document.
22. Mr Wain's submission was simple. He argued that although this document had been issued by a Judge it was clearly fraudulent in nature because such a document would not have been left at the family home and he relied on the expert evidence of Dr Ghobadi who confirmed this fact in paragraph [12] of his report. The fact the expert went on to say "it is likely a person in the Kurdistan region of Iraq would be able to obtain such a document either through his lawyer or through a well-connected personal acquaintance" meant little in this case because the Appellant's evidence was his brother came home and found the document had been left at his home address.
23. Mr Sowerby argued that in the end it mattered little whether this document had been obtain through corrupt means (false information given to persuade a Judge to issue it) or by a corrupt Judge issuing it on the request of a party. It was academic because the Respondent accepted the document was genuine. The consequences for the Appellant would lead to his rights under article 3 ECHR being breached because he faced a real risk of arrest and detention without trial for a lengthy period of time.
24. Whilst I accept the evidence (see expert report) points to the document being obtained through corrupt means I have to ask myself how would the Appellant be treated upon return. Were he returned to Iraq the evidence in SMO and SMO(2) make it clear that any returning claimant would be detained and questioned. A check on this Appellant would reveal a genuine arrest warrant and whilst he contested the document he would be detained and face inhumane conditions. The Respondent's difficulty in this appeal is that he accepted the document was genuine and that on its own must create a real risk of harm to this Appellant.
25. Mr Wain submitted that nothing was likely to happen to the Appellant because no action had been taken his family in nine years but I agree with Mr Sowerby the document did not name his family so the fact there were no follow up visits would mean little especially in circumstances where the document may have been obtained/issued through corruption.
26. Looking at the Appellant's risk factors as someone who protests against the authorities, albeit at a low level, but with the additional risk factor that there is an arrest warrant outstanding I find that returning him would lead not only to a real risk of a breach of article 3 ECHR but also a breach of his rights under the Refugee Convention on political grounds.

### **Notice of Decision**

There had been an error in law. I have set aside the previous decision and I have remade this decision. I allow the appeal on both asylum grounds and human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

**Deputy Judge of the Upper Tribunal Alis  
Immigration and Asylum Chamber**

**30 August 2024**