



**Upper Tribunal  
(Immigration and Asylum Chamber)** Appeal Number:  
PA/05481/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 22 March 2019**

**Prepared on 28 March 2019**

**Decisions & Reasons**

**Promulgated**

**On 1 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**K. M.  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a citizen of Iraq, entered the UK illegally and made a protection claim on 31 October 2017. That was refused on 15 April 2018, and the Appellant's appeal against that decision was then heard and dismissed by

First Tier Tribunal Judge Moran in a decision promulgated on 15 June 2018.

2. The Appellant's application for permission to appeal was granted by Upper Tribunal Judge Reeds on 15 November 2018.
3. No Rule 24 Notice has been lodged in response to the grant of permission to appeal. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence. Thus the matter came before me.

#### Adjournment

4. When the appeal was called on the Appellant requested an adjournment in order to secure legal representation. He said that he was not familiar with the law, and felt unable to argue his case. He accepted that he had been represented at the hearing of his appeal in 2018, but told me that his lawyers had refused to act further on his behalf. He told me that he was unable to pay an alternative lawyer, and that those he had approached had declined to assist him because they considered his appeal to be weak. Nevertheless he wished to be given a further opportunity to find a lawyer.
5. The Appellant's appeal was heard on 31 May 2018, and it was then dismissed by decision of 15 June 2018. The retainer for his former solicitors must have terminated shortly thereafter, since he told me they had refused to act further, and thus he lodged his own applications for permission to appeal to both the First tier Tribunal ["FtT"], and the Upper Tribunal. I am satisfied the Appellant had nine months to find new representation once he knew the outcome of his appeal to the FtT, and four months once he knew he had secured permission to appeal that decision. There was no evidence that allowed me to infer that he has a reasonable prospect of securing alternative representation, and so I refused the adjournment application.

#### The challenge

6. I invited the Appellant to explain to me what he believed to be the errors in the Judge's approach to the appeal, and confirmed to him that I would consider that decision in the light of the current jurisprudence in relation to Iraq.
7. The Appellant told me that he had a copy of his father's ID card. He accepted that this was a printout of the same image that the Judge had been told at the hearing existed on his mobile phone, and which he had claimed had been sent to him by his brother from Iraq. The Appellant also accepted that the Judge had known of the existence of this image, because he had told him of it, and because the

Judge made specific reference to its existence in his decision [16]. I pointed out to the Appellant that the Judge had noted that his solicitor had made it clear that she did not seek to rely upon this evidence. He had no response to that.

8. In the circumstances I am not satisfied that the Judge failed to take into account material evidence that was placed before him. I am satisfied that the reality was that this image was not relied upon at the hearing. Even if the Appellant had intended that it should be, it is plain that his solicitor did not agree – for whatever reason. In any event, even if the image had been advanced in evidence it is difficult to see what weight could have been given by the Judge to its mere existence in the light of his assessment of the weight that could be given generally to the Appellant's evidence. As Ouseley J explained in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, by reference to the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318, any documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it any presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case, especially that given by the claimant. In the circumstances of this appeal it is in my judgement clear that the Judge could have attached no material weight to the image.
9. The Appellant then told me that he had video and photographs of demonstrations in Iraq. Initially I understood him to mean that he had presented in evidence at the hearing photographs of himself at one or more demonstrations in Iraq, but when I sought to clarify this with him, he confirmed that he was not in the film or photographs. He confirmed that he believed that copies of the photographs he had in his possession were shown to the Judge at the hearing, once I had noted that there was no such material in the bundle of evidence filed in support of the appeal in advance of the hearing, or upon the Tribunal file. Nor was there any such material on the Respondent's file. In the circumstances it is highly unlikely that any such material was filed or served either in advance of, or at, the hearing.
10. Even if such material had been relied upon by the Appellant, I note that there was no dispute that demonstrations took place from time to time in Iraq. The issues for the Judge were whether the Appellant had in fact

been present at any demonstrations, and, had thereby come to the adverse attention of the authorities. In relation to those issue, I am not satisfied that the copy photographs of a demonstration, that do not show the Appellant as present, have any probative value.

11. In the circumstances I am satisfied that there is no merit in the first limb of the grant of permission to appeal.
12. The second limb of the grant of permission was that it was “Robinson obvious” that it was arguable that the Judge had made no reference to AA (Iraq) [2017] EWCA Civ 944, and had made no findings of fact in relation to return to Iraq; AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212.
13. There are two obvious difficulties with a grant of permission in those terms. First there is the wholesale rejection of the Appellant’s evidence concerning any real risk of harm faced by him in the event of his return to the KRG. Second there is the Appellant’s own evidence about the location of his home town, the location of his documents, and his ability to contact his family in Iraq.
14. The Appellant confirmed to me that his home town was Suleymanyeh, as described in the interview records, and in the Judge’s decision. I am satisfied that an internal flight could be taken to Suleymanyeh from Baghdad (the point of return to Iraq); AA and AAH. Thus he could travel from Baghdad to Suleymanyeh by air in safety, and as a returning resident he would face no difficulties in being admitted for settlement by the Kurdish authorities. He could return to his family, and to the lifestyle, that he had left.
15. The Appellant also confirmed to me that he was legitimately issued with a genuine Iraqi passport. Since his family live in, and he was born in, Suleymanyeh, his family book records must be held there. His family are able to verify his identity, should that be needed.
16. The Appellant denied being able to recall when his passport had been issued to him (although the evidence disclosed this was in 2009), but he accepted that this passport, together with all of his ID cards, had been left in the care of his father, at the family home. There is no proper evidential basis upon which any Tribunal could infer that the Appellant left Iraq illegally, since on the Judge’s adverse findings he had no reason to do so. The Appellant accepted before the Judge that he was in contact with his family, and so there is also no basis upon which the Tribunal could infer that his family were unable to send his passport and identity cards to him in the UK.
17. In the circumstances the Appellant would obviously be able to travel from the UK to Iraq upon his own legitimate

passport, if he chose, whether that passport remained in date, or had expired; AAH. It would not be removed from him upon arrival, and he would also be able to use those documents to board an internal flight to the KRG.

18. As a former resident of the KRG the Appellant would not be required to have a sponsor in the KRG, but rather he would be admitted to return to permanent residence. He clearly has a CSID, and he would also have the ability to obtain a grant under the Voluntary Returns Scheme, and could resume his occupation of his family home. There may be a decline in the construction industry and a consequent increase in unemployment for unskilled IDPs, but the Appellant is not one of them. On his own account he is a University graduate, and the clear inference is that his family are sufficiently affluent to have paid for that education, and to have paid for his travel to the UK. There is no reason to suppose he will return to destitution. He also has the significant advantages over IDPs that he would be able to show that he is a former resident, fully documented, with family support.

#### Conclusion

19. Accordingly, notwithstanding the terms in which permission to appeal was granted, I confirm the Judge's decision to dismiss the asylum, Article 3, and humanitarian protection appeals. There is no material error of law in the approach taken by the Judge to the appeal that requires his decision to be set aside and remade.

#### DECISION

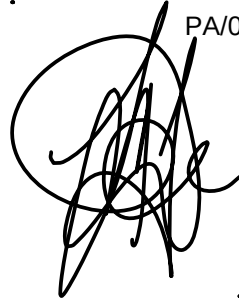
The Decision of the First Tier Tribunal which was promulgated on 15 June 2018 contained no material error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

#### Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

#### **Signed**

Deputy Upper Tribunal Judge JM Holmes  
Dated 28 March 2019

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