



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/00636/2020**

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On the 6<sup>th</sup> October 2021**

**Decision & Reasons Promulgated  
On the 16<sup>th</sup> November 2021**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**FFH**

**(Anonymity direction made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Khan instructed by Parker Rhodes Hickmotts Solicitors.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. Following a remote hearing before another judge of the Upper Tribunal on 5 May 2021 it was found a judge of the First-tier Tribunal had erred in law

such that that decision was set aside. At [19 - 23] of the error of law finding it is written:

19. Having looked at the country information and the MSM case, I have in the end concluded that the judge did err in failing to address the question of whether, notwithstanding the adverse credibility findings, the appellant might nonetheless be at risk in Iraq by virtue of being a cameraman (which would arguably fall within the ambit of “media workers”) for a television company. That question also involves an issue of whether on return, the appellant could be expected to find alternative employment in order to try and avoid that risk.
20. I conclude that the judges error is material in that a consideration of the issue, including the country information, *might* have made a difference to the outcome of the appeal.
- ...
22. The judge’s findings, which I have deemed to be sustainable, shall be expressly preserved as the starting point for the remaking of the decision in this case.
23. The key issue at the resumed hearing will focus on what I have said in paragraph 19 above.

## **Background**

2. The appellant is a citizen of Iraq, of Kurdish ethnicity, who was born on 18 January 1999.
3. The relevant factual findings of the First-tier Tribunal Judge (‘the Judge’) are set out between [21]-[46] of that decision. The preserved adverse credibility aspects can be summarised in the following terms:
  - i. “The appellant has not credibly explained why he would even briefly have referred to work he did when he was 16 - 17 years of age rather than his occupation at the point he left. To be as specific as to say he was working for Bryer newspaper for children casts doubt in my view, on his later claimed to have been working for Speda TV from 2016 until he left. I give this aspect negative weight. Further, at 5.1 he was asked if he had ever worked for various organisations and “media” is one of them. He replied “yes, I worked for a children’s newspaper.” If there was any misunderstanding at 1.14, I am of the view, he would have cleared it up. I do not find it credible he would have said he worked for a children’s newspaper if he had in fact been working as a cameraman and Journalist for Speda TV as claimed. I give these matters negative weight” [25].
  - ii. Following the appellant filing further material referred to at [26], the Judge notes those documents came after the appellant’s substantive interview, where it is recorded he claimed to have no documents to prove his case with him in the UK as they were all in a Iraq, but found it lacking in credibility that the appellant claimed he was able to get these documents thorough a friend, yet with so little supporting his own activity and role in Speda TV. The Judge finds that if the appellant were using technology to store personal data and documents similar to those produced

it lacked credibility he would not have stored documents regarding his own training and participation in events such as those he claims his father participated in. The Judge gives this aspect of the evidence negative weight [27].

- iii. Whilst one clip in the documents showed the person holding the microphone to the appellant with the words Speda TV on it, the Judge was not satisfied this in itself was evidence he was working for that organisation as he claims; although it was accepted it did show some connection to Speda TV warranting it being given positive but limited weight [28].
- iv. In relation to a letter said to be from the Director of Speda TV referred to at [31], the Judge notes the author of the letter had not given their name in the letter and that the email purportedly sending the letter had no content. The Judge finds it was difficult to accept that a Director of a television company would send the letter attached to an email with no content whatsoever. The Judge finds she would have expected something in the body of the email stating who the email is from, who it is intended for and with the name, details and even company logo and contact details. The Judge finds there is no independent evidence to show that the letter came from anyone at Speda TV. The Judge finds anyone can create an email address and send an attachment [31].
- v. The Judge notes the letter states the appellant was working as a cameraman for Speda TV and that the appellant claimed at the hearing he was working as a cameraman and a journalist for this organisation. The Judge notes the author of the letter suggests his “journalism tasks” but did not say the appellant was working as a journalist separately. The Judge found this inconsistent and gave it negative weight. The Judge also notes the letter refers to the PMU breaking into the office but did not say the office was damaged. The appellant claims it was and adduces images he says show the damage. The Judge records having expected a Director of the TV channel to have mentioned such an important fact and gives this evidence negative weight [32].
- vi. The appellant has filed a card which has the Speda logo on it, which states he was a cameraman but which makes no reference to his being a journalist. The Judge accepted the card supported the claim the appellant worked as a cameraman but found it inconsistent with his claim to be in front of the cameras as a journalist for Speda TV. The Judge finds this distinction important as the appellant’s claim to fear the PUK, KDP and Danesh was based upon his claimed spoken and written words as a journalist, not his work behind the camera filming events [33].
- vii. The Judge finds that the appellant’s claim Hashd Al Shaabi had a particular interest in him as he, together with others, took part

in organising a protest to take place on 16 August 2018 warranted limited weight for the reasons given at [34].

- viii. Four short articles the appellant claims to have written and posted on Facebook, which he stated were critical of the PMU, KDP and PUK were noted but the Judge found there was no way to verify from the printouts that the dates of the articles were correct, or if there were written by the appellant. The Judge noted it was claimed they had been posted in October and November 2017, but it was found to lack credibility that the appellant was able to access such limited evidence of social media activity when he was able to access his Facebook account if he was a journalist from 2016 until he left Iraq; especially as he now says his Facebook had been closed. The Judge found the claims relating to this evidence warranted little weight being given to then [35].
- ix. The Judge found matters recorded at [38] gave rise to a potential credibility issue in which the appellant claimed his job was dangerous as a result of what he said against the PMU, KDP , PUK and Daesh and his claim in his account he was so concerned he used his own name in his father's articles to protect his father from persecution; but it was found "odd" that somebody who is seeking to betray themselves as willing to put their life on the line for their vocation, and to get the message out, had abandoned his vocation upon leaving Iraq. The Judge also found there was no evidence the appellant had maintained any connections with journalism in Iraq or shown any interest in events in Kirkuk, which was found to be inconsistent with his claimed profile, warranting the appellant's claims being given negative weight [39].
- x. The Judge finds the letter purporting to be from Speda TV also makes no reference to a more generalised risk to the staff at the TV channel. The Judge finds the appellant did not identify any difficulties his father faced during his work with the TV channel which would have been in his own name, and that the appellant had not identified any difficulties he himself faced prior to his claimed involvement in the demonstrations referred to earlier. The Judge found the appellant's claim inconsistent with country evidence that journalists are at a heightened or enhanced risk [41].
- ix. The Judge found it inconsistent that the appellant claimed that in addition to Hashd Al Shaabi he also feared the KTP and PUK yet had failed to mention any fear relating to such Kurdish groups in his screening interview, despite being given the opportunity at the start of the asylum interview to make any additions or amendments; resulting it being found the appellant had been internally inconsistent in regard to that aspect of his claim. The Judge finds the appellant's evidence to be inconsistent and to warrant negative weight [42].

- x. The Judge found the witness Mr Majeed, who was able to adduce his Press card which was not a document the appellant had filed, and who claimed he knew the appellant and his father worked for Speda TV, to be a vague witness who gave limited evidence that contradicted the appellant's claimed activities as a journalist [45].
4. Having drawn the threads of her findings together the Judge writes at [46]:
46. Therefore, taking all those matters together, I have weighted the positives and negatives and I find the Appellant has failed to demonstrate it is reasonably likely he has told the truth about his reasons for leaving Iraq. There is some evidence to suggest he may at one stage have been working as a cameraman in Iraq, but in the light of the above, I find he has failed to show it is reasonably likely that he participated in a demonstration as claimed or that he was targeted by the PMU. I do not accept he is shown he has a profile as a journalist.
5. The appellant was cross examined before the Upper Tribunal by Mr Diwnycz during the course of which he claimed that his father had been arrested and detained as a result of which his father put the appellant's name as the author of articles his father wrote. When asked why his father would do this as this may put the appellant at risk of harm from those who had threatened his father previously, his answer was that it was considered he was more robust and able to deal with any consequences. The Judge notes at [39] of the First-tier Tribunal that it was the appellant who claimed his job was dangerous as a result of what he said against the named groups, and that he was so concerned that he used his own name in his father's articles to protect his father from persecution. This appears internally inconsistent as on the one hand he is claiming that it was his father who used his name on his fathers articles yet on the other it was the appellant who used his name on his father's articles. The appellant's reply to a question put to him that if risk arose from such articles and that his father did not want his name to appear on them why a 'nom de plume' was not used was wholly unconvincing. If a genuine risk arose from the publication of such articles and the identity of the author needed hiding to protect them from harm it is irrational that the appellant's father would hide behind his son putting him at risk, as alleged.
6. The appellant also relies upon a report written by Dr Fatah dated 22 July 2021. In the section headed "Overall summary and conclusions." Dr Fatah writes:
264. In compiling this report, I have raised all matters I consider to be professionally relevant, and I have given an unbiased, independent assessment. It should be clear that as an expert, I do not pass judgement, only give opinions.
265. **Risk from the PUK and KDP:** The Kurdish authorities have often taken a heavy-handed approach to critics including journalists and other media workers. Journalists have run the risk of being arbitrarily arrested, threatened and intimidated. Moreover, any risk here may increase when covering protests. The objective evidence provides that there is a systematic campaign of violence and intimidation by the Kurdish authorities against those who criticise

the Kurdish government. Those who have been targeted have included journalists, media workers, members of parliament, students and protestors. Therefore, those who have raised concerns against the Kurdish government have been , and are, at risk of persecution by government forces.

266. Speda TV is critical of the ruling political groups and the ruling elite. If [FFH]'s work is deemed to be critical of the PUK or KDP, it is plausible that he may face a risk of detention and ill-treatment. While the majority of violations against media personnel in the objective evidence is centred on a risk to journalists, it is considered that cameraman and crew may also face a significant level of risk, particularly if covering protests. It should also be noted that Shukri Zaynadin, who was killed in December 2016, was a cameraman for the Kurdish News Network.
267. Having a low profile may expose somebody critical of the Kurdish authorities to a greater level of risk than if they had a high profile. High profile people who are critical of the Kurdish authorities, such as established media and political figures, may have some level of safety from retribution or punishment due to their positions. A person with a low profile would not have the same safety stemming from their political influence, and may thus be more vulnerable to persecution by the Kurdish authorities. Persecution can take many forms, including violence, kidnapping, and silencing.
268. Journalists, activists, and others have faced serious risk due to their publicly speaking against the Kurdish authorities, or publicising information which could be damaging to the authorities. These risks include violence, kidnapping, harassment and threats. In the most serious instances, journalists and others who were seen as a threat to the main parties were killed, with the murders not been thoroughly investigated afterwards.
269. **Risk form the ISF and Hashd:** Journalists and media workers in Iraq, face attacks, detention, intimidation and even killings by the authorities and armed groups. It should also be noted that Iraq has the highest death toll for journalists. If [FFH]'s work was seen to be openly critical of the ISF or Hashd, it is plausible that he would face a risk of detention, a lack of due process, and the risk of torture and other ill-treatment. The objective evidence provides that while journalists are primarily targeted in Iraq, cameramen and other media workers have also been targeted. Any risk may also be elevated if [FFH] were to cover protests. Moreover, if [FFH] was suspected to have been organising protests against Hashd, he would likely be detained and face the risk of mistreatment.
270. The majority of the objective evidence points to Shia militias willingly using violence against their opponents. Largely such opponents are sectarian (i.e., Sunni) and ideological opponents (perceived homosexuals, for example). The Shia militias have committed vast human rights atrocities in areas where they operate, putting the civilian population at risk. Today, having been formally incorporated into the state's security apparatus: Shia militias continue to carry out human rights abuses with impunity in Iraq. The perpetration of abductions and killings of Sunni or mixed Sunni-Shia areas of Sunni civilians would appear to be part of a campaign by Shia militias to exercise Baghdad (and elsewhere) of Sunni Arab presence. (Not at all do similar are the Kurdish forces measures to prevent Sunni Arabs returning to their home villages in northern areas of the 'Disputed Territories').
271. Since their takeover of the Disputed Territories, Hashd al-Shaabi have been accused of committing a number of human rights violations, particularly against minority communities. In Kirkuk, there was extensive damage and displacement. If returned to an area where Hashd al-Shaabi are dominant, security wise, [FFH] would face the same level of risk as the general population. In general terms, Kurds are more likely to face difficulties from

Hashd forces in the Disputed Territories. Forster, displacement, and extra judicial killings were reported to have been committed by Hashd.

7. It is not disputed that some journalists may be at risk in Iraq but having considered the evidence in the round, including the preserved adverse credibility findings, I do not find the appellant has made out even to the lower standard applicable to an appeal of this nature that he came to the adverse attention of any of those he claims to fear whilst in Iraq. In particular, there is no credible evidence of any direct threat to the appellant arising from those he claimed threatened the television station he claims to have worked, Speda-TV, when they were asked not to broadcast critical comments.

8. The respondents latest Country Policy and Information Note entitled 'Iraq: Opposition to the government in the Kurdistan Region of Iraq (KRI), Version 2, June 2021' contains a section relating to journalists headed:

"Treatment of opponents to the KRI authorities" in which it is written:

11.2 Journalists and restrictions on media freedom

11.2.1 On 18 May 2020 the Committee to Protect Journalists (CPJ) published an article entitled 'Security forces in Iraqi Kurdistan detain 8 journalists in Duhok covering protest; charge 4' which stated:

'On May 16, Kurdish security forces arrested at least eight journalists working for media outlets affiliated with the Kurdistan Islamic Union (KIU) and the Patriotic Union of Kurdistan (PUK) opposition parties while they were covering a protest by public officials against unpaid salaries in Duhok, a city in western Iraqi Kurdistan...

'Those arrested were Speda TV reporters Azad Mukhtar, Ali Shali, and Akram Guli; Speda TV cameraman Hajar Salman; director of the KIU-affiliated broadcaster Khabir TV, Maher Sakfan; director of the KIU-affiliated Khabir Radio, Ahmad Sharnakhi; reporter for KIU-affiliated news website PRS Media, Omed Haji; and Karwan Sadiq, a reporter for the PUK-affiliated broadcaster Gali Kurdistan, according to the Metro Center and Abdulkareem Ahmed [general manager of the KIU-affiliated broadcaster Speda TV].

'The same sources and Ramadhan Artesey, the lawyer representing the journalists, said the security forces also seized the journalists' equipment; held Mukhtar, Salman, Sadiq, and Sali for several hours; and held the remaining four until today, when they were released on 2 million Iraqi dinars (\$1,680) bail after being charged under Law 11 regulating the organization of demonstrations.

'Azad Mukhtar told CPJ on the phone yesterday that security forces seized their equipment as soon as they got out of the car, accusing them of being troublemakers and saboteurs.'

"Initially they didn't arrest the Speda TV crew. We were waiting for them to give us back our equipment, when they arrested us and took us to a police station, where we were held from 3:30 to 9 p.m. At the station they asked us to sign a testimony, but we refused and requested to see our lawyers before signing anything. They tried to intimidate us by saying that they could force us to sign 10 testimonies and not see our lawyers. We eventually signed it. When we were released, they returned our equipment and the lens cap of the camera was broken," Mukhtar said.

'Ahmed, general manager of Speda TV, told CPJ yesterday that his staff was arrested while they were covering the protest organized by teachers who have not been paid their salaries in months.

"They didn't engage in activism. They were reporting on the protest," he said.'

11.2.2 In October 2020 HRW published an article entitled 'Kurdistan Region of Iraq: Media Offices Shut Down' which stated:

'Kurdish authorities have unlawfully closed two offices of a private media outlet, NRT, for over a month, apparently for covering protests and for broadcasts critical of the ruling party, Human Rights Watch said today.

'The Kurdish authorities had no court order and only imposed the shutdown in Erbil and Dohuk, the areas controlled by the Kurdistan Democratic Party, raising concerns that the closure is politically motivated.

"If NRT broke the law, surely the authorities would have taken the appropriate measures to take the outlet to court," said Belkis Wille, senior crisis and conflict researcher at Human Rights Watch. "But party officials have instead chosen to take actions outside of the scope of the law."

'...On August 11, 2020, Shaswar Abdulwahid Qadir, the leader of the opposition New Generation Movement political party in the Kurdish Region, issued a call on NRT, a private media outlet with TV and radio stations and a website that he owns, for public protests to demand better education, employment opportunities, and anti-corruption measures. On August 12, his call triggered protests across the region that lasted for about a week. NRT, which has both Kurdish and Arabic language channels, was the only outlet to cover the protests in any detail.

'On August 19, NRT's news director, Rebwar Abd al-Rahman, and another employee who was there told Human Rights Watch that the Asayish - the regional government's security forces - raided their office in Dohuk and held the staff there for several hours, then ordered them to go home, seemingly in response to the protest coverage.

'Al-Rahman said the security forces did not present a court order but said that they had instructions from a Kurdistan Democratic Party official to close down the offices. Al-Rahman said the Asayish also closed their Erbil offices on the same day, again without presenting any court documents. The offices have remained shut, though the channel has remained on the air as authorities did not close its headquarters in Sulaymaniyah down. This has meant that reporting teams in Dohuk and Erbil have been unable to report from the field and appear on TV spots.'

11.2.3 The same source further stated:

'The authorities have taken other measures to intimidate NRT's staff. On August 19, the Asayish arrested an NRT reporter in Zakho under the KRI's Law for the Organization of Demonstrations (11/2010), which prohibits people from participating in protests for which the organizers have not sought advanced permission from authorities.

'They held him for 11 days, then released him on bail and later dropped the charges, acknowledging he had been covering the protests as a journalist, al-Rahman, the news director, said. He said they also confiscated video equipment of two other reporting teams in Akre, one as a team passed through a checkpoint to report on a Turkish airstrike and the other at a checkpoint outside of Amadiya.'



- 11.2.4 The GCHR article which focussed on the protests in the KRI in December 2020 stated:
- 'Journalists who were covering the protests were targeted with excessive force and a number of them were arrested. The security forces destroyed the equipment needed for external broadcasts by a number of television channels, several of which were prevented from covering the demonstrations.
- 'On 07 December 2020, the Ministry of Culture in the Kurdistan Region announced the closure of the NRT channel and stated, "The channel was closed due to its failure to comply with the instructions related to the regulation of the audiovisual media field, and irresponsible behaviour at this time and far from the law, and describing the security forces as militia and bandits, despite the channel's alert several times." The statement added, "We decided to stop the broadcasts by the NRT channel for a whole week." The NRT channel reported on the same morning that security forces stormed its headquarters in Sulaymaniyah and seized the equipment.'
- 11.2.5 The same source provided further details on treatment of journalists trying to cover the protests:
- '- Journalist Harim Majeed, director of Digital Bazian News, was arrested by the security forces while covering the events of the demonstrations in Bazian district, near Sulaymaniyah;
- '- The Zayan news network team was attacked by the security forces in the Kalar district, in the Garmian region, in the north of Kirkuk Governorate;'
- 11.2.6 In February 2021 Rudaw published an article entitled 'Kurdistan Regional Government under fire for jailing journalists' stated:
- 'The Committee to Protect Journalists (CPJ) has called on the Kurdistan Regional Government (KRG) to "immediately" release two journalists who were sentenced to six years in prison by an Erbil court on Tuesday.
- 'On Monday, seven people, including two journalists, were put on trial for "endangering the national security of the Kurdistan Region." Five of the defendants - Sherwan Sherwani, Shvan Saeed, Ayaz Karam, Hariwan Issa, and Guhdar Zebari - detained for several months, were found guilty and sentenced to six years in jail the following day.
- '...The ruling has caused outrage in the Kurdistan Region and abroad, with the CPJ calling on the government to respect freedom of the press.
- "Today's sentencing of journalists Sherwan Amin Sherwani and Guhdar Zebari is not only unfair and disproportionate, but it also proves that the Iraqi Kurdistan regional government has finally dropped the pretense of caring about press freedom," CPJ Middle East and North Africa Representative Ignacio Miguel Delgado said on Tuesday. "Kurdish authorities in northern Iraq should immediately release both journalists, drop the charges against them, and cease harassing the media."
- '...The men were arrested in Duhok province last year after anti-government protests over unpaid wages. Kurdish security forces, known as Asayish, detained over two dozen people, including a teacher whose family says committed no offense.'
- 11.2.7 On 24 March 2021 the Financial Times published an article entitled 'Iraqi dreams of democracy fade with arrests of journalists'. The article includes details of a journalist who was arrested after covering protests in Duhok and accused of being a spy. Due to Financial Times copyright requirements CPIT is unable to republish the contents of the article.

- 11.2.8 In March 2021 Freedom House stated:  
 ‘In 2019 and 2020, Kurdish Regional Government authorities continued to intensify their repression of the activities of the New Generation opposition party and its affiliated media outlet, Nalia Radio and Television (NRT), which is owned by the party leader Shaswar Abdul Wahid. In April 2019, security forces detained over 80 members of the New Generation party, allegedly for defamation and insulting a state employee. In August 2020, authorities unlawfully shut and raided two NRT offices for over a month. In December, they raided two other offices and suspended the outlet’s broadcasting license. The Ministry of Culture and Youth, which issued the suspension, claimed that NRT had broken rules regulating broadcast media, though they did not specify which rules had been broken. NRT had covered violence during anti government protests throughout the year.’
- 11.2.9 The same source further stated that ‘In 2020, KRG authorities intensified the persecution and harassment of media outlets and journalists, particularly those covering anti-KRG protests relating to economic hardship and corruption.’
- 11.2.10 The USSD report published in March 2021 stated: ‘The IKR press law does not give the KRG the authority to close media outlets, but in August the KRG closed the Kurdish Nalia Radio and Television (NRT) offices in Erbil and Duhok over the television station’s coverage of protests. On September 9, KRG coordinator for international advocacy Dindar Zebari defended the move stating that NRT violated Article 2 of Law 12 of 2010, which bars encouraging a public disturbance or harming social harmony in accordance with IKR law.  
 ‘Government forces sometimes prevented journalists from reporting, citing security reasons. Some media organizations reported arrests and harassment of journalists, as well as government efforts to prevent them from covering politically sensitive topics, including security issues, corruption, and government failure to provide adequate services.  
 ‘...Throughout the IKR there were reports of beatings, detentions, and death threats against media workers. In some cases the aggressors wore KRG military or police uniforms. In particular journalists working for NRT were frequently arrested. On August 14, the Committee to Protect Journalists (CPJ) reported that Kurdish security forces in Erbil briefly detained an NRT crew covering protests in the city and seized their equipment. Rebwar Kakay, head of NRT’s office in Erbil, told the CPJ that authorities held the journalists without charge for eight hours at Erbil’s Azadi police station, and that the team’s cameras, live streaming devices, press badges, and cell phones were seized.  
 ‘Certain KRG courts applied the more stringent Iraqi criminal code in lawsuits involving journalists instead of the IKR’s own Press Law, which provides greater protection for freedom of expression and forbids the detention of journalists. KRG officials increased their use of lawsuits against journalists critical of the KRG, including applying laws such as the Law of Misuse of Electronic Devices instead of the IKR press law. In the first nine months of the year, KRG officials from various government offices filed eight independent lawsuits against freelance journalist Hemn Mamand after he posted content on Facebook critical of the KRG’s COVID-19 response. Mamand was arrested twice, in March and again in April, and spent 34 days in detention on charges levied under the Law of Misuse of Electronic Devices.’

9. This material provides evidence of journalists being targeted if covering events that the authorities believe will cause then

embarrassment, but the appellant is not a journalist. The KDP and PUK have taken such action within the IKR, but Kirkuk is not in the IKR, and it is not made out these groups have influence in the appellants home area, although it is accepted other groups do. There is evidence of cameramen being arrested at a demonstration on 16 May 2020 and of their being detained from 3.30pm to 9.00pm but no evidence of ill-treatment sufficient to amount to persecution during this time. The main action concerning cameramen relates to the destruction of their camera and other related equipment by the authorities preventing them from filming an event. The main target of the authorities is the journalist who actually report the event, i.e. those 'front of camera' and the Media outlets such as TV and Radio companies. The evidence does not establish a credible real risk for the appellant.

- 10.** The case of MSM (journalists; political opinion; risk) Somalia [2015] UKUT 00413 (IAC) is relied upon by Ms Khan. That case involved a Somali journalist who was found to lack credibility, as has this appellant, but who was still able to succeed on appeal. The two issues at large before the Upper Tribunal in MSM were set out [1] of that determination in the following terms:

"The first is whether, given the prevailing conditions in Mogadishu, Somalia, the Appellant, a journalist, is at risk of persecution and/or breach of Articles 2 and 3 ECHR in the form of attacks inflicting serious injury or death in the event of his enforced return there. The second is the interesting question of law of whether the Appellant can be denied refugee status in the United Kingdom on the ground that it is reasonable to expect him upon return to engage in employment other than his chosen occupation of journalism. These questions are determined in a context where the Upper Tribunal has recently promulgated updated guidance on conditions prevailing in Mogadishu: see MOJ and others (Returns to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)"

- 11.** This Tribunal is fixed with the finding of the Judge that the appellant did work as a cameraman although the preserved finding at [25] of the First-tier decision casts considerable doubt upon this claim. The Upper Tribunal in the error of law hearing found working as a cameraman fell within the definition of a "media work" or other "media professional. At [18] of the error of law hearing it is written:

18. I now turn to the issue raised in the grounds 1 and 2. On the one hand, it can be said that, having found (just) that the appellant may have worked as a cameraman, the judge then failed to consider country information relating to potential risks to not simply journalists, but also "media workers" or other "media professionals" (a category which might arguably include cameraman/camera women). On the other hand, the judge's findings in [33] and [46] are tentative and do not provide any detailed list of the appellant's role and the nature of the work. Further, there is some force in Mr Avery's point that the appellant's father had not experienced problems over the course of time despite having worked for the named television company.

- 12.** The preserved findings in MSM are as follows:

- (i) The Appellant worked as a journalist for Radio "X" in Somalia.
- (ii) He did not at any stage come to the adverse attention of AS: his evidence to the contrary was a total fabrication.
- (iii) He did not receive any threats on his mobile phone from AS.

- (iv) None of his colleagues at the radio station was targeted or harmed before the Appellant left Mogadishu.
  - (v) The Appellant's wife had not relocated to a place of safety.
  - (vi) The Appellant's sister was aware of his intention to travel to the United Kingdom, confounding his claim to the contrary.
  - (vii) Little weight could be attributed to the documentary evidence on which the Appellant relied in support of his assertion that AS had threatened him.
  - (viii) Increased income was his initial motivation in training to become a journalist.
- 13.** The reference to AS is to Al-Shabab, an Islamic terrorist group, which operated in the relevant parts of Somalia at that time.
- 14.** The Tribunal in MSM also find that the appellant in that case was likely to engage in journalistic activities, for the purpose of earning a living, in the event of returning to Mogadishu.
- 15.** The factual matrix against which risk for MSM was assessed is set out at [21] of that decision in the following terms:
- 21. We conclude that the evidence supports the following findings, some of which are specific and others general in nature:
    - (a) Radio Mogadishu is perceived by AS to be pro-government, state run.
    - (b) Journalists working for Radio Mogadishu are at real risk of being targeted by AS and killed or seriously injured in consequence.
    - (c) AS is the only identified group, or faction, which engages in such attacks and killings.
    - (d) AS has perpetrated some, but not all, of the reported killings of journalists and other workers in the media sector.
    - (e) The perpetrators of the killings of other journalists are not known.
    - (f) Those who work for media organisations other than Radio Mogadishu which publish anti-AS material or have an imputed anti-AS stance or inclination are also at risk of being targeted by AS and killed or seriously injured in consequence.
    - (g) All of the attacks upon and murders of both journalists and "*media workers*" (the language employed in one of the NUSOJ reports) documented in the reports digested above have been motivated by the occupation of the victims. The expression of political opinions is an intrinsic feature of the daily lot of most of those who work in the media sector. Furthermore, we find that the aggressors impute political opinions to all such workers in any event. We consider that there is a direct nexus between the espousal and/or expression of political opinions, actual or imputed, by the victims and their death or injury. There is no other identifiable motive or ground and none was suggested on behalf of the Secretary of State.
    - (h) We find no sustainable basis for making any distinction between journalists and "*media workers*" (and we were not invited to do so). We define this term as all those who work in the media sector. Thus the members of the endangered group are not strictly confined to journalists in the conventional sense. Thus the analysis in [20] above extends to this wider group.
    - (i) We find that there is nothing selective about the attacks on the members of the endangered group. In particular, we find no sustainable basis for confining those at risk to persons who work for media organisations perceived to be either pro-government or anti - AS (insofar there is any distinction between the two). In this sense, the attacks which have been

perpetrated and which, predictably, will continue are indiscriminate. We reject the Secretary of State's argument to the contrary.

- (j) Thus the risk is generated by membership of the endangered group without more.
- (k) We find no basis for any sustainable distinction between Mogadishu and other areas of Somalia.

**16.** At [28] of MSM it is written:

"On the grounds and for the reasons elaborated above, we conclude that the Appellant has discharged the burden of establishing that in the event of returning to Mogadishu, Somalia, there is a real risk that by virtue of his predicted employment in the media sector he will be persecuted for the Refugee Convention reason of political opinion and/or that a breach of his rights under Articles 2 and 3 ECHR will occur."

**17.** In relation to the second question, having analysed the relevant case law. The Upper Tribunal concluded that MSM was not to be denied refugee status on the ground that it would be open to him to seek to engage in employment other than in the journalistic or media sector. This argument is based upon the rights of freedom of expression and an analysis of the case law set out, including HJ (Iran), and being viewed through the eyes of a potential persecutor who imputes a journalist with an adverse political opinion, resulting in an act of persecution.

**18.** In this appeal the following findings can be properly made from the evidence:

- (i) Even though the Judge of the First-tier Tribunal noted the contradictory evidence by the appellant in relation to his employment when he claimed he worked as a children's newspaper and did not mention work as a journalist and cameraman for Seda TV at [25] of the First-tier Tribunal, the appeal has proceeded on the basis that it was accepted by the Judge that the appellant worked as a cameraman for Speda TV in Iraq at some point.
- (ii) The appellant did not at any stage come to the adverse attention of those he claims to fear. His evidence to the contrary has been found to be a total fabrication.
- (iii) The appellant claimed to face a risk as a result of being involved in a demonstration but it is a preserved finding he was not involved in that demonstration. His claim as such was found not to be credible.
- (iv) The appellant has not established he was a journalist in Iraq and has not established he has a profile that will place him at risk as a result of his being perceived as such.
- (v) He did not receive any direct threats during the raid on the offices of the TV company or at any other time and nor has his father who it is claimed by the appellant worked as a journalist and 'front of camera' man for more than 16 years in Iraq.
- (vi) Little weight could be attributed to the documentary evidence on which the Appellant relied in support of his assertion as to risk on return.
- (vii) The appellant's claim as to articles written by his father being put in his name has been found to lack credibility and to be irrational.
- (viii) There is no credible evidence the appellant had worked as a journalist.

- (ix) The lack of credible evidence of the appellant being threatened or suffering harm, despite his claim to have operated as a cameraman, indicates his profile was not such as to create a real risk for him in the past or on return.
- (x) Those in the media may face persecution in some countries if their work makes someone feel uncomfortable, such as politicians or those in power, without the legal protections to do so safely. The lack of protection from the organs of the State is evidenced in areas where agents of the state are those targeting journalist such as occurs in Iraq. The fact such persecution is conducted with impunity, yet there is no credible evidence of the appellant being targeted, is clear evidence that his work was not such that it made those in power 'uncomfortable' to the extent they wish to take action against him.
- (xi) Whether such actions will or have in the past resulted in such a consequences is fact specific.
- (xii) The appellant fails to establish, even to the applicable lower standard, that he was persecuted in Iraq as a result of an actual or imputed adverse political opinion or for any reason claimed.
- (xiii) The appellant's motivation for becoming a cameraman was following in the footsteps of his parents, claiming in his witness statement he was passionate about his work in the media, which was an easy job for which he was earning money.
- (xiv) The appellant's father would interview people, which would be filmed by the appellant as the cameraman with broadcasts on occasions being live, but also recorded to be broadcast later.
- (xv) The appellant's claim his father was detained on two occasions by the police for a short period of time, and then released, indicates a profile that does not give rise to real risk in light of the country information referred to above for his father; despite his father being a journalist and a person who is more likely to have been persecuted by the authorities.
- (xvi) Not all cameramen are at risk in Iraq.
- (xvii) In MSM the appellant was a journalist.
- (xviii) In MSM the appellant worked for pro-government organisation with a real risk arising from Al-Shabab an armed terrorist group involved in a situation of internal armed conflict against the government, creating a risk of real harm to those perceived to be in support of the government. The appellant has not established that such elements exist on the facts of his appeal.
- (xix) There is no credible evidence the appellant has published anti-government material as his claim to do so has been found to lack credibility. There is no credible evidence of an imputed adverse opinion being given to the appellant in the eyes of the authorities or other potential agents of persecution as a result of his work or actions, a finding supported by the lack of evidence of credible threats.
- (xx) The appellant's postings on Facebook have not been shown to have come to the attention of the authorities or others, such as to create a real risk for the appellant on return, or to demonstrate a credible adverse political opinion, giving rise to a real risk on return. The appellant has not taken part in journalism or credible political activities in the United Kingdom.
- (xxi) The appellant's home area is Kirkuk.
- (xxii) The appellant shall be returned to Baghdad.
- (xxiii) The appellant possesses his CSID which is with the Home Office and it was accepted before the First-tier Tribunal that he is documented.

- (xxiv) The appellant's claim not to be in contact with his parents in Iraq was rejected as not being credible by the First-tier Tribunal and insufficient evidence has been provided to warrant interfering with this finding.
- (xxv) The appellant is a fit, healthy and educated single male with no adverse history who will have the support of his family when returned to Iraq.
- (xxvi) It is not made out a male family member will be unable to meet the appellant at the airport in Baghdad or that he will be unable to fly from Baghdad to the IKR and then travel from the airport to his home.
- (xxvii) In relation to intention on return, the appellant and his witness statement on 15 September 2021 claims he would not be able to post similar entries to those on his Facebook in Iraq, but as it has been found such postings do not represent a genuinely held adverse political view sufficient to represent a fundamental aspect of the appellant's presentation and beliefs. It is not contrary to the judgement in HJ (Iran) for him to delete such postings and not make such postings on return.
- (xxviii) There is insufficient evidence to establish that the appellant would seek employment as a cameraman if returned to Iraq, distinguishing this appellant from that in MSM whose claim that he would do so was found to be credible.
- (xxix) There is insufficient evidence to establish that if the appellant returned to his previous employment that the nature of his work would create a real risk for him on return, based upon the fact that no credible real risk has been found to exist in relation to his work previously.
- (xxx) I do not find on the evidence that if the appellant has to seek alternative employment on return to Iraq this would infringe his rights of freedom of expression sufficient to engage the Refugee Convention.

**19.** I find that returning the appellant to Iraq, as a person who lacks credibility in his account and who has failed to establish an entitlement to a grant of international protection or leave to remain on human rights grounds, with reference to considering the presence of his brother in the UK and the establishment of any private life, will not place the government of the United Kingdom in breach of any of its obligations under any Convention or applicable legal provision.

## **Decision**

**20. I dismiss the appeal.**

Anonymity.

**21.** 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 21 October 2021