



**Upper Tribunal
(Immigration and Asylum Chamber)
UI-2022-006262**

Appeal Number:

**PA/53040/2020
IA/01232/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 08 September 2023**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr ARAS FAIAQ HASSANI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adejumobi, Legal Representative
(Immigration Advice Service)

For the Respondent: Mr S Walker, Home Office Presenting Officer

Heard at Field House on 25 August 2023

DECISION AND REASONS

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Haria on 29 December 2022, against the decision of First-tier Tribunal Judge A W Devlin who had dismissed the appeal of the Appellant against the refusal of his international protection claim. The decision and reasons was promulgated on or about 30 September 2022.

2. The Appellant is a national of Iraq, born on 14 March 1998. The Appellant had entered the United Kingdom on 14 May 2016 and claimed asylum on 3 June 2016. The Appellant's appeal against the refusal of his asylum claim was dismissed by First-tier Tribunal Judge V A Cox on 16 October 2017. On 11 February 2020 the Appellant made further submissions, which were refused with a right of appeal by the Respondent on 8 June 2020. The Appellant claimed in summary that he was at risk on return from the government of Iraq because of his *sur place* political activities in the United Kingdom.
3. In a decision which extended to 265 paragraphs and 41 pages, Judge Devlin identified various problems in the evidence. He found no reason to depart from the findings made by Judge V A Cox in 2017. Hence the second asylum appeal was dismissed.
4. First-tier Tribunal Judge Haria considered that it was arguable that Judge Devlin had materially erred by (i) impugning the reliability of the copy CSID card when that had neither been raised by the Respondent nor put to the Appellant: determination [236 to 238], (ii) making an irrational finding that the Government of Iraq was not responsible for physical violence against the critics of the regime [151], (iii) materially misdirecting himself in requiring at [152] that the Appellant prove that all critics or demonstrators attract the adverse interest of the Iraqi authorities, and (iv) in failing to make a finding of fact as to the weight to be attached to the Appellant's attendance at around 10 demonstrations. Judge Haria considered that ground (ii) had the most force but the grant of permission was not limited.
5. No notice under rule 24 had been served by the Respondent. Mr Stephens for the Respondent informed the tribunal at the start of the hearing that he accepted that the judge had materially erred in law as Judge Haria had indicated.
6. The tribunal agreed. Many of the judge's reservations about the *sur place* appeal before him have substance and a considerable effort was plainly made in the preparation of the decision. Some degree of judicial scepticism may perhaps be difficult to avoid when examining *sur place* activities by a claimant whose testimony has previously

been found wanting. Nevertheless, the passage in the judge's decision from [148] to [153] concerning the approach by the government of Iraq to its political opponents and the risk of the use of physical violence fails sufficiently to reflect the country background material. It is unsustainably optimistic, particularly seen against the fact that large numbers of firearms and small arms are in circulation in Iraq as the country background information shows.

7. The judge has not sufficiently explained why he has not followed the logic of his own finding at [154] "Nevertheless, given the reports that it has monitored private communications, its sensitivity to criticism, and its treatment of political opponents in Iraq, I am prepared to accept that there is at least a reasonable likelihood that the Iraq Government films or photographs its nationals who demonstrate against it in public and that it has informers among expatriate oppositionist organisations who can name the people who are filmed or photographed". Why the judge refused to accept that such behaviour and activity has at least a reasonable likelihood of extending to worse behaviours including resort to violence is unclear.
8. Mr Adejumobi for the Appellant confirmed that he wished to add nothing in the light of the Respondent's concession.
9. It follows that the tribunal finds that the decision contained a material error of law. The Appellant's appeal is allowed.
10. Dialogue with the representatives followed. It was agreed that the decision should be set aside and remade, at a full hearing, with no findings preserved.

DECISION

The onwards appeal is allowed. The making of the previous decision involved the making of a material error on a point of law. The decision is set aside.

No findings of fact are preserved. The appeal is remitted to the Manchester Hearing Centre to be reheard by any judge except Judge A W Devlin.

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Signed R J Manuell Dated 31 August 2023
Deputy Upper Tribunal Judge Manuell