



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

Case No: UI-2023-003589

First-tier Tribunal No: PA/53069/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

15<sup>th</sup> November 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**GBH**  
**(anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Khan, a Solicitor

For the Respondent: Miss Young, Senior Home Office Presenting Officer

**Heard at Phoenix House (Bradford) on 8 November 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.**

**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**

1. The Appellant was born on 20 April 1998. He is a citizen of Iraq. He appealed against the decision of the Respondent dated 22 July 2022, refusing his protection claim.
2. He appeals against the decision of First-tier Tribunal Judge (FtTJ) Rose, promulgated on 27 February 2023, dismissing the appeal.

## **The Appellant's grounds seeking permission to appeal**

### **3. Excluding duplication:**

"11. It is submitted that the FtT Judge completely fails to address the evidence which had been put forward by the appellant in relation to his sur place activities, the very least which should have been expected was an engagement with the material in his determination...

18. It is submitted that the FtT judge did not consider the risks to the appellant on return to Iraq as a result of his sur place activities ...

19. The FtT judge makes a finding at paragraph 20 that the appellant is no more than a low level protester, it is submitted that this is an incorrect conclusion reached by the judge, the appellant had provided photograph evidence which the FtT judge acknowledges at paragraph 18, to show that he is being interviewed by a journalist from NRT channel (which is an Iraqi news channel), it is submitted that this is compelling evidence of anti-regime activities and is also cogent evidence that the appellant is not a low level protester as found by the judge. There was further evidence to show that the appellant was actively managing the demonstrations which was entirely ignored by the judge.

20. It is submitted that the appellant's sur place activities will be perceived as being critical of the regime, as the material demonstrates his objection to the injustices in general against the Kurds in Iraq. The appellant's image appears on his Facebook account and photographs taken at the demonstrations are posted on the Facebook account, creating a real risk. The question is whether content of the appellant's Facebook account will have come to the attention of the Iraqi authorities because, if it has then, whatever has been posted on the Facebook account will create a risk for the appellant, this aspect of the appellant's appeal has not been considered by the judge in his determination.

21. In his evidence the appellant confirms that he has no contact with any family members having lost contact with them. The appellant had adduced evidence from the red cross asking them to search for them. It is submitted that the judge has failed to properly consider or engage with this significant part of the appellant's evidence...

23. It is submitted that the FtT judge has failed to adequately assess the issues arising from documentation. It is submitted that the FtT judge has failed to take into account the guidance in SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 110 (IAC). in order to re-document himself, the appellant would be expected to apply for a new or replacement CSID in his home area, which would then only be issued following his personal attendance due to the introduction of the new INID system requiring personal attendance and biometrics before a CSID.

24. It is submitted that the judge failed to consider whether the appellant's home CSA office continued to issue CSIDs or only INIDs and, to the extent that the appellant's claim would require him to obtain a document there, whether he could safely travel there. At the very least, this required a clear and sustainable finding and an assessment of whether the appellant would be at risk on the journey whether from Baghdad or the IKR if returns were possible to the latter."

## **Permission to appeal**

### **4. Permission was granted by FtTJ Elliott on 5 August 2023 who stated:**

"2. The grounds assert that the Judge erred in failing to give adequate reasons and making irrational findings in relation to the appellant's sur place activities and ability to re-document himself.

3. In respect of the former the Judge did not make adverse credibility findings. He appears to have accepted that the appellant had taken part in the activity he asserted. The Judge also made no adverse credibility findings regarding the

appellant's motivation for his activity. He did find, however that the appellant was, on the evidence before him, no more than a low level participant as there was lack of evidence of his involvement in any higher role. The fact that he had been interviewed by an Iraqi new channel did not demonstrate, in the absence of any evidence that the interview had been broadcast did not elevate his role.

4. It is arguable that, in failing to consider how the appellant would conduct himself on return to Iraq, and the risk, if any that would entail the Judge fell into error.

5. Permission to appeal on all grounds raised is therefore granted."

## Rule 24 notice

5. There was no rule 24 notice.

## The First-tier Tribunal decision of 27 February 2023

6. Judge Rose made the following findings in relation to the issues raised in the permission to appeal application:

"16. I start with the Appellant's sur place claim. The basis of the Appellant's claim is that he is an active participant in actual demonstrations and online postings - all of which are in opposition to both the Iraqi and Kurdish authorities - and has been interviewed by the Kurdish based media outlet, NRT.

17. I have considered the still images of the Appellant's Facebook postings. There is no method in which I can verify if the number of friends that the Appellant says he has on Facebook is correct and there is no independent, expert, evidence considering the extent of his profile on Facebook. However, even accepting the Appellant's assertion that he has 3000 friends, the still images of the posts which he has provided show that the number of comments or 'likes' which each generate is only ever measured in the low hundreds. Being as generous as I can to the Appellant, he is not, therefore, someone who generates or sparks a lot of interest in his Facebook postings.

18. In respect of his attendance at demonstrations, he has been to something in the region of 15 or 18. He states that he has played an active role at some and there is some photographic evidence to show that he has been interviewed by a journalist from NRT, although there is no evidence to show if that interview was ever actually aired or whether, as a result of that interview, he has any form of media profile.

19. There is no evidence, however, to suggest that he is in any way a high ranking member of the protests or involved in their organisation, even on his own account he has attended fewer than 20 demonstrations.

20. I find that he is no more than a low-level protester. Applying the relevant CPIN, Iraq: opposition to the government in the KRI, it says as follows

*2.4.8 The evidence is not such that a person will be at real risk of serious harm or persecution simply by being an opponent of, or having played a low level part in protests against the KRG. Despite evidence that opponents of the KRG have been arrested, detained, assaulted and even killed by the Kurdistan authorities, there is no evidence to suggest that such mistreatment is systematic. In general, a person will not be at risk of serious harm or persecution on the basis of political activity within the KRI.*

21. Accordingly, I am not persuaded on the basis of the Appellant's sur place activity that there is a realistic possibility of persecution if he were returned to Iraq.

22. The second issue to be determined is whether the Appellant can redocument himself. However, in respect of this issue, Devaseelan [2002] UKAIT 702 applies. IJ Cox considered this aspect of the Appellant's claim in the first appeal heard before the First-tier Tribunal, at paragraph 22 of his judgment:

*Further, I do not find the Appellant's claim that he cannot contact his family credible. In particular, I do not accept that the Appellant's father would not have ensured that his son could contact him. I appreciate that I am second guessing how his father would have acted and have exercised considerable caution in*

*reaching this adverse finding. However, I have reached that finding based on the information provided by the Appellant. In particular, the Appellant claimed that he was just over 20 when he left Iraq and that he had barely left the village. He stated that he had only gone to Tuz a couple of times, as his father had not wanted him to go there. In my view a reasonable inference to draw is that the Appellant's father was very protective of him and would have done everything he could to maintain contact with his only son. Accordingly, I reject the Appellant's claim that he cannot contact his family.*

23. I considered whether or not the Appellant has adduced any evidence in these proceedings which would cause me to depart from IJ Cox's findings. However, there is no new evidence indicating that the Appellant's family have since moved, or no longer can be contacted. The Appellant has asked the Red Cross to search for them but there is no evidence regarding the results of their enquiries. It follows, that I simply cannot depart from IJ Cox's conclusions that the Appellant has the ability to contact his family and can, therefore, arrange for his CSID card to be sent to him.

24. Accordingly, I am not persuaded, even to the lower standard, that the Appellant faces the realistic possibility of persecution if returned to Iraq, either on the basis of his sur place activity or because he cannot redocument himself. His protection appeal is therefore dismissed."

## **Oral submissions**

7. Miss Young submitted that the Judge dealt adequately with the Appellant's past activity. A short decision does not mean it is inadequate. The Judge assessed the evidence and was entitled to find the Appellant was a low level protestor. The Judge applied the relevant CPIN and quotes the most relevant extract of 2.4.8. The Judge considered the evidence regarding the Red Cross. The Judge did not need to consider redocumentation given the previous findings from Judge Cox that he could obtain his CSID from his parents.
8. Mr Khan submitted that the Judge's decision was quite brief and not to the point. There was a lack of consideration of the sur place activity. Inadequate weight was given to the evidence. He was interviewed on television. It is not reasonable to say he was a low level protestor. There was no conclusion on the risk on return. The fact he had been to the Red Cross was not taken into account. The Judge has overlooked the change in Iraqi documentation from the CSID to the INID.

## **Discussion**

9. Regarding ground 1, inadequate consideration of sur place activities, there is no material error of law as the Judge was entitled to make the findings he did. Indeed as noted in the grant of permission to appeal, the Judge did not make adverse credibility findings. The Judge noted the Facebook posts at [17] and demonstrations at [18 and 19] and gave adequate consideration to the Appellant's involvement. He was fully aware of the TV interview and noted this at [18]. The Judge was entitled to find "he is no more than a low-level protester." The grounds are simply a disagreement with evidence based findings.
10. Regarding ground 2, inadequate consideration of an ability to be documented, there is no material error of law. The Judge noted the Red

Cross approach at [23]. He was entitled to find that this did not disturb the previous findings of Judge Cox “that the Appellant has the ability to contact his family and can, therefore, arrange for his CSID card to be sent to him.” There was nothing to suggest he would be unable to use that and with the assistance of his family attend at the Civil Status Affairs office to obtain his INID. It was for the Appellant to establish this. The Judge’s failure to refer to SMO & KSP (Civil status documentation; article 15) Iraq CG was not therefore a material error of law as it was for the Appellant to establish that the criteria referred to in headnote 12 of SMO could not be met.

11. Regarding ground 3, inadequate consideration of how he would conduct himself on his return to Iraq and what may follow as a result of that, there is no material error of law as the Judge noted at [20] the background evidence that “*The evidence is not such that a person will be at real risk of serious harm or persecution simply by being an opponent of, or having played a low level part in protests against the KRG...In general, a person will not be at risk of serious harm or persecution on the basis of political activity in the KRI.*” That was the evidence presented. The Judge was plainly aware therefore that the Appellant may continue the activity he has done here and assessed that risk by reliance upon the background evidence.
12. The Judge’s decision was not brief. It was focussed. It was for the Judge to determine what weight should be given to the different strands of evidence.

## Decision

13. The Judge did not make a material error of law.

**Laurence Saffer**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
8 November 2023

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### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).**

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is “sent” is that appearing on the covering letter or covering email.**