IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002138

First-tier Tribunal No: PA/55273/2021
LP/00199/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 8 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

KMS
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss Sepulveda, Legal Representative
For the Respondent: Mrs Arif, a Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 14 November 2023

Order Regarding Anonymity

The First Tier Tribunal made an order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I make such order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. 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

Procedural History

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1. The appeal before me is that of the Appellant, who was born on 15 June 2007, and who is a citizen of Iraq or Iran. He appeals against the decision of First-tier Tribunal Judge H L Williams (the Judge), dismissing his appeal against the decision of the Respondent to refuse his further submissions of 10 May 2022, which the Respondent accepted as a fresh claim for asylum, but which claim was refused by letter dated 9 November 2022.

2. By the time of the appeal before the Judge, the Appellant had been through 2 appeal processes. The first related to his first asylum claim, made on 6 January 2016, refused by the Respondent on 17 May 2016, and dismissed on appeal by First-tier Tribunal Judge Ghani (Judge Ghani) on 16 February 2017. The Appellant was unsuccessful in his attempt to obtain permission to appeal to the Upper Tribunal against Judge Ghani's decision. He then made further submissions on 18 November 2019, which were accepted by the Respondent as a fresh claim, but his claim was refused by letter dated 23 January 2020. The Appellant's appeal to the First-tier Tribunal against this decision was dismissed on 21 October 2020 by First-tier Tribunal Judge Athwal (Judge Athwal). Again, the Appellant's attempts to obtain permission to appeal to the Upper Tribunal against Judge Athwal's decision were unsuccessful.

3. The grounds of application for permission to appeal are lengthy. Permission to appeal was granted by First-tier Tribunal Judge Sills in the following terms:

> "*2. I am satisfied that ground 2 identifies an arguable error of law. The Appellant's father's death certificate was previously considered by Judge Athwal. The Decision sets out Judge Athwal's findings on this document at [46]. Part of Judge Athwal's reasoning in not accepting that the death certificate was the Appellant's father's, was that the document did not contain his full name. The Judge notes at [51] that the document did in fact record the Appellant's full name. I further note that the full name recorded at point 20 shows that the name was made of up (sic) the name given at point 1 and the name given at point 12 on the death certificate. However, at [56] the Judge finds that the Appellant had not established that his father was Iranian based on the death certificate, and relies on the consideration of the document by Judge Athwal. However, in relying on Judge Athwal's consideration of the death certificate, the Judge does not acknowledge that Judge Athwal, on the Judge's own analysis, was mistaken in stating that the death certificate only contained the individual's surname. Hence the reasoning on this issue is arguably inadequate. All grounds may be argued.*"

4. At the outset of the appeal, I confirmed with Miss Sepulveda and Mrs Arif that I had read the grounds of application, the grant of permission and the Rule 24 Response filed by the Respondent and there was no need to repeat what was already before me in writing. Therefore, unless Miss Sepulveda had anything to clarify within the grounds, she could move to deal with the contents of the Rule 24 response, which in itself was lengthy. She stated that she had not received a copy of the Rule 24 Response, and a hard copy was provided to her, and the matter was put back so that she could read it to enable her to deal with it.

5. On resuming the hearing, Miss Sepulveda made her submissions, which were followed by a brief reply from Mrs Arif, and a brief response from Miss Sepulveda, all of which I will consider in the context of my analysis below.

Discussion and analysis:

6. In the grounds of appeal, 7 grounds were identified. These are as follows:

7. The first is that the Judge erred in his interpretation of whether an Embassy can verify documents. It is stated in the grounds that at [54] the Judge recorded that in cross-examination the Respondent asked if the Appellant had verified the document, and the Appellant had stated that he had tried to have it verified at the Iraqi embassy, and that the Judge had then erroneously stated that "his attendance to the Iraqi embassy is not documented". It is submitted that "It is off (sic) course common knowledge or if not through that (sic) SMO 2 highlights that individuals cannot obtain documents from an Embassy (albeit the Appellant is an Iranian national), let alone a verification of the death certificate" (grounds, para 4). It is also submitted that "The IJ then states that in the absence of documents of visiting the Embassy, it cannot be held against him if he cannot obtain corroboration".

8. In the Rule 24 Response, it is submitted that the Judge noted at [54] that there was no verification that the death certificate was genuine, and therefore it fell to be assessed in the round pursuant to Tanveer Ahmed at [55], and that this would include any evidence that would have been reasonably available to the Appellant in the UK, pursuant to (TK (Burundi) [2009] EWCA Civ 40). It is stated in the grounds that "Such evidence could have included evidence of actually travelling to the Iraqi embassy in the UK, evidence from anyone who accompanied them to the embassy, or indeed photographic evidence of the Appellant attending the embassy as claimed. None of which relies upon official evidence from the embassy itself". In her oral submissions, apart from relying on the grounds of application, Miss Sepulveda did not make any further submissions on para 4 of the grounds. Mrs Arif relied on the Rule 24 Response.

9. What the Judge states at [54 – 55] is as follows:

> "*54. The Appellant was cross-examined about whether he had taken any steps to seek to have the death certificate verified as genuine. He said he had been to the Iraqi Embassy to seek to do this. He mentioned this for the first time in his oral evidence. He could not state when he went to the Iraqi Embassy. He simply said that as he had no documentation to prove he was Iraqi they would not assist him. He has produced no documentation to support his attendance at the Embassy, such as travel documents, any correspondence, any evidence from any person who accompanied him, by way of examples. While there is no requirement for corroborative evidence in this jurisdiction, the Tribunal is entitled to take into account the absence of documents which would be reasonably available to the Appellant to produce. Given that the Appellant knew that he was relying again on a death certificate as a central plank of his claim, it is rather surprising that he has failed (i) to mention in his witness statement any attempts he had made to establish the authenticity of that document and (ii) to adduce any supporting evidence of that visit to the Iraqi Embassy.*

> *55. I confirm that I have considered the evidence in the round before arriving at any decision. However, I set out my reasons on an issue-by-issue basis. "*

10. As stated in [54], it was the Appellant who stated, for the first time in oral evidence that he had gone to the Iraqi embassy, but had not provided any evidence to support his assertion; this does not suggest that the Judge was expecting the document to be verified by the Embassy, only that there is evidence that would have been reasonably available to him in the UK of his visit, that would have gone towards assessment in the round of his evidence in relation to the death certificate. Paras [54 – 55], read as a whole, disclose no arguable error of law, and the grounds at para 4 do not accurately represent what the Judge has stated within the decision.

11. In ground 2, it is submitted that the Judge erred in his consideration of the death certificate, which was stated by the Appellant to be that of his father, who is stated on the death certificate to be an Iranian national. The Judge states at [53] "The Appellant seeks to rely on the principle that if his father is Iranian, he too would be Iranian pursuant to Article 976 of the Iranian Civil Code." In the grounds, it is submitted that Judge stated at [56] that she does not accept that the Appellant's father's "nationality is based upon the death certificate because it was considered by Judge Athwal at length" (grounds para 5). In relation to the name that appears on the death certificate, it is stated in the grounds that the Judge noted that Judge Athwal in her decision, stated that "The certificate records just the surname of the man as "Mahmood", which is a common name, no first name is recorded", but that the Judge stated at [51] that the certificate "…does provide a full name of Mahmood Sharif Mahmood", and so "the death certificate has not been considered properly". This is the only ground in relation to which Judge Sills, in granting permission, gave reasons in the grant.

12. In the Rule 24 Response, it is submitted that the Judge was entitled to rely on the entirety of the points made by Judge Athwal as set out in [46], which were not limited to the mistake as to fact referred to at [51] in relation to the full name of the deceased on the death certificate. Judge Athwal also referred to the Appellant's father's being recorded as having a permanent address in Iran, the absence of any occupation given for him, and that the father was recorded as having died in a hospital, which was contrary to the Appellant's evidence in his asylum interview record. It is further submitted that the Judge formed his own view on the basis of the oral evidence before him, before cross-referencing it to the evidence before Judge Athwal (see [57], and [59] and [62]).

13. Miss Sepulveda again made no further submissions on this point, other than relying on the grounds of application. Mrs Arif relied on the Rule 24 Response.

14. It is clear from the decision that the Judge, pursuant to Devaseelan [2002] UKAIT 00702, used the findings of fact previously made as the starting point for his findings of fact. However, having noticed the factual error in Judge Athwal's decision in relation to the name on the death certificate, the Judge set this out in his decision.

15. I take note of the fact that the Appellant sought permission to appeal to the Upper Tribunal against the decision of Judge Athwal, but that permission was not granted. I was not provided with the grounds on which an application for permission to appeal was made against Judge Athwal's decision, or whether the erroneous reference by her to the death certificate not containing the full name of the Appellant's father was referred to in the grounds of application for permission to appeal against her decision. However, the name was but one reason why Judge Athwal found that the death certificate provided was not reliable pursuant to Tanveer Ahmed. The rest of her reasons are set out at [46] by the Judge. The Judge conducted a rigorous review of the evidence before him at [54 – 59], properly noting that Judge Athwal had overlooked the reference to the full name on the death certificate further down the document. The Judge concluded at [56] that he did "…not accept that the Appellant has established that his father was Iranian based on the (translated) death certificate he has produced." This finding was open to him on the evidence before him, and was well reasoned. I find that the grounds amount to no more than a disagreement with the findings of the Judge, which were open to him on the evidence before him.

16. At ground 3, it is argued that the Judge erred in his consideration of the evidence of SP at [60 - 61]. The reasons given are that the Judge accepted that the evidence was "broadly consistent including that they met in 2019" at [60 – 61] , but that at [64] he found that SP's evidence was unsatisfactory, citing the reason as the failure by SP to give the name of the Appellant's brother, when his evidence was not challenged (the Respondent did not cross-examine on this issue, and the Judge did not seek clarification) and therefore it was "implicitly accepted that the witness was a truthful and honest witness set against the background of proof as applicable in MAH v Egypt [2023] EWCA Civ 216. It is also submitted that the Judge set SP's evidence "against the background of previous finding", when his evidence was new evidence and required a "stand alone assessment" (grounds, paras 8 – 9).

17. In the Rule 24 Response it is submitted that the weight to be attached to the evidence of the witness was a matter for the Judge, with the Judge noting that SP's evidence that the Appellant had three sisters was not necessarily corroborated by the Appellant at [62], and that the chronology of their time together was unclear at [63] and that there was no dispute to the Judge's observation that SP did not once mention the Appellant's brother's name. It is submitted that the Judge assessed the evidence in the round, and gave cogent reasons for finding that "the witness evidence was insufficient to offset the valid concerns identified elsewhere in the material to the Appellant's credibility" and that the grounds "in essence disagree as to the weight" that the Judge elected to give to the evidence at [65] (para 5 of the Rule 24 Response).

18. Miss Sepulveda, in reply to the Rule 24 Response, submitted that the Appellant maintains that the evidence of SP was not adequately assessed. In her submissions she referred again to the Judge's description of the evidence of the Appellant and SP being "broadly consistent", and SP having provided oral evidence at the hearing. She referred to the issues noted by the Judge: at [60] that the Appellant and SP mentioned for the first time in oral evidence that they met in 2019; at [61] that there appeared to be inconsistency between the evidence of the Appellant as to whether he had a sister or sisters, with SP stating that the Appellant had three sisters; the lack of clarity

as to when SP last saw the Appellant (he stated it was in Iraq and that he left Iraq in 2007, when the Appellant would have been 10, but the Appellant had stated that his family went to Sulaymaniyah when he was 8); and that Mr SP did not state the name of the Appellant's brother. She submitted that it was clearly recorded in the evidence that the Appellant had 'sisters' and it was inaccurately recorded that he had a 'sister'. In relation to SP's failure to mention the name of the Appellant's brother, she stated that it was open to the Respondent to cross-examine the witness. She submitted again that the Judge had accepted that the evidence of the Appellant and the witness was broadly consistent.

19. Mrs Arif relied on the Rule 24 Response.

20. The Judge's findings at [60 – 65] set out the entirety of her findings in relation to the evidence of SP. Having identified the parts of the evidence that were lacking in detail, or in relation to which there were discrepancies or lack of clarity as between the evidence of the Appellant and SP, she concluded at [64] that the evidence of SP "was unsatisfactory because it was vague. It was devoid of the detail that makes an account credible and compelling." The examples that she gave at [60 – 63] were merely examples of the lack of detail, and consistency and coherency that led her to conclude that it was too vague to be reliable. SP's evidence could not be considered in a vacuum, bearing in mind the number of times the Appellant has given evidence, and it had to be considered against the background of previous findings. Ground 3 is stated to be based on a failure by the Judge to adequately assess the evidence, and I find that his findings were open to him on the evidence before her (Durueke (PTA: AZ applied, proper approach) [2019] UKUT 197) (IAC)). I find that no arguable error of law is disclosed in the Judge's consideration of the evidence of Mr SP.

21. As to ground 4, it is submitted that the Judge took into account things that he should not have taken into account because he considers at [66] that at [68] the Appellant mentioned in his first statement that his father was "involved with the KDPI" yet she states that "in his second witness statement no mention is made of this". It is submitted that the finding would not have changed "regardless of whether it was mentioned or not". Secondly, the Appellant in his appeal mentions his father at [6], however, it is not necessary to use the words that he worked for the KDPI, "but that does not negate the fact that the Appellants evidence is that his father was involved in the KDPI against the Iranian regime" (grounds, para 10).

22. In the Rule 24 Response, it is stated that the Judge was merely making an observation at [68], and that the arguably more significant point was the lack of documentary evidence [66], and oral evidence on this point and the lack of substantive submissions [69], and that the Judge's "unwillingness in this context to depart from the Devaseelan starting point is perfectly rational".

23. Miss Sepulveda did not make additional submissions on ground 4, but relied on the grounds, and Mrs Arif on the Rule 24 Response.

24. I accept, as set out in the Rule 24 Response that it is clear that what the Judge in fact did at [66] – [68] is to confirm that in order to depart from the findings of Judge Ghani, she would require additional evidence, and none was provided. He states that there were no "substantive submissions in the

Appellant's Skeleton Argument on this issue" and that he was "not addressed about this issue in submissions on the Appellant's behalf" [[69]. He concluded at [70], that "There is a distinct lack of additional evidence adduced on this issue. I am not satisfied that I should depart from the findings of the previous Judge." It was open to him to so find, and his approach discloses no arguable errors of law.

25. As to grounds 5 and 6, it is submitted that the Judge's consideration of the demonstrations is flawed. This, in the grounds, is substantiated by reference to [78], in which the Judge states that the Appellant did not have a prominent role within the demonstration and was only a face in a crowd, but that there is no requirement for the Appellant to have a prominent role in order for a real risk of persecution to be established. It is also stated in the grounds that at [79] the Judge stated that the Appellant was not 'genuinely committed', but that this finding lacks clarity as it seems to stem from the Judge's finding that the Appellant did not have a prominent role in the demonstrations. It is further submitted that the Iranian authorities are not concerned about whether or not sur place activities are opportunistic because "the fact that the Appellant has undertaken them is enough for the hair trigger approach as per HB (Kurds) and AB & Ors" (grounds para 12). As to ground 6, it is stated that the Judge's consideration of the television interview at [80 – 81] is flawed because the Appellant had provided a photograph of him being interviewed and had given oral evidence as to it having been broadcast.

26. It is worth citing the Rule 24 Response to grounds 5 and 6 in full. It is as follows:

> *"7. In assessing the Sur Place activity, the FTTJ cogently identified limitations with the Appellant's evidence (upon whom the burden of proof lay) [74-75]. The FTTJ found the Appellant to be Iraqi [65] and thereafter considered background evidence relevant to Iraq [73] any basis of challenge centred on risk in Iran therefore being immaterial. The FTTJ noting it was difficult to establish which demonstrations related to which embassy [74] but that most seemed related to the Iranian embassy [76]. In the context of risk on return to Iraq the FTTJ considers the Appellant would be perceived as a 'face in the crowd' rather than an organiser or prominent participant [77/78]. The FTTJ concludes such activities were non-genuinely motivated having considered the delay in undertaking them [79/84]; the FTTJ gave cogent reasons for rejecting the alleged television interview would raise the Appellant's risk profile [81]; absent evidence of actual broadcast and impact in Iraq."*

27. No issue was taken with the Judge's finding that the Appellant did not have a prominent role in the demonstrations and 'was only a face in a crowd.' Miss Sepulveda relied on the grounds of appeal, and further submitted that issue is taken with the Judge's characterisation of the Appellant's political activities as not genuine at [79], and as an opportunistic attempt to strengthen his claim to international protection because the Judge notes that the Appellant did not start his sur place activities until he had been in the UK for 3 years, with no explanation provided for the delay. She submitted that there was evidence within the Appellant's witness statement, and she referred me to pp 409 – 410 of the composite stitched PDF bundle of 710 pages ("SB") provided to the Judge (to which I had access in digital form, and when I refer to the page

numbers in my decision, I will refer to the numbers of the SB rather than the internal pagination). She referred me to paras 10, 14 and 15 of the Appellant's witness statement at pp 409 – 410. She submitted that this provided a plausible explanation as to why the Appellant did not start his sur place activities until 2019.

28. Miss Sepulveda submitted that the Judge had set out at [73] the background evidence that was before her, which she had considered and this would have identified the current situation in Iraq. I asked her if submissions had been made to the Judge, with specific reference to the parts of the background evidence before him that supported the Appellant's case. Miss Sepulveda stated that she could not say. She also submitted that the Judge, in making his findings at [79], [84] and [90], had attached disproportionate weight to the Appellant's having started his sur place activities in 2019, and not before.

29. Mrs Arif relied on the Rule 24 Response.

30. It is worth looking at the paragraphs referred to in the Appellant's witness statement, relied on by Miss Sepulveda, in full. These are as follows (inaccuracies as in the original):

> *"10. I wish to state that I have a high profile now due to my continues (sic) activities and more involved (sic) with demonstrations and my role during those demonstration can be obvious to the Iraqi and Kurdish authorities.*
>
> *…*
>
> *"14. I wish to state that I fear persecution upon return to Iraq by ISIS and Shia militia, due to my ethnicity as Kurdish. Shia militias are present within in Ramadi, and in other areas outside of the Iraqi Kurdistani region (IKR), and they target Kurds for persecution. I also fear Shia Militia, due to my religion as a Sunni Muslim, because the Shia milita target Sunni Muslims for persecution".*
>
> *15. The new evidence that I have enclosed within my application, is up to date evidence of the current situation in Iraq and. (sic) In summary, my new evidence shows that the situation in Iraq has got worse over the previous year, and it continues to deteriorate. The problem in my area, is that there remains conflict and fighting between ISIS, Shia militia, the Iraq authorities and this makes the situation very dangerous for people in the area. The situation is currently very bad, and I really fear having to return to my home area, because of this".*

31. However, nowhere within the witness statement does the Appellant state why his fear of ISIS, the Shia Milita or the Kurdish authorities started in 2019. I take judicial note of the fact that the ISIS invasion of Iraq was apparent from 2014, yet it took the Appellant another 4 - 5 years to start protesting against the situation on the ground in Iraq. I find that the paragraphs of the Appellant's witness statement identified by Miss Sepulveda as confirming why the Appellant did not start his political activism until 2019 do not in fact support her submissions. The evidence before the Judge, as set out at [73], is recent evidence; in order to support the events that led to the Appellant's fear not arising until 2019, specific reference would need to be made to the background material that influenced the Appellant at the time, and as confirmed by Miss Sepulveda, she could not confirm that any such submissions were made. I find that the Judge did not err in her finding that the

Appellant's sur place activities were not genuine and were entered into to strengthen an otherwise weak claim for international protection; her findings were open to her on the evidence before her. Her findings, in relation to sur place activities were based on a finding that the Appellant was not a citizen of Iran and so HB (Kurds) Iran CG [2018] UKUT 00430 (IAC) and AB and Others (internet activity – state of evidence) Iran [2015] UKUT 257 and the "hair trigger approach" do not apply. Miss Sepulveda submitted that the Judge had placed disproportionate weight on the non-genuineness of the Appellant's activities at [79], [84] and [90]. However, the matter of weight is for the Judge; it is not made out that the weight given is in any way irrational or unreasonable when the evidence is considered as a whole.

32. In ground 6, it is submitted that the Judge's consideration of the television interview at [80 – 81] is flawed because she finds that the Appellant has produced a photograph of him being interviewed and the Appellant's oral evidence as to it being broadcast. It is further submitted that the Judge, in making a finding of "grave concern" is making it a mandatory requirement for the broadcast of the interview, even though the Appellant had produced a photograph, which it is submitted, was enough to trigger a risk.

33. In the Rule 24 Response, it is submitted that the Judge gave cogent reasons for rejecting that the alleged television interview would raise the Appellant's profile at [81], absent any evidence of actual broadcast and impact in Iraq. On the basis of the evidence that was before the Judge, it was entirely open to her to make the findings that he made, and it does not equate to a "mandatory requirement for the broadcast of the interview". Read as a whole, the findings do not disclose any arguable material errors of law.

34. Finally, in ground 7 it is submitted that the Judge failed to assess future risk on the basis that the Judge should not have focused on the time at which the Appellant started his sur place activities, but should have assessed the risk to the Appellant on return. It is further submitted that there was no consideration of the background evidence, which is contrary to what the Judge stated at [87], in which it is stated that he was not directed to any background evidence, which was contained in the Appellant's bundle. It is also submitted that the Judge contradicted herself by stating that she had considered the background evidence at [92]. It is further submitted that the Judge stated at [93] that on deletion of the Appellant's Facebook account, it will cease to exist, but that this was wrong in law as it is confirmed in XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC) that cached copies, tagging and sharing and liking of posts would ensure that even if a Facebook account is deleted, it would not neutralise risk. It is submitted that an incorrect reading of XX enabled the Judge to conclude that deleting his posts would mean that it will remove all of the Appellant's posts.

35. In the Rule 24 Response, it is submitted that the Judge identified correctly at [86] that the case of XX related to Iran, not Iraq, and that it was for the Appellant to establish that the actual surveillance and monitoring abilities of the Iraqi authorities (as opposed to any desired ability) were sufficient to result in real risk to the Appellant, which the Judge considered at [87 – 89]. It is submitted that there seemed little credible suggestion that the Iraqi regime had the same scope or ability to monitor as the Iranian authorities, which in any event was found to be overstated in headnote 1 of XX. It is further submitted that the burden of proof was on the Appellant to establish that in

the event that his Facebook account was timeously deleted there would nonetheless be material incriminating to him and that it was not submitted in the grounds that any Facebook friends had 'shared' or 'tagged' the Appellant. It is further submitted that even if they had, this would fall to be considered as part of the Iraqi regime's ability to identify it, which the Judge found to be lacking. It is further submitted that the general Facebook and social media guidance in XX at headnotes 5 – 9 supported the Judge's assessment at [93 – 98].

36. Miss Sepulveda did not make any further submissions in relation to Ground 7, but relied on the grounds. Mrs Arif relied on the Rule 24 Response.

37. On the basis of the submissions before me, I note that the Judge did direct herself properly to the XX at [86], and stated that she would focus on the nature of the guidance in relation to social media. She confirmed:

> "*87….I was not directed to any background material that establishes that the government of Iraq, the IKR/KRG, or local security forces, monitor the activities of those abroad. There is no evidence before me to support the claim that the Appellant would be identified as an individual that has attended a demonstration outside the Iraqi Embassy or other demonstrations, or via his Facebook account, as someone voicing opposition. There is evidence that protesters continue to use the Internet as an effective tool, but at its highest, from the background material, it seems that the focus appears to be upon those promoting civil disobedience or disruption within Iraq (emphasis added). Notwithstanding the Appellant's references to developments in Iraq concerning the monitoring of social media sites, there is insufficient evidence to show that the authorities in Iraq are able to monitor accounts outside the country.*"

38. It is for the Appellant's representative to direct the Judge to background material that is before him in order to substantiate the Appellant's case. The Judge clearly stated that he had not been so directed. Miss Sepulveda confirmed that she could not state if any submissions had been made to the Judge on the background evidence as to the capabilities of the Iraqi regime to monitor the activities of Iraqis abroad. I note that the Judge did state that he had considered the background evidence at [74] in reaching his decision. However, although there is a submission in the grounds as to the apparent inconsistency in content of [74] and [87], it is not submitted in the grounds that submissions were made as to the capabilities of the Iraqi regime, or that there is material within the background evidence at [74] that is capable of establishing that the Iraqi regime has the capability of monitoring the Appellant's Facebook account. In light of this, I find that there is no inconsistency in [74] and [87] of the Judge's decision, and that his findings at [87], and in relation to future risk at [91 – 97] were open to him on the evidence before him.

39. As to para 16 of the grounds, it is accurately stated in the Rule 24 response that it was not submitted in the grounds that any Facebook friends had 'shared' or 'tagged' the Appellant or that the Iraqi authorities have the ability to identify it, which the Judge found to be lacking. I find that ground 7 is not made out. The Judge made findings that were open to him on the evidence before him and are not unreasonable or irrational.

40. At the end of the hearing, Miss Sepulveda made no reference to para 10 of the Rule 24 Response, in which it is stated that the Secretary of State notes that there is no challenge to the Judge's findings of fact at [104 – 114] and [119] (in relation to availability of identity documents) and at [121-127] in relation to Article 8, absent risk on return. I drew her attention to it, and she stated that these were not challenged on the basis that the Appellant was an Iranian national. However, I reminded her that the Judge had considered background material in relation to Iraq at [73], and had made detailed findings in relation to the availability of identity documents in her decision. However, there were no submissions in the grounds as to a challenge on the basis of the availability of identity documents in the event that he was found not to be a citizen of Iran, nor was there any application to amend the grounds. She accepted that this was the case and made no further submissions. I find that there is no challenge to the Judge's findings at [104 – 114] and [119], or to her findings on Article 8, at [121 – 127], absent risk on return.

Notice of Decision

87. The First-tier Tribunal Judge made no material errors of law in his decision and the decision shall stand.

M Robertson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 November 2023