



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

**Case No: UI-2022-005624**  
**First-tier Tribunal No:**  
**PA/52183/2021**  
IA/05486/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 25 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**R M**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E. Rutherford, instructed by Rodman Pearce Solicitors Ltd.  
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 23 March 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 appealed the respondent's decision dated 21 April 2021 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge Hena ('the judge') dismissed the appeal in a decision sent on 01 August 2022. The judge rejected the credibility of the appellant's claim to have been targeted by people who he suspected were affiliated with the KDP (Kurdish Democratic Party - based in and around Erbil). He thought that this

was because of his late father's involvement with the PUK (Patriotic Union of Kurdistan - based in and around Sulaymaniyah). The judge noted that the appellant was not politically active and that there was no evidence to show who the people were who had made the threats. Other members of the family, such as his brother, had not received threats. In any event, there was sufficient protection because the appellant was able to report the matter to the police. He had not provided an adequate explanation as to why he felt the need to leave the Kurdish Region of Iraq (KRI) while there was an ongoing investigation [36]. Although the judge accepted that there was political infighting between the two Kurdish groups, the evidence did not show that it reached the extent described by the appellant [39].

3. The appellant applied for permission to appeal to the Upper Tribunal. The grounds made general submissions and were not particularised clearly. However, the main points were:
  - (i) The First-tier Tribunal failed to consider various explanations given by the appellant that addressed the apparent inconsistencies identified.
  - (ii) The First-tier Tribunal erred in finding that there was no risk on return because there had only been two threats by text message. The correct test was whether there would be a real risk of the threats being carried out.
  - (iii) The First-tier Tribunal failed to give adequate reasons to explain why there would be sufficient protection with reference to the background evidence.
  - (iv) The First-tier Tribunal made errors in the assessment of the availability of identity documents on return.
4. First-tier Tribunal Judge Cruthers granted permission to appeal in an order sent on 17 November 2022. He considered it to be arguable that the First-tier Tribunal erred in its approach to the assessment of documentation and risk on return.
5. The respondent filed a response under rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. She accepted that some of the findings in [36] of the decision might disclose an error of law. Although the response was not clear, the suggestion was that the error was likely to be material because the Upper Tribunal was invited to 'determine the appeal with a fresh oral (continuance hearing)'.
6. Although the grounds were not particularised clearly, and the response from the Secretary of State was rather vague, there seemed to be general agreement between the parties that the findings made in relation to the assessment of risk on return were somewhat confused and may have failed to take into account relevant matters. There was an agreement that the decision involved the making of an error of law. Mr Tufan did not seek to go behind the concession made in the rule 24 response.
7. I considered that this is a borderline decision because, whilst the judge accepted that there were political tensions between the KDP and the PUK, no background evidence was identified in the grounds of appeal to indicate that threats of this kind are made, let alone carried out, in the KRI. Although I think that this is what the judge probably meant in [39], I accept that some of her findings between [36]-[42] might be somewhat unclear and may have failed to consider some evidence that might have been relevant to the assessment.

8. Despite having argued the point in the grounds, Ms Rutherford accepted at the hearing that it would be difficult to argue that the appellant could not obtain relevant identity documentation now that return flights can be made directly to Sulaymaniyah, where it is likely that the appellant's family book is held, and where he could obtain an INID. Given that there was some agreement between the parties that some of the findings were unsustainable, and that the decision would need to be remade, I accept that the decision involved the making of an error on a point of law and that it should be set aside.
9. The normal course of action would be for the Upper Tribunal to remake the decision even if this involves making further findings of fact. However, after further discussion at the hearing I was just persuaded that a completely fresh decision would need to be made with more detailed reference to the background and other evidence produced by the appellant to assess the credibility of his claim to have been threatened, whether there is a real risk of such threats being carried out, and whether there would be sufficient protection given that the appellant had produced evidence to show that the police appeared to have conducted some investigation into the matter. On this occasion it is appropriate for the case to be remitted to the First-tier Tribunal for a fresh hearing.

### **Notice of Decision**

The First-tier Tribunal decision involved the making of an error on a point of law

The case is remitted to the First-tier Tribunal for a fresh hearing

**M.Canavan**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

12 April 2023