Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11471/2019**

THE IMMIGRATION ACTS

Decided Under Rule 34 (P)	**Decision & Reasons Promulgated**
On 28 September 2020	**On 01 October 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

OIH
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Fox ('the Judge') promulgated on the 13 February 2020 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
2. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal.
3. Following the grant of permission directions were sent to the parties indicating a provisional that the error of law hearing could be considered and disposed of without a face to face oral hearing, inviting the parties observations upon such a proposal, and providing

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time for the submission of additional material in support of their respective cases.

4. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.

5. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.

6. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:

> 34.—
> (1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.
> (2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.
> (3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.
> (4) Paragraph (3) does not affect the power of the Upper Tribunal to—
>
> (a) strike out a party’s case, pursuant to rule 8(1)(b) or 8(2);
> (b) consent to withdrawal, pursuant to rule 17;
> (c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or
> (d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.

7. The only party to have expressed a view is the Secretary of State. The directions, sent on the 23 July 2020, indicated the view of the judge who issued the same that the error of law issue could be disposed of remotely, via Skype for Business or any other platform on a date to be fixed, but it is not made out there is any need for an oral hearing, whether remotely or otherwise. It has not been shown to be inappropriate or unfair to exercise the discretion provided in Rule 34 by enabling the error of law question to be determined on the papers. There is nothing on the facts or in law that makes consideration of the issues on the papers not in accordance with overriding objectives at this stage.

Background

8. The appellant is a citizen of Iraq who entered the United Kingdom illegally on 5 August 2009 claiming asylum shortly thereafter. The asylum claim was refused but the appellant granted a period of leave to remain in accordance with the respondent’s discretionary policy

relating to Unaccompanied Asylum-Seeking Children. That leave was valid to 18 February 2010. An application for further leave made on 18 February 2010 was refused and an appeal against that decision dismissed leaving the appellant 'appeal rights exhausted' on 8 June 2011. A series of further representations were all refused including the most recent representations dated 13 August 2019 which were refused in the decision appealed to the First-tier Tribunal.

9. Having considered the written and oral evidence the Judge sets out his findings of fact at [45] of the decision under challenge. The Judge finds the appellant had failed to discharge the burden of proof upon him, even to the lower standard, and found no reason to go behind an earlier decision of the Tribunal which dismissed a previous appeal in accordance with the Devaseelan principles.

10. The Judge specifically finds the appellant, his activities, and alleged political ideology not credible, with there being no reliable evidence of any meaningful political activity that would create a real risk for the appellant on return to Iraq.

11. The Judge considers the allegation of alleged barriers to redocumentation from [51]. The Judge does not accept the appellant is unable to engage with the redocumentation process either in Iraq or the UK and agrees with the decision of the earlier Tribunal to this effect.

12. The Judge notes the appellant has a male relative, an uncle, in Iraq and that the only alleged barrier to redocumentation was the appellant's absence from Iraq. The Judge notes, however, there is no reliable evidence to demonstrate the appellant had taken reasonable steps to approach the Iraqi Embassy or engaged with the redocumentation process. The appellant's evidence that he took his CSID with him when he left Iraq and that other documents were at his mother's house when she relocated to Kirkuk was noted by the Judge, as was the fact the appellant attended school, and had been issued with a passport in the past. The Judge noted at [56] that it therefore follows that official documents do exist to demonstrate the appellant's identity and that it is the appellant who seeks to create barriers to the redocumentation process to bolster his appeal.

13. The Judge considers the country guidance decision in <u>SMO</u>, making specific reference to it at [57]. At [58] the Judge writes:

> 58. The appellant remains in contact with family members in Iraq and he is free to return there as part of the repatriations process. There is no dispute that the appellant can travel to Baghdad, Erbil or Sulaimaniyah. For all the reasons stated the appellant has also failed to demonstrate insurmountable obstacle to his return.

14. The appellant sought permission to appeal claiming the Judge paid little regard to the country guidance caselaw, erred in the application of the Devaseelan principles by failing to assess to what extent a 2011 determination can be permitted to stand without more as it predates the country guidance caselaw, in finding that SMO did not assist the appellant, in failing to note that the appellant's CSID was confiscated

by his agent when he reached the Turkish/Greek order and never returned, and in making contradictory findings, for the reasons set out application seeking permission to appeal.

Error of law

15. I do not find arguable merit in the assertion the Judge failed to properly consider the country guidance in SMO. Whilst that may post-date the 2011 determination factual findings made in that earlier decision have not been shown to be affected by later country conditions. The grounds fail to make out that all the earlier country guidance relied upon in 2011 is no longer applicable or that any change in country guidance has any material impact upon the factual analysis and adverse credibility findings even if relevant to the assessment of risk on return or the redocumentation process.
16. The Upper Tribunal in SMO find most people would know their family book details which is the source enabling an individual to obtain necessary identity documents. There is arguable merit in the respondent's written submissions that it was not for the Secretary of State or the First-tier Tribunal to prove the appellant's case for him, in an appeal in which he was represented. The Judge notes that the appellant had been issued with a CSID in the past, had attended school for which a valid CSID will have been required and where such details could be obtained, and was issued with an Iraqi passport. The appellant's mother remains in Iraq as does a male relative, his uncle, and it was not made out before the Judge that these sources would not enable the appellant to obtain the necessary details to enable him to redocument himself.
17. Whilst it is accepted earlier forms of identification have been replaced in Iraq by the biometric identity cards for which personal attendance at an assigned centre is required, the current CPIN country material clearly refers to the existence of an identity document issued by the Iraqi authorities which will allow a national to obtain a document sufficient to enable him to re-enter Iraq where he will be able to attend the relevant centre.
18. It was not made out before the Judge that the appellant is an undocumented asylum seeker unable to return to Baghdad. It was not made out he will be unable to travel within Iraq, especially in circumstances in which he has a male relative. It was not made out his uncle would not be able to meet him at the airport to assist in travel back to his home area or, in accordance with Kurdish custom and tradition, to provide him with the necessary accommodation and support to enable him to re-establish himself.
19. It was an important finding at [28] that it was the appellant's own case that his maternal uncle could have obtained the documents for him in his home area.
20. It was found the appellant would not be able to return safely to his home area of Diyala at [57] making the issue that internal relocation but it was not made out that it was unreasonable in all the

circumstances for the appellant to have relocated with the assistance of family members.

21. The appellant did not establish before the Judge, in accordance with SMO, that he will be unable to re-document himself in Iraq. In any event, the current CPIN clearly refers to the considerable experience the authorities and NGOs have in Iraq of assisting displaced persons in obtaining the necessary identity documents. It was not shown this service will be unavailable or will not assist the appellant.

22. It was not made out the appellant would have to seek accommodation one of the IDP camps as he has family members in Iraq and had not established before the Judge that they will be unable or unwilling to provide him with the required degree of support.

23. The Judge makes clear findings supported by adequate reasons that the appellant had not discharged the burden of proof upon him to show he was entitled to a grant of international protection or leave to remain in the United Kingdom on any basis. The pleadings do not establish this is a finding outside the range of those reasonably available to you the Judge on the evidence sufficient to warrant the Upper Tribunal interfering any further in relation to this matter.

Decision

24. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

25. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed
Upper Tribunal Judge Hanson
Dated the 28 September 2020