



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: LP/00002/2019  
[PA/50063/2019]**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On the 10 October 2022**

**Decision & Reasons Promulgated  
On the 1 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE SMITH  
DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR AMANJ ABUBAKIR NADIR**

Appellant

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondents

For the Appellant: Mr Greer, Counsel, instructed by Broudie, Jackson Canter Solicitors  
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, an Iraqi national of Kurdish ethnicity, was encountered by the police in Kent on 18 September 2017 having arrived here clandestinely. He claimed asylum the same day but his claim was refused by the Respondent on 3 December 2019.
2. The Appellant appealed this decision pursuant to Section 82 of the Nationality, Immigration and Asylum Act 2002 and his appeal was heard by Judge of the First-tier Tribunal Buckley (hereinafter referred to as the

FTTJ) on 10 February 2020. In a decision promulgated on 4 March 2020 the FTTJ refused his claim on all grounds.

3. Permission to appeal was granted by Resident Judge Phillips on 25 March 2020 and his appeal was originally heard by Upper Tribunal Judge Hanson on 12 August 2021. In a decision promulgated on 18 August 2021 he found there to be no error of law in the FTTJ's decision. He therefore upheld it. Permission to appeal to the Court of Appeal was thereafter sought by the Appellant's representatives and in a decision promulgated on 29 July 2022 Upper Tribunal Judge Hanson set aside his previous decision pursuant to Rule 46 of The Tribunal Procedure (Upper Tribunal) Rules 2008 on the basis the requirements of Rule 45(1)(b) of The Tribunal Procedure (Upper Tribunal) Rules 2008 were met.
4. This appeal was listed for an error of law hearing before us on the above date.
5. No anonymity direction is made.

### **MR GREER'S SUBMISSIONS**

6. Mr Greer adopted the grounds of appeal but in particular he relied on Grounds One and Three.

#### **Ground One**

7. Mr Greer submitted there was inadequacy of reasoning in the FTTJ's findings on the risks posed to the Appellant from Hashd Al Shabi.
8. Mr Greer submitted the Appellant could not return to Iraq as he faced a real risk of persecution from Shia militias and having regard to the conditions and the general problems there. There had been unchallenged findings of fact about the Appellant's claim including that the Appellant's family had links to the former Ba'ath regime, an association with ISIS in the area, he had been identified in Tar Afar and he was a Sunni Muslim of Kurdish ethnicity.
9. Mr Greer argued that even if the Appellant's uncle had been able to live safely in Iraq this was not determinative of the Appellant's own position and the FTTJ had to consider the Appellant's position against the factors set out in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) (hereinafter referred to as SMO[1]) as the Appellant's circumstances were different to his uncle as his uncle was living in a displaced person's camp and the Appellant, if returned, would have to travel through a multitude of checkpoints which would place him at risk of being identified given the finding he had been filmed and videoed when he last crossed the checkpoints.
10. Mr Greer submitted the FTTJ erred (a) by finding the militias retained their own lists and continued to man the checkpoints and (b) by finding the militia did not have the apparatus to identify the Appellant.

11. Finally, Mr Greer submitted the FTTJ had erred by not considering the Appellant's personal risk factors against what SMO[1] said.

### **Ground Three**

12. Mr Greer submitted that the FTTJ's findings were irreconcilable with what the Tribunal said in AAH (Iraqi Kurds-internal relocation) CG [2018] UKUT 212 ("AAH").
13. The FTTJ's findings at paragraphs [49] and [50] were inconsistent with the expert evidence of Dr Fatah in AAH. The Tribunal found Dr Fatah's evidence to be measured, detailed and well-sourced; when he was unable to give a definitive answer, he made that clear; he declined to speculate; he was markedly objective and did not hesitate to give evidence that could potentially have enhanced the Respondent's case. Both advocates in AAH described him as an "excellent" expert witness and urged the Tribunal to give substantial weight to all of his evidence.
14. Mr Greer submitted that Dr Fatah made it clear that in order to obtain a replacement CSID it was not sufficient to simply have the page and book number but it was necessary to consider the factors set out in paragraph [106] of AAH and the FTTJ failed to do this or properly consider the correct process.
15. Even if the Appellant's maternal uncle had all of his own documents this would not satisfy what Dr Fatah said in AAH because once a male reached adulthood and found his own family, he will have his own page, upon which all the relevant information about his wife and descendants will be entered and the Appellant's father's papers will also not appear on his maternal uncle's documents.

### **MR TAN'S SUBMISSIONS**

16. Mr Tan argued that the FTTJ's decision was detailed and the FTTJ had made clear findings and there was no error in law.

### **Ground One**

17. Whilst the FTTJ had found the attack in Tar Afar took place, Mr Tan submitted this incident occurred more than six years before the FTTJ heard the Appellant's appeal at a time when the Appellant was sixteen years of age. The FTTJ was entitled to find the Appellant was being speculative about the risks he may face having found the Appellant's uncle faced a similar situation and was alive and apparently not suffering any persecution from the very people the Appellant feared. The FTTJ had considered the various risk factors posed by the Appellant's father's associations with the Ba'ath Party and the risk posed by the Hashd Al Shabi militia and had reached conclusions open to him especially as there was no evidence he supported ISIS.

18. As to future risk Mr Tan submitted that the various militias were not all under the “same umbrella” and whilst he maybe on one militia’s list he may not be on another’s list and there was little evidence to suggest that the same militias, in control in 2014, were in control in 2020 when this appeal was heard.

### **Ground Three**

19. Mr Tan submitted that the Appellant’s maternal uncle had been very involved in the Appellant’s departure from Iraq and it therefore followed that if he was in contact with him then he would have access to re-documentation. The FTTJ had found the Appellant remained in contact with this uncle and there was no reason why the uncle could not obtain the necessary documents from the Appellant’s mother and she could obtain the Appellant’s brother’s details. The Tribunal in AAH did not rule out the possibility of obtaining documents in the United Kingdom as long as he had the relevant information from Iraq.
20. Mr Tan invited us to uphold the FTTJ’s decision.

### **MR GREER’S RESPONSE**

21. In response Mr Greer submitted that a lot of what Mr Tan made sense save these were not issues considered by the FTTJ and that was the place they should have been considered. He submitted that if Ground One was made out then the Appellant was entitled to refugee status. In the alternative if Ground Three was made out then Mr Tan accepted on a remaking the Appellant would be unable to secure the required documentation without his article 3 ECHR rights being breached.

### **FINDINGS**

22. The thrust of Mr Greer’s arguments centred around two areas of the FTTJ’s decision. We agreed that if the first ground of appeal was made out, we would then have to consider whether the Appellant would be entitled to asylum whereas if the third ground was made out then the Appellant would, applying the latest country guidance, be entitled to protection under article 3 ECHR.
23. The FTTJ made a number of positive findings about the Appellant’s appeal but ultimately rejected the Appellant’s asylum claim. Mr Greer submitted that the FTTJ materially erred by giving inadequate reasons.
24. The FTTJ made the following findings:
- a. The Appellant’s account of the Tal Afar being captured on 16 June 2014 was consistent with the objective evidence.
  - b. There were no significant inconsistencies in the Appellant’s interviews in so far as the Appellant’s problems with Hashd Al Shabi and other authorities in Iraq were concerned.

- c. The Appellant provided a consistent account regarding the circumstances in which his father and brother had been shot.
  - d. The Appellant provided a consistent account of what happened when the incident in Tal Afar broke out.
  - e. The Appellant successfully rebutted the Respondent's submissions that he had provided an inconsistent account of how long he and his family had remained in Old Tal Afar before the fighting ensued.
  - f. The Appellant's account of timescales for waiting at checkpoints and about the checks being videoed continuously for the events between 14 and 16 June 2014 was consistent.
  - g. The Appellant failed to explain how given his uncle's involvement in the incident his uncle was able to remain safely in Iraq despite purporting to also be at risk.
  - h. The Appellant has not been personally targeted by either Hashd Al Shabi or the authorities and would not be on return. It was speculation to suggest that Hashd Al Shabi have the infrastructure to recognise or identify the Appellant on return.
  - i. The Appellant no longer has his documents and he is likely to be in the minority of people who cannot recall his volume and page reference of his family book in accordance with paragraph 13 of SMO, KSP & IM (article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) (SMO(1)) and it is likely, given his age, he would not remember the details needed to provide to the Iraqi Embassy to obtain replacement documents.
  - j. It was not unreasonable to suggest that the Appellant would have taken a mental note of his uncle's phone number to ensure he could maintain communication with his mother and sister. The Appellant did not provide a credible account in relation to his reported loss of contact with his uncle.
  - k. It was reasonable to expect the Appellant to obtain a replacement CSID within the United Kingdom and within a reasonable timeframe (with support from his uncle and family) to enable him to have the relevant documents to return to Iraq and travel internally across Iraq as he would have family support upon his return so he could return to his home area or internally relocate with support.
25. Mr Greer submitted that the FTTJ's reasons for dismissing the Appellant's asylum claim were inadequate and speculative whereas Mr Tan argued that there was no material error in the way the FTTJ dismissed the asylum claim.
26. The FTTJ was aware of the applicable country guidance case of SMO[1] as he set out the relevant headnote of that decision in the body of his

decision. The FTTJ made the findings set out in paragraph [24] above about and provided reasons in paragraphs [28] to [38] and paragraphs [39] and [50] of his decision. In assessing whether the FTTJ erred we must assess the situation on the date the FTTJ heard the appeal rather than the position today.

27. The Tribunal in SMO[1] considered the position in Iraq including the general security situation, primarily from an article 15(c) prospective and they placed weight on the expert evidence provided by Dr Fatah who stated that in the Ninewa Governate:
  - a. *The pattern of sporadic and irregular attacks by the security forces against ISIL and vice versa was what was happening on the ground and there were relatively few incidents relating to civilians.*
  - b. *The fact governors and civil servants were beginning to work again in the region was a very positive sign because they were no longer in fear and the first opportunity people had to return to their home area, they would do so. It was fair to say that life was returning. ISIL could not invade the city any more, although that may change in the future.*
  - c. *By December 2018, more than a million were displaced from their homes in Ninewa, with more than half of those displaced within the governorate. It nevertheless ranks top in the governorates in terms of the numbers who have returned, with more than 1.6 million having done so.*
28. Mr Tan submitted that although the FTTJ had found the Appellant to be a credible witness he had made a number of reasoned conclusions on the risks facing the Appellant supported by country evidence .
29. The Appellant's account of what had occurred took place over six years before his appeal was heard and when he was aged 16 years of age. His fear arose out of a one-off incident.
30. The FTTJ rejected the Appellant's claim that he remained of interest to the authorities and Mr Tan submitted that it was speculation he would remain of interest to Hashd Al Shabi or other militia groups because the FTTJ had found at paragraph [35] of his decision (a) the Appellant would not be personally targeted and (b) there was no basis for him having a subjective fear.
31. The Appellant's uncle continued to live in the area, despite being involved in the same incident. Mr Greer had submitted the FTTJ erred by concluding the Appellant would be safe simply because his uncle was safe, but we were satisfied the FTTJ's finding was open to him given his finding the Appellant had not suffered any direct threat from Hashd Al Shabi. The fact his uncle described various killings carried out by Hashd Al Shabi did not mean the Appellant personally would be at risk given his finding the Appellant faced no personal risk.

32. Mr Greer also argued that the FTTJ erred by not accepting the Appellant's details would be shared by the various militias, but this submission overlooked when this incident happened, the passage of time since that incident and the fact that different militias were now in control in these same areas. An article in the Appellant's own bundle (page 35) suggested there was no evidence of there being a wide network of communication between the militias in 2014 which would be available in 2020.
33. We were satisfied the FTTJ was entitled to find the Appellant's fear was speculative for the reasons given above.
34. Mr Greer's final submission on the FTTJ's approach to the asylum claim was that he had not had regard to the risk factors set out in paragraphs [313] to [315] of SMO[1]. These risk factors as:
  - a. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq.
  - b. Secondly, in those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.
  - c. Opposition to or criticism of the GOI, the KRG or local security actors.
  - d. Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area.
  - e. LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals
  - f. Humanitarian or medical staff and those associated with Western organisations or security forces.
  - g. Women and children without genuine family support.
  - h. Individuals with disabilities.
35. The FTTJ found the fact his father was linked to the Ba'ath Party was not a factor bearing in mind (a) he knew nothing of his father's activities when growing up and (b) his family had led a "good and normal" life.
36. Whilst the FTTJ did not specifically refer to these particular paragraphs in his decision we find that the FTTJ did consider the relevant factors in his decision.
37. The FTTJ made appropriate findings which took into account what the Tribunal in SMO[1] considered to be relevant and we find the FTTJ did not err in his assessment of the Appellant's asylum claim.

48. We have next considered the issue of re-documentation and having considered those submissions we conclude that the FTTJ must demonstrate he had regard to the guidance provided by the Tribunal in AAH as that was the relevant case law at the date of the appeal.

49. The Tribunal in AAH stated:

*“48 If the individual does not have relatives in the IKR, the options are limited.*

*50 A newly arrived man with no connections to the area would have to book into a hotel on arrival. He could only do this if in possession of his CSID, since hoteliers are legally obliged to send a list of residents each day to the Asayish. There would be no time limit on stay in a hotel but obviously that would be dependent upon funds. Dr Fatah had never heard of a hostel operating in the IKR.”*

50. The FTTJ made findings on the issue of re-documentation between paragraphs [39] and [50] of his decision. As stated above the FTTJ accepted the Appellant did not have his documents (CSID) and did not recall his volume and page reference.

51. At paragraph [40] of his decision the FTTJ referred to the fact that in order to try and redocument at an Iraqi Embassy he needed to remember these details. The Tribunal in AAH stated the following:

*“26. If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must be countersigned by the head of the applicant’s family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a representative (proxy) in Iraq, an additional form completed by the head of the applicant’s family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his family’s details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an embassy abroad for the individual who is unable to verify his or her identity.”*

52. Mr Greer submitted the FTTJ erred because his consideration of the redocumentation process in the UK was flawed because he did not have regard to what the Tribunal said in AAH and at paragraph [50] the FTTJ concluded “I therefore find that it would be reasonable to expect the Appellant to obtain a replacement CSID within the UK”. Mr Tan’s submitted that he would be able to obtain his documents through his uncle who could in turn obtain the necessary information from the Appellant’s brother.



53. Having reviewed the FTTJ's decision we were satisfied his approach was flawed because Dr Fatah made it clear that to redocument in the United Kingdom all those matters identified in paragraph [26] of AAH had to be shown.
54. The FTTJ erred because his finding the Appellant could redocument was flawed because (a) his uncle was a maternal rather than a paternal uncle and (b) there was no evidence the Appellant had access to all the matters referred to by Dr Fatah.
55. The alternative finding made by the FTTJ on the issue of redocumentation was that he would be able to safely return to Iraq as he would have the support of his family upon his arrival given the FTTJ rejected his claim that he had lost contact with his uncle.
56. We again find there was a flawed assessment on this issue. Whilst the FTTJ discussed in some detail why he felt the Appellant would be able to contact his uncle, the decision itself failed to apply the Tribunal's findings in AAH.
57. At paragraph [25] of AAH the Tribunal stated:

*"Dr Fatah states to his knowledge the documents that must be produced in order to apply for a CSID within Iraq are:*

- i) Application form*
- ii) Birth certificate*
- iii) A 'housing card' or a letter from the local council confirming the applicant's residence*
- iv) (In the IKR) a recommendation from the mukhtar*
- v) PDS card*
- vi) Two photographs of the applicant (or in the IKR, four)*

*This information broadly accords with that reproduced by Landinfo (December 2015), who confirm this list but add that the ID card of a close relative would also be required. Dr Fatah has been told by practitioners in the IKR that a person returned to Iraq from abroad who wishes to replace his CSID would, before making his application, also require a certificate from the Ministry of Foreign Affairs."*

58. As with his assessment of the process in the United Kingdom, we find the FTTJ's assessment of the process in Iraq was flawed as he did not consider what the Tribunal accepted needed to be done.
59. We therefore accept on the issue of re-documentation the FTTJ erred and this error materially affected the article 3 ECHR decision.

60. Both representatives agreed that if the article 3 ECHR finding was flawed it should be set aside.
61. Mr Tan conceded that any remaking of the article 3 ECHR claim today would lead to a grant of protection under article 3 ECHR because SMO and KSP (Civil status documentation, article 15) (CG) [2022] UKUT 00110 (hereinafter referred to as SMO[2]) and the July 2022 CPIN made it clear that in order to be able to return to Iraq the Appellant would now need an INID and he could only obtain this in his home area. To do so would require him to cross numerous checkpoints with the correct documents which would breach article 3 ECHR.

### **CONCLUSION**

62. Given the Respondent's acceptance that the Appellant would be unable to return home we find, for the reasons provided by the Tribunal in SMO[2] and in the July CPIN, that he could not safely return to his home area as he would be flown to Baghdad and from there he would be unable to travel safely within the country given his lack of an INID.

### **DECISION**

**The Decision of First-tier Tribunal Judge Buckley promulgated on 4 March 2020 does involve the making of an error on a point of law in respect of article 3 ECHR only.**

**We therefore uphold the Decision with regard to the asylum and humanitarian protections claims but we set aside the decision in respect of article 3 ECHR and remake that part of the Appellant's claim and allow the appeal under article 3 ECHR only.**

Signed:



**Deputy Upper Tribunal Judge Alis**

Dated: 24 October 2022