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Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2023-002291**

First-tier

Tribunal No: PA/53071/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decisions and Reasons Promulgated**
On 12 September 2023	25th September 2023

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Mr SARKO AHMED KARIM
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: Mr R Selway, Counsel
(instructed by Immigration Advice Centre Ltd)

DECISION AND REASONS

1. The Appellant, the Secretary of State for the Home Department, appealed with permission granted by First-tier Tribunal Judge Chohan on 11 June 2023, against the decision of First-tier Tribunal Judge Caskie who had dismissed the appeal of the Respondent against the refusal of his Refugee Convention claim, but had granted his humanitarian protection and Article 3 and 8 ECHR appeals. The decision and reasons was promulgated on or about 8 December 2022.

2. The Respondent is a national of Iraq, born on 1 July 1968. He is of Kurdish ethnicity and he claimed in summary that he was at risk on return because of an extra-marital affair. The Respondent said he had lost his identity documents.

3. In a thorough and careful decision, Judge Caskie set out many reservations about the Appellant's evidence. In short, he disbelieved the Appellant's claim, save that he accepted that the Appellant would refuse the option of voluntary repatriation to the KRG, so would have to be forcibly removed to Baghdad. There the Appellant would face conditions which breached Article 3 ECHR. The judge found that the Appellant had no family in Iraq who could assist him and that the Appellant would be able to unable obtain identity documents.

4. Judge Chohan considered that it was arguable that Judge Caskie had misunderstood or misapplied SA (Iraq) [2022] UKUT 00037 (and by implication) SMO (Iraq) CG [2022] UKUT 110 (IAC).

5. Ms Everett for the Appellant indicated that she was instructed to rely on the grounds submitted and the grant of permission to appeal. The grant of humanitarian protection was plainly an error as the conditions for humanitarian protection had not been made out. The judge had not reached a specific finding as to whether or not the Appellant could obtain help from his family to obtain identity documents, which was a material omission. The decision should be set aside for material error of law.

6. Mr Selway for the Respondent agreed that the grant of humanitarian protection was probably based on a

misunderstanding, but that did not extend to the grant of the Article 3 and 8 ECHR appeals, which were based on the secure reasons which applied SA (Iraq) (above). The forced return would have to be to Baghdad which would not be safe for the Respondent.

7. The tribunal agreed with Mr Selway. It might well be thought that this appeal has little merit. Judge Caskie found that the Respondent was not credible on almost every point, and gave sustainable reasons for those findings which have not been challenged. It was, however, not in dispute that the Respondent was of Kurdish Sunni background and was not Arabic speaking. It followed that the Respondent could not relocate safely to Baghdad as indicated in SMO (Iraq) CG [2019] UKUT 400 (IAC), at [415] and [416], as reaffirmed in SMO (Iraq) CG [2022] UKUT 110 (IAC).

8. While the Respondent had been found by the judge to have family in Iraq, the proper inference was that the family like the Respondent were Kurdish. There was no evidence to suggest that any of the Respondent's family lived in Baghdad, and from the country background evidence, it was unlikely that they did so.

11. Perhaps UTJ Blundell's observations from SA (Iraq) (above) should be repeated (passages of no direct relevance omitted):

"57. In the circumstances, I conclude that the FtT erred in relying on the possibility of the appellant returning voluntarily to the IKR and that the only permissible conclusion available on the facts of this case is that the appellant's removal would be unlawful under section 6 of the Human Rights Act 1998 as being in breach of Article 3 ECHR.

58. I reach that conclusion with no enthusiasm for two reasons. Firstly, because the appellant can avoid the risk which obtains in Baghdad by choosing to go voluntarily to the IKR. Secondly, …. For the reasons I have given, however, I do not consider that either of those points bears on the appellant's entitlement to a declaration that his

enforced removal by the only available route would be a breach of Article 3.

59. I add this observation… T**h**e appellant is not a refugee and the decision I have reached affords him no comparable status. He is simply entitled not to be removed to Baghdad because to do so would be in breach of Article 3 ECHR. What leave the respondent should grant to a person in that position – who is perfectly able to return to a safe part of his country but refuses to do so – is a matter for her. It might well be thought that such a person is undeserving of any leave to remain, regardless of the outcome of such an appeal."

12. In the dialogue with the representatives which followed, it was agreed that the Judge Caskie's decision should be set aside and remade immediately, all findings preserved except for the grant of humanitarian protection, which was inapplicable. The Appellant faced no individual threat of harm.

13. Remaking the decision (the Respondent is once again the Appellant) on the preserved findings and the inferences properly drawn from them, accepting that the Appellant had family in Iraq, they could not assist him as they were in the KRG. Applying SMO [2022](above) in the light of that finding meant that the Appellant was at real risk of Article 3 ECHR harm in Baghdad. He was Kurdish and Sunni, not an Arab. He had no family or other network of support available to him in Baghdad. There was no reason to believe that the Appellant was familiar with Baghdad or had any contacts or connections there capable of assisting him. The tribunal so finds.

14. It follows that the Appellant's Article 3 and 8 appeals succeeds.

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 in part.

The decision is remade as follows:

The Appellant's appeal is allowed on Article 3 ECHR and Article 8 ECHR grounds. The Appellant is not a refugee. He is not entitled to humanitarian protection.

No fee award is made

No anonymity direction is needed

Signed R J Manuell **Dated** 18 September 2023
Deputy Upper Tribunal Judge Manuell