



IAC-AH-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/02186/2020**

**THE IMMIGRATION ACTS**

**Heard at Field House (remotely via MS Decision & Reasons  
Teams) Promulgated  
On Friday 1 October 2021 On Tuesday 9 November  
2021**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**HHH**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Badar, counsel instructed by Barnes Harrild & Dyer  
Solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision of First-tier Tribunal Judge Abebrese, promulgated on 17 February 2021. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 1 May 2021.

## Anonymity

2. An anonymity direction was made previously and is reiterated below because this is a protection matter.

## Background

3. The appellant is an Iraqi national who arrived in the UK on 23 December 2016 and applied for asylum. That claim was refused on 9 March 2018 and the appellant exhausted his rights of appeal on 25 September 2018. The appellant made further submissions on 5 December 2019 which were refused on 7 February 2020. It is this decision which is the subject of this appeal.
4. The appellant's first protection claim was based on his fear of the paternal uncle with whom he resided after his parents were killed in a car accident. The appellant is of Kurdish ethnicity, is a Sunni Muslim and is from Kirkuk. His present claim is that his home area is a contested area, he could not relocate, he would be at risk from Shia militias because of his father's Ba'ath Party links, he would face undue hardship, unemployment and homelessness and would have no family support on return.

## The decision of the First-tier Tribunal

5. The First-tier Tribunal concluded that the appellant was not from Kirkuk; did not accept that his uncle would no longer assist him; the appellant would be able to voluntarily return directly to Erbil or forcibly to Baghdad where he would be issued with an official document if he provided details of his family.

## The grounds of appeal

6. The grounds of appeal were twofold. Firstly, that the judge failed to give reasons in relation to a material issue, that being whether the appellant went to the Iraqi embassy and had not analysed the appellant's evidence on this issue. Secondly, the judge had erred in his application of *SMO, KSP & IM (Article 15(c); identity documents)* CG Iraq [2019] UKUT 400 (IAC), regarding the appellant's ability to travel, without official documents, from Baghdad to his home area.
7. Permission to appeal was granted on the basis sought. The judge granting permission considered it arguable that the First-tier Tribunal judge did not "adequately explain the basis for his conclusion that the appellant would be able to obtain a replacement CSID given the potential difficulties in doing so even with family support, as described in *SMO*..."
8. The respondent's Rule 24 response, received on 14 June 2021 stated that the respondent did not oppose the application for permission to appeal. In addition, it was noted that the Court of Appeal had remitted *SMO* to the Upper Tribunal to consider the issue of CSIDs and it was due to be heard in the coming weeks. It was submitted that continuance or remittal hearing

be stayed on the basis that it would have a material impact on a significant issue, that being the ability of the appellant to obtain a CSID.

### The hearing

9. Mr Badar had only just had sight of the Rule 24 response and agreed that he had no need to make submissions. Ms Isherwood added that the grounds did not challenge the suggestion by the judge that the appellant was from Sulaymaniyah [24] and that he was in contact with an uncle and aunt [23]. In response, Mr Badar stated that while that was correct, given the materiality of the judge's error in respect of the second ground, the decision could be set aside in its entirety. Furthermore, the respondent had made no proposition as to where the appellant was from.
10. At the end of the hearing, I confirmed that the judge made the material errors of law complained of in the grounds. In addition, there is an absence of the record of proceedings in this case and it is not possible to ascertain the entirety of the evidence before the judge or submissions made on the appellant's behalf. I therefore accepted Mr Badar's invitation to remit the matter to the First-tier Tribunal for a de novo hearing.

### Decision on error of law

11. Briefly, the judge erred in finding that the apparently undocumented Kurdish appellant could obtain an official document if returned to Baghdad if he provided the details of his family [28]. This finding failed to apply [15] of the headnote in *SMO*, which found that this was unlikely to occur and "*certainly not within a reasonable time.*" The judge further erred by not indicating whether he accepted the appellant's account of a visit to the Iraqi embassy which was supported by the evidence of an interpreter who accompanied him and if he rejected that evidence, he failed to state why that was. While Ms Isherwood's observation regarding the appellant's place of origin in Iraq is noted, the judge made no firm finding on this issue.
12. The case of *SMO* has been remitted to the Upper Tribunal and the hearing is listed for early October 2021. The issue at large is whether Iraqi citizens would recall the volume and page reference of their entry in the Family Book, in relation to an application for a Civil Status Identity Card on arrival in Baghdad. This issue is clearly relevant to the appellant who has only a photocopy of a CSID card giving his place of birth as Kirkuk. The respondent does not accept that the appellant is from Kirkuk and there appears to be doubts as to the reliability of the appellant's document.
13. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

## **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside to be remade.**

**The appeal is to be reheard, de novo, at the First-tier Tribunal by any judge except Judge Abebrese or Judge PJM Hollingworth with a time estimate of 3 hours.**

**A Kurdish-Sorani interpreter is required.**

**This appeal is stayed pending the promulgation of the Upper Tribunal's decision in *SMO(2)***

## **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:  
Upper Tribunal Judge Kamara

Date 4 October 2021