**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/11844/2019

**THE IMMIGRATION ACTS**

| **Heard remotely at Field House On 7 October 2020 *via Skype for Business*** | **Decision & Reasons Promulgated On 5 November 2020** |
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**Before**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**

**Between**

**MA (IRAQ)**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Ms E. Rutherford, Counsel instructed by Rodman Pearce Solicitors
For the Respondent: Mr T. Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS (V)**

*This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.*

*The documents that I was referred to are in a bundle of [60] pages, the respondent's bundle. the grounds of appeal and the grant of permission to appeal, the appellant's skeleton argument from before the First-tier Tribunal,*

*and a skeleton argument from Mr Melvin, the contents of which I have recorded.*

*The order made is described at the end of these reasons.*

*The parties said this about the process: they were content that it had been conducted fairly in its remote form.*

1. This is an appeal against a decision of First-tier Tribunal Judge Watson promulgated on 21 April 2020 dismissing an appeal by the appellant against the decision of the respondent dated 20 November 2019 to refuse his asylum and humanitarian protection claim.

*Factual background*

2. The appellant is an Iraqi citizen of Kurdish ethnicity born in 1980. He left Iraq in 2010 following the targeting of his village by the terrorist group Hashad al-Shaabi, and was granted asylum in Belgium for a period of one year, before being returned to Iraq in 2012. He remained in Iraq until September 2017, staying for a month in Erbil before living with his aunt in Kirkuk, until his departure for Europe in September 2017. He arrived in this country on 18 April 2018 clandestinely and claimed asylum the next day.

3. The appellant's case before the First-tier Tribunal was that he feared returning to Iraq as he had no family to assist him, and would be unable to secure a CSID card. Hashad al-Shaabi continue to have a significant presence in Kirkuk, and he would be at risk from them if returned. He claimed he could not be returned to Baghdad, as a Kurd, and that relocation to the Iraqi Kurdish region ("the IKR") would not be possible as he had no access to his CSID.

4. It was not disputed by the respondent that the appellant fled his home village due to the attacks conducted by Hashad al-Shaabi. The issue before the First-tier Tribunal was whether the appellant would be at risk on that account, and broader human rights issues relating to his return.

5. The judge found that the appellant was aware of the essential details of his family registration, pursuant to the guidance given in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) [22]. She accepted that the only remaining family the appellant had in Iraq was his aunt, with whom he used to live, but that he had not been in contact with her since speaking to her in January 2018 concerning the death of his cousin. The judge found that he had no contact with anyone in Iraq at present, and that he had no male relatives. See [23].

6. Overall, the judge found the appellant to be a credible witness [24]. Although he had passed through safe countries *en route* to the United Kingdom, that did not harm his credibility, for reasons given by the judge and not challenged by the respondent.

7. Concerning the risk on return to the appellant, the judge found at [29] that the appellant was a Kurd with no high profile and had not worked for any Western or security organisation. He would not be at greater risk of kidnap or other ill-treatment or death than other returnees.

8. At [32], the judge found that the appellant would be able to obtain CSID card upon his return, thereby enabling him to make a safe journey from Baghdad to Kirkuk or the IKR upon his return. She then added:

> "Whilst I accept that he has no male relatives, he does have an aunt and I find it likely that he will be able to contact her to obtain some form of emotional and perhaps practical support. He was aware that she had returned to live with her husband's family and I find it likely that he will be able to contact her again on a return."

*Permission to appeal*

9. Permission to appeal was granted by First-tier Tribunal Judge Feeney on the basis that the judge arguably failed to consider the criteria enunciated by SMO concerning whether it would be reasonable to expect an individual to relocate to the IKR. Judge Feeney granted permission on all grounds.

*Discussion*

10. Pursuant to ground one, Ms Rutherford submits that the judge failed to make findings concerning the risk to the appellant from Hashad al-Shaabi. She submits that there were materials before the judge which, properly analysed, demonstrated that the appellant may have been at risk from Hashad al-Shaabi upon his return, such that it was an error of law for the judge to fail to make findings on this issue. For the respondent, Mr Melvin argues that there was no basis upon which it could properly be said that this appellant would ever be at risk from Hashad al-Shaabi; while the respondent accepted that he had been part of a generalised target from the group in 2010, there was nothing to suggest that he was personally at risk. His involvement had been limited to being in the wrong place, at the wrong time, ten years ago.

11. I find the judge did address the risk to the appellant on this basis. She plainly had in mind the risk the appellant claimed to be subject to from Hashad al-Shaabi: see [7] where she referred to the claimed risk as forming part of the appellant's case. It is necessary to read the judge's decision as a whole, and when one does so, the judge's discussion at [29] is contextualised. In that paragraph, the judge set out findings to the effect that the appellant would not be at any greater risk of kidnap or other ill-treatment, or death, than any other returnee, upon his return. These findings encompass any risk that would be posed to the appellant by Hashad al-Shaabi, thereby covering the point the appellant contends was erroneously overlooked.

12. Ms Rutherford took me to the following materials in the appellant's bundle which, she contended, demonstrate that he was at risk from Hashad al-Shaabi, and which the judge failed to consider.

    a. At pages 19 to 20, there features a news article dated 15 September 2019, *Clash between ISIS and Hashd al-Shaabi,* published online. The article describes a clash between ISIS fighters and Hashad al-Shaabi which resulted from cars being stopped at night on the highway between Baghdad and Kirkuk, and being asked for money by ISIS. This article went to the general presence of Hashad al-Shaabi, submitted Ms Rutherford.

    b. At pages 28 to 30, there is an article dated 28 June 2019 from a website called rojname.com titled *Hashd al-Shaabi Smuggles Oil in Kirkuk, Khanaqin: Former MP*. The single sentence of the report which is visible across the three pages relied upon by the appellant states that a former member of the Iraqi Parliament had "revealed" that pro-Iranian Hashad al-Shaabi militia continued to smuggle oil from the province of Kirkuk. This article also demonstrated the general presence of Hashad al-Shaabi, submitted Ms Rutherford.

    c. At pages 31-35, there is an undated article, which appears to have been accessed on 29 January 2020, titled *Hashd al-Shaabi / Hashd Shaabi Popular Mobilisation Units / People's Mobilisation Forces*. It is published by www.globalsecurity.org. It is said by Ms Rutherford to demonstrate that Hashad al-Shaabi militia are being incorporated into government forces.

13. Considering these articles in the round, with the remaining evidence that was before the judge, in light of the extant country guidance in SMO, I do not consider that they could properly be said to provide any support for the proposition that the appellant is personally at risk upon his return, still less that they demonstrate it was irrational or otherwise perverse for the judge not to reach that finding. There being no appeal to this Tribunal on the point of fact, that would be the threshold the appellant would need to reach in order to demonstrate that the judge fell into error by not finding in his favour on this point.

14. The article *Clash between ISIS and Hashd al-Shaabi* does nothing to demonstrate individualised risk. At its highest, it reports that there was a single incident between ISIS and Hashad al-Shaabi fighters, catalysed by an attempted highway theft. The appellant has no link to either group, and this article demonstrates that there is no basis upon which he has a well-founded fear of being persecuted, or is otherwise at risk, on account of his Kurdish ethnicity or any other specific basis.

15. The article *Hashd al-Shaabi Smuggles Oil in Kirkuk, Khanaqin: Former MP* is so brief that it cannot possibly be said that the judge fell into error by not referring to it or otherwise relying on it. There is no suggestion the opponent is involved in the oil trade, or would otherwise be involved in oil

smuggling activities. It provides no support for the proposition that he is at any form of risk from Hashad al-Shaabi.

16. Finally, the article at pages 31 to 35 does not demonstrate that the appellant is at any risk personally. The events discussed in the article take place over the previous few years, and without exception pre-date the country guidance given in SMO. Its contents were of peripheral relevance to the appeal, if any.

17. While the judge did not address the risk emanating from Hashad al-Shaabi directly, there was no basis in the materials that were before her for her properly to have found that there was such a risk. The judge addressed the global risk posed to the appellant at [29]; nothing submitted by Ms Rutherford demonstrates that that was a finding not properly open to the judge, still less that it was irrational or otherwise unlawful for her not to find in favour of the appellant on this point.

18. The second ground of appeal contends that the judge erred in failing to apply the factors in SMO concerning whether internal relocation would be unduly harsh. Ms Rutherford accepts that the judge's findings concerning the appellant's ability to obtain a CSID were open to her on the evidence, and accordingly does not challenge that aspect of the case.

19. Mr Melvin submits that Ground 2 falls with Ground 1, as, if there is no risk to the appellant, the issue of internal relocation does not arise. While there is some force to that contention, the appellant's general circumstances on return do need to be engaged with, even in the absence of a specific risk that would require consideration of the option of internal flight.

20. The headnote to SMO outlines a series of considerations to which regard must be had when considering an appellant's circumstances upon return. Ms Rutherford submits that the judge failed to consider whether the appellant would, for example, be able to obtain work, and failed to address the considerations listed at paragraph 28 of the Headnote, such as the role of patronage and nepotism, the skills and experience of the appellant, and whether he is from an area with a marked association with ISIL. This, she contends, was an error of law.

21. Ms Rutherford also submits that it was not open to the judge to find that the appellant would return to the "emotional and perhaps practical" support of his aunt. While she confirmed during submissions that she does not challenge the judge's finding at [32] that the appellant would be able to resurrect contact with her, she submits that the practical reality of the situation on the ground is such that the aunt will not be able to provide the appellant with anything like the support necessary to facilitate his proper return. The appellant's evidence was that the aunt had moved to live with her husband's family, and no longer had her own home.

22. Paragraph 26 of the headnote to SMO, addressing the position of Kurdish returnees, provides:

> *"If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis."*

23. The judge's findings were consistent with the guidance in SMO that Kurdish cultural norms would require the remaining family of the appellant, namely his aunt, to provide sufficient assistance such that it would be possible for the appellant to lead a "relatively normal life". It was open to the judge to reach that finding. As Ms Rutherford confirmed, there was no challenge to the finding that the appellant would be able to resume contact with his aunt. That being so, and in the absence of any evidence to the contrary, the cultural norms governing the appellant's return are such that he would be provided with assistance by his aunt. He lived with his aunt from 2014 to 2017, and the mere fact that his aunt has moved house does not render the judge's findings irrational, perverse or mean that they were otherwise not open to her.

24. It follows, therefore, that the separate guidance in SMO addressing those who, unlike this appellant, will not return to the support and assistance of family members, was not engaged. It was not necessary for the judge to consider those factors and she did not err by not doing so.

25. Ground 2 is without merit.

26. The appeal is dismissed.

27. I maintain the order for anonymity made by Judge Watson.

## Notice of Decision

The decision of Judge Watson did not involve the making of an error of law.

This appeal is dismissed.

## Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Stephen H Smith Date 13 October 2020

Upper Tribunal Judge Stephen Smith