



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2021-000559

First-tier Tribunal No: PA/03092/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 10 July 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**AJA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss Khan of Counsel

For the Respondent: Mr Bates a Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 21 June 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant was born on 28 January 1992. He is a citizen of Iran from Basra. He appealed against the decision of the Respondent dated 12 March 2020, refusing his protection and human rights claim. That appeal was dismissed by First-tier Tribunal Judge Hollings-Tennant in a decision promulgated on 5 August 2021.

## Permission to appeal

2. Permission was granted by Upper Tribunal Judge Kamara on 24 February 2022 who stated:

“2. It is arguable that in using the term, ‘certain’ when rejecting a core component of the applicant’s claim, that the judge arguably applied the incorrect standard of proof. It is further arguable that there was procedural unfairness in that the appellant was not given the opportunity to respond to the judge’s concerns, as expressed at [29-30] of the decision.

3. All the grounds are arguable.”

## The First-tier Tribunal decision

3. Judge Hollings-Tennant made the following findings:

“20. The Appellant claims that he faces persecution on return to Iraq at the hands of the Al Mahdi militia, who accused his family of being spies and traitors because his brothers worked for British forces in Basra. First, I consider that the Appellant has provided a broadly consistent account of his problems with the militia from 2009 to when he left Iraq in September 2015. He explains that his family had difficulties in the local area, were subjected to harassment and ostracised as collaborators. Whilst he was verbally threatened on several occasions on his way to school or college, he was never physically harmed (Asylum Interview Record (AIR), question 127). His evidence is also consistent with regards to his mother being approached on one occasion when returning home from the market in 2014, the family having received a threatening letter in August 2015, and his brother being kidnapped around a week later. However, there is limited detail with regards to the extent and nature of individual threats that he faced, and the evidence presented amounts to little more than verbal harassment and intimidation arising because his brothers had worked for British forces, to which the Al Mahdi militia took exception.

21. ... The Appellant explains that after British forces withdrew from Basra in 2009 the militia began to target those who had supported coalition forces. This accords with country information from the Australian Government Refugee Review Tribunal, dated 22<sup>nd</sup> June 2011, which states that in 2009, there were reports of increased political killings in Basra, coinciding with the gradual return from self-imposed exile of former Mahdi Army members and militants targeting Iraqi citizens who co-operated with British forces and Iraqis working for foreign companies (Respondent’s bundle, page 70). His brothers may well have been harassed before then but they would have had a greater degree of protection from British forces until they withdrew from Basra in 2009 and it is certainly plausible that the militia were emboldened by such withdrawal leading to threats as described.

22. ... It does seem a little odd to me that the family would not take such threats seriously if they were in genuine fear of their lives at the time. That said, his evidence is clear that the family were subjected to frequent harassment and he refers to life being difficult as they were ostracised from their local community. If they were verbally threatened on a regular basis but such threats were never carried out I can understand why they may not have taken them seriously, though it begs the question as whether there is any real risk of persecution on return. I also cannot discount the possibility that the Appellant did not take the threats seriously until the situation escalated with a threatening letter and the kidnapping of his brother in August 2015. As such, I do not consider that his reference to having not taken the threat to his mother seriously serves to undermine his account.

23. Whilst his evidence is broadly consistent as to the threats received, the Appellant does appear to be inconsistent as to whom he believes sent the threatening letter in August 2015. In his asylum interview, he was asked if he knew who sent the letter and he replied, ‘*Militias but we don’t know the name of that militia*’, (AIR, question 63). However, in his witness statement he seems rather more certain and confirms that it

was the Al Mahdi militia, and says he knows this because his brother was kidnapped by them a week later and his abduction witnessed by neighbours (at paragraph 14). If he was certain that the letter was from the Al Mahdi militia by virtue of the fact that his brother was kidnapped by them, there is no reason why he could not have made that clear when asked who sent the letter during his asylum interview. This calls into question whether such a letter was in fact received, and I note that no documentary evidence has been provided in this regard. In his evidence before me, the Appellant says that his mother took the letter and he does not know where it is now. This seems odd to me given that he also claims that they reported the threats to the local police, which begs the question as to why they did not give the letter to the police as evidence to support their assertions or why, if they did so, the Appellant would be unaware as to the whereabouts of that letter and be unable to say they gave it to the local police.

24. It is also not entirely clear to me how the Appellant knows for certain that it was the Al Mahdi militia who were responsible for kidnapping his brother. In his interview, he refers to being told by his neighbours that a vehicle stopped and took his brother away, but there is very limited detail as to how he knows who was responsible. They have not heard from his brother since then and the Appellant did not stay in the area long enough to find out any more information. I cannot discount the possibility that the neighbours who witnessed the incident were able to identify the group responsible, though he does not explicitly state as much. It is also entirely possible that the Appellant's evidence in this regard is somewhat speculative, albeit a reasonable conclusion to draw if the family have been verbally threatened by the Al Mahdi militia over several years because his brothers worked for British forces.

...

26. ... The country information indicates that those who worked for coalition forces have been subjected to harassment in the past and I do not consider that this would suddenly stop overnight in local communities simply because the leadership reoriented the group at a national level.

27. Further, it is at least reasonably likely that the situation exacerbated in 2015 following the invasion of Iraq by the Islamic State if there were rumours that British forces may return to Basra to help the Iraqi army combat the insurgent threat, as the Appellant contends (witness statement, paragraph 16). In the context of the prevailing situation in Iraq at that time, it is certainly plausible that those who were perceived to be spies or traitors may be subjected to harassment by those involved in the militia at a local level, notwithstanding the aims and objectives of the group or the general position that Iraqi citizens would not be targeted for reprisals.

### **Section 8 issues and lack of contact with family**

28. The Respondent argues that the Appellant's general credibility is damaged because he travelled through several European countries on his way to the United Kingdom. It is argued that he failed to take advantage of a reasonable opportunity to claim asylum in Austria, Denmark, France, Germany, Greece, or Sweden. The Appellant claims he was treated badly in the countries he travelled through and was advised that the safest country to claim asylum in was the United Kingdom. He also says he wanted to join his brother who is resident here. I do not find it credible that he did not feel safe in any of the various countries he travelled through on his journey to the United Kingdom and find that the main reason he wanted to come here was to join his brother. Whilst that is an understandable desire it is not a reasonable excuse for travelling through so many safe countries before claiming asylum here. I find that his failure to claim asylum in a first safe country therefore undermines his general credibility by virtue of behaviour to which section 8(4) of the 2004 Act applies.

29. With regards to his journey to the United Kingdom there are also inconsistencies in his evidence. In his interview with an Immigration Officer dated 30<sup>th</sup> March 2017, he says that he travelled to Turkey by plane using his own passport (Respondent's bundle, page 40) whereas in evidence before me he claimed that he hid in his friend's car. He also says that he left all his identity documents at home in Iraq when he left (AIR, questions 34 to 36) which appears to be at odds with his assertion that he used his own passport to leave and thereafter sent it back to his family when he was in Turkey (witness statement, paragraph 19). These inconsistencies have some adverse impact on his general credibility, particularly with regards to two issues of some

significance relating to the whereabouts of his identity documents and the extent to which he is in contact with family members.

30. The Appellant claims that he has lost contact with his family members in Basra and is unaware as to whether they remain in the area. In evidence before me, he said he has tried to contact them by phone and via Facebook but that is the extent of his efforts. He says that he has not written to them at their last known address because letters are not delivered to house addresses but this assertion seems to be at odds with his evidence that he arranged for his passport to be sent back to Turkey (Respondent's bundle, page 40). It does not seem credible that he could arrange for his passport to be sent back to his family but is unable to try to write to them at their last known address as one other means of attempting to re-establish contact. Further, in evidence before me he said that he lost contact with his family whilst in Greece. If he had lost contact as claimed it is far from clear how he would be aware that his family had received the passport back as he claimed in his interview on 30<sup>th</sup> March 2017, bearing in mind that he arranged for someone to send it back from Turkey and only spent one day in Turkey and two days in Greece (Respondent's bundle, page 40). His claim to have lost contact in Greece is also undermined by his evidence in his screening interview that he can ask for his passport to be sent to him (at question 6.3). If that passport was indeed at home and he no longer had contact with his family, it begs the question as to who he was intending to ask when he made such an assertion.

31. Further, the extent of his evidence as to attempts to contact his family is very limited and I consider that this calls into question his assertion that he is not in contact with them. Despite having been in the United Kingdom for over four years, during which time he has sought legal advice with regards to his asylum claim, he claims that he has not tried to contact his family through the Red Cross family tracing service because it did not cross his mind. I do not find it credible that he would not explore all possible avenues to re-establish contact with his family if he genuinely believed that his family were at risk of harm.

32. In his evidence, the Appellant's brother said the last time he spoke to his family was in 2011 and claimed that he was unaware as to whether the Appellant was in contact with them. I do not find this remotely credible. First, there is no discernible reason or explanation as to why he was not in regular contact between 2011 and September 2015, given his parents and siblings lived in the family home in Basra until at least that point and noting the problems they claim to have faced at the hands of the Al Mahdi militia during that time. Second, it is far from clear why he would be unaware as to whether the Appellant was in contact with the family or not. The evidence relating to his own efforts to contact family amounts to nothing more than a vague reference to asking a cousin for information about them. He claims he had no information about the Red Cross and does not know whether the Appellant has approached them. When asked about the steps taken by the Appellant to contact family he said, *'I have no idea, I didn't ask'*. He also said he never thought about posting a letter to them at the last known address because he does not think they are there, but this is based on what he was told by the Appellant, who left Iraq at the point at which his family were still in Basra. I find that the evidence presented with regards to the lack of contact and efforts to re-establish such is not credible and I do not accept their assertion that they are not in contact with family members in Iraq.

#### **Summary of credibility findings**

33. ... I find that it is at least reasonably likely that the Appellant and his family have experienced some degree of verbal harassment within their local community in Basra as perceived collaborators. This is because he has provided broadly consistent evidence in this regard which accords with relevant country information and as the Respondent accepts that his brothers worked for British Forces in Iraq. The family may well have received a threatening letter in August 2015 and his brother kidnapped, though the Appellant's assertion that the Al Mahdi militia were responsible some time after the group were officially disbanded is somewhat speculative, albeit perhaps an understandable inference to draw. However, I do not accept his assertion that he is no longer in contact with family in Iraq as I found his evidence in this regard to be vague, inconsistent, and lacking in credibility. ...

#### **Risk on return to Basra**

34. Whilst I accept it is reasonably likely that the Appellant has been subjected to verbal harassment within his local community as he claims, such treatment does not necessarily amount to persecution nor does it demonstrate that he faces a real risk of persecution or serious harm on return. By his own account, he was never physically harmed by the militia notwithstanding verbal threats received over a period of some six years (AIR, question 127). His evidence is that he was approached a few times on his way to school or college by members of the Al Mahdi militia who spoke to him and told him his family were traitors. The last time he was approached was in July 2015, before a threatening letter was received in August (AIR, questions 97 to 100). It would seem that if the Al Mahdi militia wished to do him any harm they had ample opportunity during several face-to-face encounters over a significant period of time.

35. Further, the Appellant describes their lives as being difficult because people were bothering them and they were not accepted in the local area. However, as unpleasant and disconcerting as verbal harassment would clearly have been, it did not prevent him from attending school or college and completing his studies, given his evidence that he graduated in 2015 in physical education (screening interview, question 2.6). As such, by his own account, the extent of such ostracism appears to have been somewhat limited to harassment by the militia rather than extending to every facet of their lives. This should not be taken to downplay the Appellant's subjective fear of harm, it is entirely understandable that he would be concerned about the threats escalating but this does not mean that such fear is well-founded. On the evidence presented, I consider that the Appellant has not personally experienced treatment that is sufficiently serious by its nature or repetition as to constitute a severe violation of his basic human rights (see Regulation 5(1) of the 2006 Regulations). This provides some indication as to the extent to which he faces a real risk of persecution on return.

36. There is of course a question as to whether the threatening letter received by the family and, in particular, the kidnapping of his brother gives rise to an enhanced risk for the Appellant on return. However, there is no evidence to suggest that the letter was specifically directed at the Appellant, as opposed to a general threat, and I note that he never worked for British Forces in Iraq (AIR, question 75). His brothers worked as labourers at Basra airport and were targeted as collaborators on account of that work. I consider that it is likely that his brother would therefore have been at greater risk from those seeking to target perceived collaborators than the Appellant and whilst I fully appreciate his concern following the kidnapping of his brother, it does not necessarily follow that the Appellant would also be targeted in the same way, bearing in mind he has been approached several times over six years and never come to any harm. His evidence is also somewhat speculative as to who was in fact responsible for kidnapping his brother, as noted in my findings of fact above, and whilst it is possible that it was linked to a political or sectarian motive it could also have been rooted in criminal activity for financial gain.

....

41. Having considered all the evidence presented before me in the round, I find that whilst the country information indicates that perceived collaborators were subjected to harassment and threats at the hands of militia groups and there are reports that Iraqi citizens who worked for coalition forces, particularly interpreters, have been killed, such incidents occurred mainly prior to December 2011. I do not consider that the Appellant has provided sufficient evidence to demonstrate that it is reasonably likely he would be targeted as a perceived collaborator on return to Iraq now, particularly given he was never physically attacked by the militia, during a period in which such attacks were more prevalent, and as he did not actually work for British forces himself. I also find that there is no real risk of the Appellant being kidnapped as a returnee from the West notwithstanding the fact that he left Iraq in September 2015 as the evidence presented before me is not sufficient to demonstrate such.

#### **Internal relocation**

42. ... the Appellant has not made out his case that he faces a real risk of persecution on return to Basra ...

43. The Appellant's case is based on threats received whilst he lived in Basra and there is no indication that he would be readily identified as a perceived collaborator should he relocate to another area within Iraq, for example, Baghdad. In SMO, the Tribunal found that Baghdad is generally safe for ordinary civilians. Whilst there are

sponsorship requirements for residency there a documented individual of working age is likely to be able to satisfy those requirements. The Tribunal also found that relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men. In this case, there is no suggestion that the Appellant suffers from any specific medical conditions such that would give rise to particular vulnerabilities on return. He is educated, having graduated from college in physical education and there is no evidence to suggest he would not be able to find work. He speaks Arabic and is of Arab ethnicity and whilst any support network there may well be limited, I note in his evidence before me that he referred to having a friend in Baghdad to whom he could initially turn.

44. In all the circumstances, I find that it would not be unreasonable to expect the Appellant to relocate to another area within Iraq if he continues to hold a subjective fear of the Al Mahdi militia or his local community in Basra. ...

#### **Identity documents**

...

49. However, as I do not accept the Appellant's evidence that he is not in contact with his family in Basra, I find there is no good reason why he cannot call upon family members to obtain his own identity documents, including his CSID, which are said to be in the family home in Basra. As such, his CSID can either be sent to him in the United Kingdom or a family member can meet him at the airport in Baghdad to facilitate internal travel from Baghdad to Basra. As such, I find that the Appellant does not qualify for humanitarian protection on the basis of an inability to obtain relevant identity documents.

#### **Conclusions**

50. In summary, having considered all the evidence in the round to the appropriate standard of proof, that is the lower standard of a reasonable degree of likelihood, I find that the Appellant has experienced verbal harassment in his local community in Basra as a consequence of his brothers work for British forces. Whilst it is entirely understandable that he holds a subjective fear of return, I find that he has not provided sufficient evidence to demonstrate that such fear is well-founded if he returns to Iraq now. On the evidence presented, I do not accept that he faces treatment amounting to persecution on return to Basra as a perceived collaborator because the country information before me does not support that contention.

51. With regards to the question of identity documents, I find that there is no reason why he cannot contact his family to obtain his CSID, having reached the conclusion that he has not been truthful about having lost contact with his family members in Iraq."

## **The Appellant's grounds seeking permission to appeal**

4. The grounds assert that:

### **"Ground (1) - Irrational conclusion as to the threat letter**

9. At [23], the FTJ concludes that the alleged inconsistency between the interview and his witness statement as to who he believes sent the threat letter calls into question whether the letter was in fact received. Respectfully, there are two points to be made:

9.1. It is at least arguable that there was no inconsistency between the answer at AIR/63 and paragraph 14 of his witness statement. He was not able to name the individuals at any stage, only that they were part of the Al Mahdi Militia. It is notable that the Appellant's account has only ever been that he feared/had problems with Al Mahdi Militia, not that there were multiple militia groups troubling his family.

9.2. Secondly, it is a leap to conclude that the differences between AIR63 and paragraph 14 of the (sic) witness call into question whether the letter was in fact received.

10. The FTJ also expresses concern at [23] that the Appellant is unaware of the whereabouts of that letter now but, in doing so, overlooks that it has been around 6 years since that letter was written and he has not had contact with his family who he has been unable to trace.

### **Ground (2) - Failure to make a finding/incorrect standard of proof**

11. At [24], the FTJ discusses how the Appellant knows for certain that it was the Al Mahdi militia who kidnapped his brother and canvasses two possibilities: (1) the neighbours who (sic) witnesses the kidnapping were unable to identify the group or, (2), that his claim as to the Al Mahdi militia kidnapping his brother was speculative. The difficulty with this paragraph is that the FTJ has failed to make a finding of fact on this issue.

12. Further, or in the alternative, the FTJ has arguably applied the incorrect standard of (sic) proofing by requiring the Appellant to be certain of the identity of his brother's kidnappers.

**Ground (3) - Irrational conclusions on section 8/inadequately reasoned**

13. The Appellant submits that the conclusion at [28] is arguably irrational. The (sic - nothing further written here)

14. Furthermore, the FTJ simply concludes that it was not credible that the Appellant did not feel safe in other countries, but that reasoning fails to provide adequate reasons as to why. The Appellant draws attention to the following:

14.1. The question of whether or not *he felt* safe in other European countries was a subjective assessment.

14.2. He was advised that the safest country to claim asylum is the United Kingdom. In the context of what the First-tier Tribunal, as a specialist Tribunal, knows, the FTJ has given no reasons as to why an agent or those he meets along the way could not conceivably had told him that the United Kingdom was the safest place for him to be.

14.3. The FTJ has overlooked the fact that the Appellant's brother had successfully claimed asylum here which fortifies the belief that the United Kingdom was the safest option.

14.4. At paragraph 17 of his witness statement, the Appellant had confirmed he had been subjected to racism and abuse in Finland.

**Ground (4) - Procedural fairness**

15. The Respondent chose not to attend the hearing and, as such, the Appellant's account was not subjected to cross examination. At [15], the FTJ indicated that in the absence of a Presenting Officer he asked the Appellant's representative to ask supplementary questions on key aspects of the evidence upon which the FTJ had concerns. However, it appears that certain key aspects of the determination (for example §§29-30) are based on findings made without the Tribunal having put its concerns to the Appellant during the hearing.

16. (sic) Appellant submits that the above contravenes the guidance set down by the Upper Tribunal in *AM (fair hearing) Sudan [2015] UKUT 00656*; the judicial headnote reads:

*(i) Independent judicial research is inappropriate. It is not for the judge to assemble evidence. Rather, it is the duty of the judge to decide each case on the basis of the evidence presented by the parties, duly infused, where appropriate, by the doctrine of judicial notice.*

*(ii) If a judge is cognisant of something conceivably material which does not form part of either party's case, this must be brought to the attention of the parties at the earliest possible stage, which duty could in principle extend beyond the hearing date.*

*(iii) Judges are entitled to form provisional views in advance of a hearing provided that an open mind is conscientiously maintained.*

*(iv) Footnotes to decisions of the Secretary of State are an integral part of the decision and, hence, may legitimately be considered and accessed by Tribunals.*

***(v) Fairness may require a Tribunal to canvas an issue which has not been ventilated by the parties or their representatives, in fulfilment of each party's right to a fair hearing.***

(Emphasis added).

**Ground (5) - Irrational conclusion as to risk on return**

17. At [36], the FTJ has discounted the likelihood of the Appellant being at risk in comparison to his brother because he worked for the British Armed Forces whereas the Appellant did not. The Tribunal has erred by overlooking the perception. The Appellant's *family* were the subject of threats and harassment and it was not simply confined to his brothers who worked for the Armed Forces. That he was approached

several times in the past without coming to harm does not undermine his claim as militia had similar opportunities with his brothers.

18. The FTJ's findings on the lack of objective evidence as to the risk on return after 2011 is undermined by his brother's kidnapping in 2015.

**Ground (6) - Internal relocation: failure to adequately consider material evidence**

19. The Tribunal's findings on relocation failed to engage, either adequately or at all, with his evidence of the militia having reached throughout Iraq as confirmed at §21 of his statement and the risk of being stopped by the militia at checkpoints. The Appellant had mentioned these concerns at AIR123 where he emphasised that the militia is everywhere."

## **Rule 24 notice**

5. There was no rule 24 notice.

## **Oral submissions**

6. Mr Bates submitted regarding Ground 1 that the test for irrationality is very high. The Judge was entitled to find as he did regarding the lack of knowledge of the group name and on the whereabouts of the letter. At [33] the Judge accepted the "family may well have received a threatening letter in August 2015..."
7. Regarding Ground 2, the Judge was not applying a certainty test. At [23/24] the Judge was referring to the Appellant's certainty as it states "he seems rather more certain...if he was certain" and at [24] "it is also not entirely clear to me how the Appellant knows for certain". At [33] the Judge said "...the Appellant's assertion that the Al Mahdi militia were responsible sometime after the group were officially disbanded is somewhat speculative, albeit an understandable inference to draw."
8. Regarding Ground 3, the Judge was simply looking at there being a variety of safe countries where protection could have been claimed. It was not irrational. It was a matter of weight and just a disagreement with a finding the Judge was entitled to make. The fact he may prefer to come here as his brother is here does not mean it is unsafe elsewhere.
9. Regarding Ground 4, there was no Presenting Officer at the hearing. The Judge was merely assessing the evidence. The Judge was entitled to find at [31] that it was not credible he had not explored all avenues to find his family. At [32] the Judge did not find what the brother said regarding contact credible. The Judge was not obligated to find in the Appellant's favour. There was no procedural unfairness.
10. Regarding Ground 5, this is a rationality argument regarding the findings at [36]. The Judge was aware of the case and is entitled to find on the facts that there is a difference between the Appellant's situation and that of his brother. That finding was not irrational. The Judge was aware of the Appellant's proven ability to complete his studies. The general threat



from the letter did not prevent the family living a normal life. He speculated regarding what happened to his brother.

11. Regarding Ground 6, if there is no risk in Basra, internal flight is not relevant. The Judge assessed the evidence regarding the militia at [8], [11], [39], and [40] and made rational finding on that evidence in [41]. The Judge was entitled to find at [49] and [51] that as there is family contact he can obtain documents. The high threshold of rationality is not made out. It is not for the Judge to run the Respondent's arguments.
12. Miss Khan relied on the grounds seeking permission to appeal. She additionally submitted that the Respondent accepted that his brothers worked for the British Army in Basra. Where the Judge engaged with explanations and went through the factors he resolved them in the Appellant's favour. At [33] he accepted there was verbal harassment. The evidence of the problems is generally consistent with country information. It was accepted that a threatening letter was sent and his brother was kidnapped.
13. The Judge found that the issue of the specific group name was speculative. It was a matter of procedural fairness that the Judge has to put matters of concern to the Appellant. He did raise some issues and they were clarified.
14. Regarding Ground 2, at [24] the Judge was using the wrong standard. It cannot be discounted that neighbours witnessed an event. The use of the term "certainty" is an elevated factor.
15. Regarding Ground 3, there is hardly any reasoning in engaging with the Appellant's explanation on the Section 8 issue. He explained about the racism in Finland.
16. Regarding Ground 4, the concern over the documents was not put to the Appellant. Where matters were put, the issues were found in his favour. The issues regarding family contact and documentation at [29 and 30] are material factors. They should have been put to the Appellant.
17. Regarding Ground 6, the internal flight alternative finding is predicated on the earlier grounds being found in the Appellant's favour. The findings on the document issue has an impact on the internal flight alternative issue.
18. Reliance was not placed on [11] of the grounds seeking permission to appeal as there was a finding on the kidnapping.
19. Mr Bates did not seek to respond.

## **Discussion**

20. Regarding Ground 1, the Appellant stated in his interview on 5 June 2019 at q63 in response to the question "Do you know who sent the letter?" "Militias

but we don't know the name of that militia." In his statement of 26 October 2020 he said at [14] "I confirm that it was the Mahdi Militia who sent us the threatening letter. I know this because after we received the threat letter, my brother was kidnapped by the Mahdi Militia a week later and his abduction was witnessed by a neighbour." The Judge was entitled to find that this was a discrepancy such as to cast doubt on the veracity of the threat. He did not have to put the matter to the Appellant as it should have been evident to the Representative from a simple reading of the documents that such a discrepancy existed. Whilst "Fairness may require a Tribunal to canvas an issue that has not been ventilated..." the use of "may" makes it clear that not every point has to be raised by the Judge, and not putting something does not of itself mean a party has not had a fair hearing. It was not irrational for the Judge to find as he did on the issue, and the grounds are nothing more than a disagreement with the Judge's decision on this issue.

21. There is nothing in [10] of the grounds given the Judge's subsequent findings as to ongoing contact with the family at [32] and [43] of the decision.
22. Regarding Ground 2 and [11], the Judge did make adequate findings on the issue as after considering the issue at [24] he returns to the issue of the kidnapping at [36] and was entitled to find "His evidence is also somewhat speculative as to who was in fact responsible for kidnapping his brother, as noted in my findings of fact above, and whilst it is possible that it was linked to a political or sectarian motive it could also have been rooted in criminal activity for financial gain."
23. It is plain from reading the decision that when referring to "certainty" the Judge was discussing the Appellant's knowledge. The Judge was not using that as the test for his own assessment of the evidence. The Judge when considering this evidence said in [23] that "in his witness statement he seems rather more certain". That is a statement of fact as the Judge was simply comparing that answer to the one given at question 63 of the interview record. Likewise when stating if the Appellant "was certain that the letter was from the Al Mahdi militia...there is no reason why he could not have made that clear...". The Judge is simply referring to the Appellant's state of knowledge and is not using that as a threshold for assessing the credibility of the account. Likewise when stating "It is not entirely clear to me how the Appellant knows for certain...". There is no material error of law in the Judge's use of the word "certain".
24. Regarding Ground 3, the Judge was entitled to find that "it is not credible that he did not feel safe in any of the various countries he travelled through..." for these reasons. In his statement at [9] he said "I decided to come to the UK... because I consider the UK is the only country that could grant me international protection. This is also because my eldest brother was allowed to come to the UK, and he was given protection by the UK authorities." And at [22] he said that "I did not claim asylum elsewhere in Europe because I wanted to be reunited with my brother in the UK. I also wish to state that the treatment I received in the European countries before coming to the UK was very bad. I was subjected to racism in Finland. I did not feel safe there. I was advised that the safest country was to claim asylum in the UK." Apart from the racism and abuse in Finland, he gives no detail about the

situation elsewhere. Likewise in his interview on 30 March 2017 he said when asked “Why did you not tell the Greek authorities about your problem in Iraq” he said “As I wanted Human Rights in UK and my brother is in UK, UK is not scary. Its safe.” Similarly regarding Hungary and Austria he replied “I want human rights in UK where it is safe. I only wanted to come to UK” and France “Since I wanted to come to UK.” Against that evidential background, the Judge was entitled to summarise his findings as he did. The Judge was simply looking at there being a variety of safe countries where protection could have been claimed. It was not irrational. Preferring to come here as his brother is here does not mean it is unsafe elsewhere.

25. Regarding Ground 4, all the Judge was doing at [29 and 30] was assessing the credibility of the evidence presented of the journey and family contact. It is for the Representative to deal with anomalies in the account presented. The Representative was content to leave those discrepancies on the papers unchallenged. As stated above ([21]) whilst “Fairness may require a Tribunal to canvas an issue that has not been ventilated...” the use of “may” makes it clear that not every point has to be raised by the Judge, and not putting something does not of itself mean a party has not had a fair hearing.
26. Regarding Ground 5, there was nothing irrational in the Judge finding at [36] that the risk to the brothers was different to the perceived risk to the Appellant who was able to carry on with his studies for the reasons the Judge gave. The grounds are nothing more than a disagreement with that finding.
27. Regarding Ground 6, this was an alternative finding predicated on it being found that there is a real risk in Basra. As there was no real risk in Basra, the Judge did not materially err in his assessment. However, he did make findings regarding family contact and an ability to obtain documents to assist in return and relocation that were sustainable on the evidence. The findings were not irrational and were evidence based.

## **Notice of Decision**

28. The Judge did not make a material error of law. The decision of the First-tier Tribunal shall stand.

*Laurence Saffer*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
23 June 2023

## **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the

**appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent" is that appearing on the covering letter or covering email.**