



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

Case No: UI-2023-002921

First-tier Tribunal No: PA/00791/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 7 November 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**KHABAT TOFIQ HAMAALI  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Ahmad of Hanson Law Ltd.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

**Heard at Manchester Civil Justice Centre on 31 October 2023**

**DECISION AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Alis ('the Judge'), promulgated on 20 March 2023, in which the Judge dismissed the appellant's appeal against the refusal of his application for international protection and/or leave to remain in the United Kingdom on any other basis.
2. The appellant is a citizen of Iraqi born on 1 January 1984 who arrived in the UK on 30 April 2004 and claimed asylum the same day. His application was refused and an appeal against that decision unsuccessful. A number of further submissions were made, between 2008 and 2015, but refused without a right of appeal. Fresh submissions made on 11 September 2018 were refused on 7 November 2018 with a right of appeal, but the appellant's appeal dismissed by a judge of the First-tier Tribunal, Judge Row, on 13 September 2019. Further submissions made on 4 October 2021, refused on 12 April 2022, were the subject of the appeal before the Judge.
3. The appellant claimed he had a fear of returning to Iraq because of a blood feud between the PUK and his uncle and that although his uncle had died he claimed the blood feud would continue. The appellant also claimed he had no family in Iraq who could help him obtain a replacement CSID.
4. The Judge records at [10] that the appellant's representative confirmed there was no new evidence in relation to the alleged blood feud, that the appellant was

not pursuing any sur place activities as a ground of appeal, and that he will be arguing he could not be returned due to a lack of documentation.

5. Having considered the written and oral evidence the Judge sets out findings from [26] of the decision under challenge.
6. The Judge sets out the core findings of two earlier determinations, the first promulgated on 24 February 2005 at [28] and of Judge Row at [29].
7. The Judge finds that the evidence before him did not add anything to the appellant's claim there was an ongoing blood feud that the only new evidence adduced is centred around the appellant seeking to address the adverse findings made by Judge Row. The Judge properly takes as his starting point in accordance with the Devaseelan principles the findings previously made.
8. At [40] the Judge accepts the submission that if the appellant did not have a CSID card he will be unable to replace it in the UK or ask a family member or friend to obtain one for him as virtually all of Iraq is no longer issue CSID cards and now use the INID card, which would require the appellant to return to his home area in the Governorate of Sulaymaniyah.
9. The Judge records the appellant's representative submitting the appellant would be unable to return to Iraq as any returns will be through Baghdad from which he would have to travel to Sulaymaniyah whereas the Home Office Presenting Officer relied upon the latest CPIN suggesting agreement had been reached that former residents of the IKR are to be returned there directly, regardless of whether they were voluntary or involuntary returns.
10. At [45] the Judge finds that as a former residence of Sulaymaniyah the appellant could be returned directly to the IKR where he will be granted entry and, given his age, health and the previous rejection of his claim that he has no family/friends in Iraq, and being satisfied given his claim he still owned land in the IKR, that it would be reasonable to return him there.
11. The Judge finds if the appellant did not have a CSID he will be able to obtain an INID within a reasonable period of time taking into account not only the evidence but also his entitlement to a payment from the UK government of up to £1500 [46].
12. The Judge's findings are summarised at [48].
13. The appellant sought permission to appeal asserting the Judge erred in the assessment of the CSID/INID, failed to consider the witness's evidence, and failed to consider the death certificate. Permission to appeal was refused by another judge of the First-tier Tribunal but granted on a renewed application by Upper Tribunal Judge Sheridan on 8 September 2023, the operative part of the grant being in the following terms:
  1. In SA (Removal destination; Iraq; undertakings) Iraq [2022] UKUT 00037 (IAC) it was found that enforced removal, at that time, was possible only to Baghdad because the IKR only accepted voluntary returnees.
  2. The judge in this appeal found that the position had changed, in the light of what is said in the respondent's July 2022 CPIN.
  3. The judge arguably erred in finding that there had been a change when, arguably, the 2022 CPIN does not explicitly address the question of whether enforced removal to the IKR is now permitted.

### Discussion and analysis

14. A preliminary issue arose at the hearing in that in the renewed application for permission to appeal the appellant accepted that the application six days out of time. An explanation was provided. Although granting permission to appeal Judge Sheridan did not deal with this issue. The issue is material as unless time is extended an application for permission to appeal is not admitted.

15. Mr Ahmad was able to assist with an explanation, based upon operational issues within the solicitors firm concerned, and in light of no evidence of prejudice the Secretary of State, the fact that there was no point raised prior to today objecting to the Upper Tribunal considering whether the material error of law had been made, and in the interests of justice, I concluded it was appropriate in all the circumstances to extend time and to admit the application.
16. I also advised the parties that I have judicial knowledge of the following information provided by the Secretary of State in relation to similar appeals of this nature:
  2. Failed asylum seekers and foreign national offenders can now be returned to any airport in Federal Iraq and the Iraqi Kurdistan Region, as stated in section 3.1.1 of the Home Office's Country Policy and Information Note: internal relocation, civil documentation and returns, Iraq, July 2022.
  3. Between 30/09/2020 and 05/10/2022 the Home Office successfully enforced the removal of 8 Iraqi nationals to Erbil and 9 to Sulaymaniyah. There were no flights between the UK and Iraq from 17/03/2020 to March 2021 due to the Covid pandemic.
17. In relation to the point of return of a failed asylum seeker to Iraq, at the date of the promulgation of the country guidance case in SMO such enforced returns were to Baghdad.
18. It is accepted a judge should not depart from findings in a country guidance case unless there is a proper evidential basis for doing so. In this appeal, there is. As Mr Tan submitted it is a relevant factor that the Secretary of State had negotiating an alternative arrangement with the authorities in the IKR in relation to returning both voluntary and enforced removals of Iraqi Kurds. That was the effect of the statement was made to the Judge by the Presenting Officer, irrespective of what was included in the CPIN referred to in the determination. The position set out by the Presenting Officer was confirmed in the later published CPIN and is now common practice.
19. I raised with the advocates the question of the materiality of the alleged error, for even if the Judge was wrong to find that the appellant will be returned to the IKR, as that is now the current position and if the matter was relitigated it would have to be considered on the basis that return would be to any airport within Iraq which for the appellant would be to his home city of Sulaymaniyah, it would make no difference to the outcome.
20. In relation to the submission by Mr Ahmad that the appellant could not return in any event as he would be undocumented, the Judge was entitled to find that if he was returned to his home city he will be able to obtain an INID. The appellant will be returned to Iraq using a laissez passer issued by the authorities in Iraq. Even if that was taken from him when he arrived at the airport it would only be issued to him if the authorities were satisfied that he was lawfully entitled to it as an Iraqi national.
21. The Judge at [48 (i)] finds that given the length of time the appellant has been away from Iraq, and considering earlier findings made in 2019, it was reasonably likely he may no longer have access to the CSID, but the Judge rejected the appellant's claim he did not have surviving family who could provide him with assistance. It was not made out they could not, possibly because the appellant was claiming they did not exist.
22. I find no error of law material to the decision of the Judge in relation to the ability of the appellant to return to Iraq and obtain identity documents. The appellant would not have to pass through any internal borders between the IKR and government-controlled regions of Iraq controlled by the militia and there is

insufficient evidence before the Judge to show a real risk or inability to secure the required identity documents.

23. The submission the Judge failed to consider witness evidence is without merit. The Judge clearly considered all the evidence with the required degree of anxious scrutiny. Just because the Judge rejects the appellants credibility does not mean the evidence was not considered in an appropriate manner.
24. I find the claim the Judge failed to consider the death certificate without merit. The Judge clearly considered that evidence and there is specific reference to it in the decision.
25. Whilst the appellant disagrees with the outcome and seeks a more favourable conclusion to allow him to remain in the United Kingdom, the grounds fail to establish legal error, material or otherwise, sufficient to warrant the Upper Tribunal interfering any further in this matter.

### **Notice of Decision**

26. No material error of law is made out of the decision of the First-tier Tribunal. The determination shall stand.

**CJ Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**31 October 2023**