



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

**Case No: UI-2023-000240**  
**First-tier Tribunal No:**  
**PA/55814/2021 (IA/17258/2021)**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 11 September 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MAI**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Schwenk, Counsel

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 10 August 2023**

**DECISION AND REASONS**

1. The Appellant is a national of Iraq, date of birth 20 March 1992, who on 2 June 2021 submitted fresh submissions for asylum. The Respondent refused his application in a decision dated 22 November 2021.
2. The case was listed before Judge of the First-tier Tribunal Mackenzie (hereinafter referred to as the FTTJ) on 22 June 2022 who on 20 October 2022 dismissed the Appellant's appeal under the Refugee Convention and on human rights grounds.
3. The Appellant sought permission to appeal arguing the FTTJ:
  - a. Failed to give adequate reasons for his decision and misapplied the principles established in Devaseelan.

- b. Erred in his application of XX (PJAK – sur place activities- Facebook) Iran CG [2022] UKUT 00023 (IAC).
  - c. Erred in his assessment of the risk to the Appellant as an atheist and/or political activist.
  - d. Erred by refusing to depart from a previous finding of where the Appellant came from.
  - e. Erred in his approach to the issue of re-documentation.
4. Permission to appeal was initially refused by a First-tier Tribunal Judge but permission was subsequently granted by Upper Tribunal Lindsley on 21 February 2023. The permission stated:

“2. The fifth ground contends, in summary, that the First-tier Tribunal erred in the treatment of the appeal with respect to identity documentation: and contends that the applicant would be at risk as he would be without identity documentation necessary to protect him against Article 3 ECHR risks if returned to Iraq. It is arguable that the decision of the First-tier Tribunal does not deal with this issue and therefore does not provide an adequately reasoned decision in this respect. It is arguably accepted that the appellant has no CSID document, and would need to obtain new documentation. It would appear that the respondent only makes forced returns to Iraq to Baghdad and that he believes that the correct CSA office for the appellant is Erbil. The latest country of origin information provided by the respondent states that Erbil is now issuing only the new INID identity documents, and so arguably the appellant would be at Article 3 ECHR risk returning to Erbil from Baghdad as an INID document could only be issued in Erbil and not at the Iraqi Embassy in the UK, in Baghdad or by other acting as proxies on the appellant’s behalf. In these circumstances the failure to deal with this issue is arguably material.

3. It is also arguable that the First-tier Tribunal fails to give adequate reasons at paragraph 35 of the decision as to why the evidence relating to the operation of Fedex does not draw doubt on the conclusion of the previous First-tier Tribunal that the appellant comes from Erbil rather than Kirkuk.

4. The other grounds appear less arguable, but permission is granted on all grounds.”

5. Mr Schwenk relied on the renewed appeal grounds and submitted the FTTJ had erred. Whilst there were a number of grounds raised Mr Schwenk advanced three primary grounds:
- a. The FTTJ erred by upholding the earlier finding that the Appellant came from Erbil as the Appellant had submitted ample evidence to enable the FTTJ to go behind the previous finding and therefore find

he came from Kirkuk. Evidence before the FTTJ showed that Fedex only had offices in either Erbil or Baghdad and that the Erbil office dealt with documents sent from Kirkuk. By finding the Appellant came from Erbil the FTTJ materially erred.

- b. If the FTTJ erred on where he came from then there was evidence that someone from mainland Iraq would be at risk for posting his views especially someone who had been identified on a poster outside a mosque. Mr Schwenk submitted the findings at paragraphs [30] to [34] failed to have regard to his sur place activities.
  - c. The previous findings assumed the Appellant came from Erbil and would be able to redocument. If the FTTJ erred in his approach to where he came from then he would have to be returned to Baghdad without documents. As he did not have his CSID there would be a breach of article 3 ECHR. The FTTJ erred as he suggested the Appellant would be able to obtain documents using a proxy whereas an INID would be required which he would only be able to obtain from his home area.
6. No Rule 24 was filed but Mr McVeety opposed the application. He responded to the main grounds as follows:
  - a. The FTTJ followed the previous finding as he was not satisfied there was sufficient evidence to depart from that earlier finding that the Appellant came from Erbil. The FTTJ did not just rely on the fact the document was posted from Erbil but also took into account the Appellant's lack of knowledge of the Kirkuk and surrounding area. The evidence about Fedex offices did not address this core finding which had not been challenged.
  - b. The FTTJ found the Appellant was neither an atheist nor genuine in his political beliefs. If the finding he came from Erbil was upheld then the Judicial Notice referred to in the earlier papers only effected mainland Iraq and not the IKR so even if he was genuine in his beliefs there was nothing in the material before the FTTJ which suggested he would be at risk in the IKR albeit if he was found to come from Kirkuk then if his account was credible then he may face a risk as a result of the Judicial Notice.
  - c. If the Appellant came from Kirkuk then this was an area that still issued CSIDs. However, looking at paragraph 14(m) of Judge Herwald's decision Mr McVeety submitted there was no need for him to redocument if his account was not accepted.
7. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of

publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

### **DISCUSSION AND FINDINGS**

8. Having considered all the evidence and the submissions of the Representatives I was satisfied there was no error in law.
9. This was a case in which the Appellant had previously had two appeals dismissed. It has never been disputed that the principles of Devaseelan applied to this current appeal.
10. I indicated to the parties that one of the central issues in the current appeal was whether the FTTJ had materially erred in finding the Appellant came from Erbil which is what two previous Tribunals had found. Mr Schwenk's submission was that the FTTJ had erred in dealing with the fresh evidence from Fedex.
11. Judge Holt had made a clear finding at paragraph [21] of her decision that the Appellant was not from Kirkuk. In making that finding she stated:

"I also am not satisfied that he is from Kirkuk. I note that his family have sent his driving licence from Iraq but that it was posted from Erbil. Whilst it seems that his address was registered as Kirkuk on the licence in 2011, I find that the letter was sent from Erbil [see 17 A's bundle] .... The driving licence combined with the more contemporaneous envelope evidence emanating from Erbil, all point to the fact that the Appellant seems to have supportive family members in Erbil who are willing and able to help him generally and who are demonstrably capable of getting important documents to him safely in the UK."

12. Judge Herwald reconsidered the issue of where the Appellant came from and he too made clear findings on this issue at paragraph [14](b) and (c) of his decision. He stated:

"(b) In interview he was able to answer certain questions about Kirkuk, but stated that Mosul was the closest city to his hometown. In fact, external information shows that there are other cities much nearer than Mosul. I found it particularly noteworthy that Erbil, in the relatively safe IKR, is less than 70 miles away from Kirkuk. It will be seen that the Appellant appears, according to evidence before me, to have connection to Erbil and I am bolstered in that finding, by the fact that the Appellant stated in interview that he had no idea in which direction one would travel, to arrive at Mosul. The Appellant has some education, claimed to have lived in the area for many years (he was after all born in 1992), and I am not persuaded that by the age of 25, he would have had no idea how one might travel from his homeland, from his hometown, into the nearby IKR.

(c) To assist his claim, the Appellant produced a driving licence. The address on the driving licence, at page 13 of the Appellant's bundle, is described as "Kirkuk - Kirkuk 370661." That might have been the end of the matter but I am satisfied that his family have been persuaded to send this driving licence to him, from Iraq, but it is clear and obvious, according to page 17 of the Appellant's documents, that it was posted by his mother, from Erbil, as this is clearly recorded on that particular document, addressed from his mother, to the Appellant in Liverpool. This is consonant with the fact that one of the nearest large cities to Kirkuk is in fact Erbil, in the IKR. The Appellant sought to suggest that his mother had not gone to Erbil to post the document to him, but instead, had somehow posted it from Kirkuk, but could not explain why the document clearly states that it has come from Erbil. It will be seen later that I found the Appellant not to be a credible witness, in respect to any aspects of his claim...."

13. When the matter came before the FTTJ the Appellant maintained his claim that he came from Kirkuk rather than Erbil, but the FTTJ concluded at paragraph [28] of his decision that there was no basis to depart from the previous findings. At paragraph [35] the FTTJ stated:

"Applying Devaseelan, I note the detailed and robust reasons set out by Judge Herwald in his determination, which included analysis of information given by the Appellant in his asylum interview, for rejecting the Appellant's claim to have lived in Kirkuk (para. 14(b)). The Appellant has now offered an explanation for his driving licence having been posted by his mother from Erbil to him in Liverpool in 2018. I do not find that evidence, including the information regarding the FedEx system in Iraq, when I consider all the evidence before me in the round, causes me to depart from the conclusions reached by Judge Herwald regarding the Appellant's place of origin."

14. The printout about Fedex services can be found in the consolidated bundle and was a document the FTTJ considered. The FTTJ referred to it at paragraph [35] and concluded that this document on its own did not enable him to depart from the previous finding that the Appellant came from Kirkuk as against Erbil.
15. Mr Scwhenk referred me to this document in his submissions and argued that this document was evidence that the documents from Kirkuk would be posted in Erbil.
16. Having considered this document, I am satisfied that this document does not necessarily support Mr Schwenk's argument. The information on that document simply refers to two companies who manage Fedex operations in the country and the areas they are responsible for. It is not a document that states if you come from those areas you would have to post it from either Erbil or Baghdad.

17. The FTTJ considered all the evidence including two previous decisions from two Judges and concluded this document was insufficient to enable a departure from the previous finding that the Appellant came from Erbil as against Kirkuk. As Mr McVeety made clear in his oral submissions both the previous Judges and the FTTJ had given other reasons for concluding the Appellant was from Erbil.
18. Having made that finding I then considered whether the FTTJ erred in his approach to the evidence about the Appellant's activities. Again, a consistent theme through the Appellant's immigration history has been that the Appellant's credibility has been found to be lacking. Two previous Tribunal decisions highlighted the fact the Appellant's claim lacked credibility. It was against this background the FTTJ was asked to review the Appellant's latest activities.
19. The FTTJ agreed with Judge Herwald and did not accept as credible the Appellant's claim to be an 'open and expressive atheist' (statement, para. 9). He relied on the multiple reasons given by Judge Herwald for calling into question the Appellant's credibility and reliability on this issue. The FTTJ considered the new evidence from that starting point and stated at paragraph [30]:

"Against that background, I do not find to be credible the claim by the Appellant that he continues to post material on his Facebook page criticising both the Quran and the Bible, thus placing him at risk of persecution in Iraq. I agree with the Respondent that little weight can be given to the documents now relied upon by the Appellant, purporting to be articles that he has posted on Facebook over the period February to May 2021 and the video of a poster outside a Mosque in Iraq that the Appellant claims shows his photo. In his statement of 02 June 2021 the Appellant states that the video clip was sent to him by a Facebook friend, Rahil Kwrds and his name was also mentioned in the Friday prayer speech to say he was an infidel and should be killed. I do not accept that this video, or any of the materials posted by the Appellant via social media, place him at risk of coming to the adverse attention of the authorities in Iraq and at risk of persecution."

20. This was not a case where the FTTJ had ignored the new evidence and simply followed the previous findings. The FTTJ correctly took his starting point as the original adverse findings and then looked at the new evidence. Having decided the Appellant was not genuine in views he then considered how his new actions impacted on him. The FTTJ considered the evidence in detail in his decision and concluded he posted on Facebook to bolster a claim that had previously been rejected in two occasions. Mr Schwenk argued that the FTTJ materially erred in his approach to the video footage but the evidence was considered by the FTTJ in the round. There was reference to a Judicial Order but as Mr McVeety pointed out this did not appear to relate to the IKR and in any event the Appellant's action did not increase his profile. Having found the Appellant came from the IKR the FTTJ

was entitled to make the findings he did about the Appellant's profile and to find he was not at risk at persecution.

21. The third primary ground advanced related to the issue of documentation. However, given the FTTJ's finding that he came from Erbil and he retained access to his document then there is no merit to this ground of appeal.
22. Judge Holt found that he was in contact with his mother and could return to the IKR. He told the Tribunal previously he no longer had his documentation, but given the findings made and the current position that failed asylum seekers can be returned to Erbil then I am satisfied, having considered SMO and KSP (Civil Status documentation, article 15(c)) CG [2022] UKUT 00110 and the July 2022 CPIN which would have been before the FTTJ. As a Kurd from the IKR he is not only returnable to Erbil, but he would be granted entry and as he has family who can support him he would be able to obtain a replacement document (INID).
23. Paragraph 6.2 of July 2022 CPIN makes it clear, "...upon entry to the KR-I (at either an internal border checkpoint or the airports in Erbil or Sulaymaniyah) and following security screening, the Asayish (Kurdish security agency) generally provides such persons with a temporary entry authorization valid for 30 days. This authorization is issued for short-term visits (for the purposes of medical care, business, shopping or similar reasons). It enables the holder to enter and remain in the KR-I within the validity period of the authorization ...." I am satisfied the FTTJ did not err in the way he dealt with the issue of return.
24. Mr Schwenk also argued that the FTTJ failed to take into account the Appellant would have to pretend to be a Muslim to obtain an INID card. Given the FTTJ rejected his account about being an atheist I am further satisfied the FTTJ was entitled to reach the findings he did.

### **Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error in law. I uphold the FTTJ's decision.

Deputy Judge of the Upper Tribunal Alis  
Immigration and Asylum Chamber  
**30 August 2023**