Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/01841/2020**

THE IMMIGRATION ACTS

Heard at Bradford (via Microsoft Teams)	**Decision & Reasons Promulgated**
On the 4th June 2021	**On the 21st June 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JMM
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Coen instructed by Kabir Ahmed & Co Solicitors.
For the Respondent: Mr Diwnycz Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Saffer ('the Judge') promulgated on 27 August 2020 who dismissed the appellant's appeal on all grounds.
2. The appellant was born on 25 June 1995 and is a citizen of Iraq from Topwaza near Kirkuk.
3. Having had the benefit of being able to consider the documentary and oral evidence the Judge sets out his findings of fact from [21] of the

decision under challenge which can be summarised in the following terms:

i. It is reasonably likely the appellant is from Topwaza near Kirkuk, given his CSID and Iraq Nationality Certificate which is now produced and whose authenticity has not been challenged [21].
ii. The finding as to the appellant's place of birth and home area does not undermine previous adverse credibility findings which were not based on geography [21].
iii. The appellant lied in his previous hearing when claiming not to know where his documents were. The Judge did not accept his assertion that he only re-established contact with his sister in 2019 through Facebook, it being more likely that they have been in contact throughout [22].
iv. The Judge did not accept it was reasonably likely the appellant's sister is in Iran as there was no statement from her or documents to show where she is [23].
v. It was not accepted as reasonably likely that the appellant's mother died in 2015 or that the informant was his brother-in-law as the appellant claimed, as the certificate provided says it was 2014 and that the appellant was the informant. The Judge placed little weight upon that document as establishing anything as a result of the discrepancies [24].
vi. The Judge placed little weight on the appellant's father's death certificate as it was not produced for the previous hearing despite being in existence at that time. The full name of the father was not given and there was no evidence to confirm the informant is the appellant's brother-in-law, despite the appellant being in touch with him, and there is no indication as to how the deceased was killed [25].
vii. Even if the appellant's parents were deceased the Judge was not satisfied that materially altered the risk to the appellant for the reasons given at [30].
viii. Although the appellant did not stay with his mother when he was working in Kirkuk the Judge placed little weight upon that as it did not appear to be material [27].
ix. The Judge had no reason to doubt the authenticity of the appellant's CSID and Iraq National Certificate and finds it is reasonably likely he will be able to return to Baghdad, the issue being whether it will be unduly harsh for him to travel and resettle in Kirkuk [28].
x. The appellant failed to establish he will be perceived to be associated with ISIS as the findings from the previous hearing had not been dislodged. The Judge finds the appellant will have family assistance as it is reasonably likely his sister and brother-in-law are in Kirkuk and he has documentation that establishes his "right" to be there. The appellant is not a military target and of little interest

to insurgent attacks and the Judge was not satisfied the appellant had established that he possessed any risk factors over and above the general population that would make movement unduly harsh or will place him at risk of indiscriminate violence amounting to serious harm [29].

xi. At [30] the Judge writes:

> "The evidence within SMO is that the situation in Kirkuk is complex, encompassing ethnic, political, and humanitarian issues which differ by region. Despite the high levels of violence, he has failed to establish he has any risk factor that would aggravate the general risk (see [29] above). Whilst 7% of housing in Kirkuk has been damaged, 93% has not, and he has failed to establish it is reasonably likely his family home is one of those damaged. Whilst 35% of primary health centres are not functioning, he has failed to adduce any medical evidence to suggest he has any elements requiring treatment. Accordingly, it would not be unduly harsh to require him to resettle in Kirkuk, and he would not need to relocate within Iraq or to the IKR."

xii. The Judge did not accept the appellant is a refugee or that his Article 3 rights will be breached if return to Iraq or that he is entitled to a grant of humanitarian protection [31].

xiii. In relation to Article 8 and paragraph 276 ADE of the Immigration Rules, the Judge finds it would not be unduly harsh or even unreasonable for the appellant to reintegrate in Iraq. It is found the appellant has had no family in the United Kingdom and in relation to his private life the Judge had no supporting statements from anyone that identify what ties the appellant has. The appellant has only been in the UK for five years and any private life has been established whilst his leave has been precarious. The appellant failed to establish he speaks English or would not be a burden on the state as there was no evidence as to what his income and outgoings are. Any ailments the appellant may have come nowhere near the relevant threshold to found a claim as the Judge has no medical evidence at all [32].

4. The appellant sought permission to appeal which was refused by the First-tier Tribunal but granted on a renewed application by a judge of the Upper Tribunal, the operative part of the grant being in the following terms:

> 1. Ground 2 is just about arguable. Ground 3 seems to add nothing but refers to other grounds, so is, I find arguable.
> 2. Ground 1 makes out an arguable case that the First-tier Tribunal Judge should have included a "sliding scale" in his reasons but, arguably, did not. It will not necessarily follow that any error thus established is material.
> 3. For the avoidance of doubt, I give permission on each ground.

5. The three grounds relied upon by the appellant read:

Ground 1

IJ Saffer did not properly consider the Appellant's case in line with the County Guidance case of SMO, KSP & IM (Article 15 (c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) in that they did not apply a fact sensitive 'sliding scale' assessment of the Appellant's circumstances as prescribed by paragraph 3 of that case.

Ground 2 The death certificate for the Appellant's Father produced was given little weight despite the CSID and ID documents being sent at the same time and by the same means and not being challenged and accepted as genuine.

Ground 3 The grounds above were not fully considered by the FFT when refusing permission. (This ground relates to apply for permission to appeal, which was granted).

6. Ms Coen asserts the Judge failed to carry out a fact sensitive "sliding scale" assessment of the appellant's individual circumstances when considering the prospects of return to a Former Contested Area as per SMO. It was accepted the Judge had considered several risk factors at [29] but claimed this still fell short of the thorough fact sensitive assessment required.

7. There is nothing in SMO that states that just because a person originated from Kirkuk that they are entitled to a grant of international protection per se. The Upper Tribunal in SMO identify the correct approach to be taken in such a case, but the Judge was clearly aware of the guidance provided in the case law and makes specific reference to this case. It was not made out that any of the factors identified in SMO that may give rise to an enhanced real risk on return were present in this case. Those specifically identified in SMO are set out in the headnote in the following terms:

> 5. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:
>
> - Opposition to or criticism of the GOI, the KRG or local security actors;
> - Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;
> - LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
> - Humanitarian or medical staff and those associated with Western organisations or security forces;
> - Women and children without genuine family support; and
> - Individuals with disabilities.

8. It was not made out before the Judge that any enhanced risk elements were present. The Judge considered the evidence provided in relation to Kirkuk and the application fails to identify any specific element the Judge failed to consider that would give rise to a real risk. The Judge made specific reference to an earlier decision by a previous judge which found the appellant to lack credibility, to have made a meritless claim, and to face no real risk on return. The appellant was aware of

this earlier finding yet produced insufficient evidence before the Judge to warrant a finding that such risk did exist.

9. It is not established the Judge failed to consider the evidence provided with the required degree of anxious scrutiny and the Judge's finding as to why the appellant had not establish an entitlement to a grant of international protection is supported by adequate reasons. The Judge was clearly aware of relevant case law and the grounds fail to establish that the Judge did not approach the evidence in the required manner or that if the Judge was required to set out further detail of how he considered the sliding scale approach the result would have been any different. No material error is made out on this basis.

10. In relation to ground 2, there is no merit whatsoever in this ground. The Judge clearly considered the documentary evidence with the required degree of anxious scrutiny and gives adequate reasons for why the appellants CSID and Iraqi Nationality Certificate were accepted, which was because their authenticity had not been challenged, but why little weight was placed upon the death certificate. The Judge gives adequate reasons but, in any event, at [25] finds in the alternative that even if the appellant's parents are dead that does not alter the Judge's conclusion [26] again, making any alleged error not material. Whilst the grounds referred to the documents having been made available at a similar time that does not mean they are all genuine.

11. On the basis of the evidence before the Judge the conclusion the appellant is not entitled to succeed with his appeal is a finding clearly within the range of those available to the Judge. Whilst the appellant disagrees with that outcome and seeks to be permitted to reargue the appeal, he fails to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter. The appellant has failed to establish any material legal error in the decision.

Decision

There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

12. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

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

Signed……
Upper Tribunal Judge Hanson
Dated 8 June 2021