



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

**Case No: UI-2022-006333**  
**First-tier Tribunal No:**  
**PA/00073/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 15 April 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**DAM**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance.

For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

**Heard at Phoenix House (Bradford) on 3 April 2024**

**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. In a determination promulgated on 4 December 2023 Deputy Upper Tribunal Judge Davidge found a judge of the First-tier Tribunal had materially erred in law, set that decision aside, and gave directions for the future management of this appeal.
2. A judicial transfer order has been made as a result of which the appeal comes before me today for the purposes of substituting a decision to either allow or dismiss the appeal.

3. Judge Davidge preserved a number of findings of the First-tier Tribunal in her determination as follows:
  4. The appeal raises no challenge to the issue of the Section 72 certificate finding of the judge and accordingly those findings stand. The findings in respect of family life and the stay or go scenarios and the impact on the Appellant's daughter not amounting to unduly harsh circumstances are not challenged and stand. The conclusions in respect of very compelling circumstances over and above those that apply in cases where the sentence was less than four years also stand. The grounds raised no challenge to the judge's findings in connection with the Appellant have been sufficient access to identity documents to facilitate his return whether to his home area all the IKR and accordingly those findings also stand.
4. The issue for further consideration is that relating to risk on return to Iraq.
5. In accordance with Judge Davidge's directions an email was sent to the Appellant's representatives asking them to confirm if an interpreter was needed for the resumed hearing and if so in what language and dialect. On 23 February 2020 Equity Law Chambers on behalf of the Appellant confirmed they had been advised by the client that he did not require an interpreter for his up-and-coming hearing.
6. On 29 March 2024 the appeal was listed for hearing at Bradford on 3 April 2024 and notices of the hearing sent to the Appellant's representatives and Home Office via email with a hard copy of the hearing notice being posted to the Appellant at the last address provided for correspondence. There is no evidence of any of these notices having been returned/rejected as not having been served. I am satisfied there has been valid service of the notices confirming the date, time, and venue of the hearing, to the Appellant, his appointed representative, and the Home Officer.
7. Notwithstanding this neither the Appellant nor his legal representative attended the hearing at Bradford.
8. There is no explanation, no application to adjourn, no indication of any difficulties for example within the transport network, or anything to assist in understanding why there was no attendance.
9. In addition to being satisfied there has been valid service I have considered whether it is appropriate, in the interests of justice, to proceed to determine the merits of the appeal in the Appellant's absence. He has had ample opportunity to file any further evidence he wishes to rely upon. As noted, there is no explanation for his failure to attend. The Tribunal has allocated a court room, a salaried judge as this is a deportation appeal involving a convicted murderer, together with supportive administrative staff time, and the services of a Senior Home Office Presenting Officer has been provided to represent the Secretary of State's interests by him. There have been considerable resources dedicated to the appeal and is not made out the interests of justice nor the overriding objective require such to be wasted.
10. In terms of the available evidence; the Appellant has provided a witness statement dated 14 June 2022, a statement from a witness identified as JM, who claims to have known the Appellant for approximately 35 years (who also did not attend the hearing), and a letter from his brother SAM in Iraq accompanied by a certified translation.
11. There are also a number of translated documents which it is claimed originated from the General Police Directorate Kirkuk Governorate dated 18 November 2019 and 19 November 2019, a document described as an Arrest Warrant dated 1 June 2008, a further document entitled "Disclosure Evidence" issued by the Iraqi police dated 21 January 2021 referring to an event that occurred on 7 June 2008, together with various certificates the Appellant obtained during his time in prison. All the Appellant's evidence has been taken into account even if not specifically

mentioned. As mentioned by Miss Young in her submissions, there is no more recent up-to-date information provided by the Appellant.

12. The Appellant's immigration history shows he claims to have arrived in the UK in 2002 illegally. On 2 October 2002 he claimed asylum and on 19 November 2002 his asylum interview was conducted. The asylum claim was refused on credibility grounds although, as a result of the situation in Iraq at that time, the Appellant was granted a period of Exceptional Leave to Remain valid to 29 November 2006. On 7 October 2006 the Appellant submitted an 'Indefinite Leave to Remain' (ILR) application.
13. On 1 February 2018 the Appellant was served with a Decision to Deport following his conviction and sentence to life imprisonment with a minimum 12-year term for murder. On 19 February 2018 the Appellant submitted representations as to why he should not be deported to Iraq. A section 72 letter was served on 29 July 2019 followed by a second section 72 letter served on 24 October 2022 to which a response was received.
14. The Secretary of State deemed the Appellant's deportation to be conducive to the public good and in accordance with section 32 (5) UK Borders Act 2007.
15. The Appellant then made a Protection and Human Rights Claim which was refused on 1 December 2020. It was the appeal against that decision which came before the First-tier Tribunal judge.

#### Discussion and analysis

16. In his witness statement the Appellant states he was born in Jabarah, Iraq. He has four brothers and four sisters and claims to be the youngest of all the siblings.
17. The Appellant claimed to have had little contact with his family since he was sentenced to a period of imprisonment.
18. The Appellant states the reason he came to the United Kingdom in 2002, during the time Saddam Hussein was in power in Iraq, was because under his regime he had a lot of problems. Although the Appellant claimed asylum as soon as he entered the United Kingdom he admitted to having travelled through Turkey, Bulgaria, Romania, Austria, and France without claiming asylum in any of these countries.
19. The Appellant claimed he will face a real risk of a revenge killing if returned to Iraq. He claims the family of the victim of his index offence, the person the Appellant murdered, are actively looking to kill him. He claims the community is small and that his family and the victim's family knew each other prior to the index offence.
20. The Appellant claims the victim's family have been following his family from city to city, intimidating them, threatening them with acts of violence, and that they even tried to shoot his brother. The Appellant claims the victim's family are trying to get his whole family involved and have continually told his family that they are still looking for him. The Appellant claims if he is returned to Iraq the victim's family will find out very quickly.
21. The Appellant claims his family have had to flee from city to city as a result of the threats they have received. The Appellant claims his family have attempted to settle the matter by way of payment on a few occasions, but that settlement is either being refused or the victim's family have asked for a sum of money which the Appellant says his family simply cannot afford.
22. The Appellant claims the family have gone from Kifri to Kirkuk and have not been able to settle down and also moved houses in the same area.
23. The Appellant claims his victim's family are very big and from a powerful tribe with the victim having four or five brothers and extended family involved in politics, and that the victim's uncle is a Kurdish politician in Iraq and a member of

the PUK who has a lot of power and influence in the area and wished to harm the Appellant's family, and who has the means to do so.

24. The witness statement from JM claims the Appellant's family are receiving threats from the victim's family and that his brother SM has been shot at in the past by the victim's family. JM claims to have been told this by his own brother approximately nine years ago.
25. JM claims that as SM was shot at he now carries a gun for his own safety. It is claimed SM is the main target for the victim's family as he tried to settle the matter between the families and they have not been able to get hold of the Appellant.
26. JM claims the Appellant's family's house in Kirkuk was shot at "a lot" and that they have had to move. He claims the first time he heard this was in 2007.
27. JM claims the victim's uncle was in control of the Asayish. JM claims he believes the victim's uncle is waiting for the Appellant to be deported before he takes any action.
28. The translation of a note from SM, addressed to a lawyer, shows him claiming that he cannot go back to his own area since he has received threats from the victim's family and been shot at on two occasions, that he cannot go back to Kfry and is now in Sulamaniyah in the IKR, and that his brother, the Appellant, has been threatened and cannot come back "to his own place".
29. The police document dated 18 November 2019 records a complaint having been made on that date by a named individual stating the Appellant is about to get out of prison in the UK and that the person against whom the complaint is made would kill him once he arrived in Iraq and asking for the necessary procedures to be taken.
30. There is a translation of a handwritten note dated 2019 from a person describing themselves as the brother of the Appellant's victim who was killed, that they have information the Appellant is about to get out of jail in the UK, and that according to tribal norms he will be killed once he arrived in Iraq.
31. The document dated 19 November 2019 described as an arrest warrant authorises the police to arrest the person making the threats and to bring him before the Court of Investigation. The person concerned whose is the subject of the Arrest Warrant is said to reside in Al-Qadisiyah 2 Kirkuk.
32. A second document also describes as an Arrest Warrant dated 1 June 2008 is in similar terms.
33. The document described as a 'Disclosure of Evidence' stamped on 21 January 2021 refers to the person subject to the Arrest Warrant on 7 June 2008 shooting at a house located in the Al-Qadisiyah 2 area, that there have been no injuries, that the shots were fired at the house fence, recording the reason for the shooting as being the brother of the occupant of the house killed the brother of the person made the subject of the arrest warrant in Britain.
34. It was submitted by Miss Young that there has been no further evidence from wither the Appellant nor his representatives indicating any other problems. There is nothing to indicate there is any ongoing problem, nobody knows what is happening or what is going on as a result of the Appellant's failure to engage with the appeal process. The shooting, even if credible, appears to have occurred in 2008.
35. The submission made in relation to the evidence is correct. It is also the case that as a result of the Appellant and any witness failing to attend Miss Young was not able to cross examine them on the basis of the evidence that had been provided. It is untested. This is important as a number of claims that have been made by the Appellant were not accepted by the First-tier Tribunal, such as the appellant's claim not to have access to identity documents or contact with his family.

36. As the Appellant is excluded from the protection of the Refugee Convention or to a grant of Humanitarian Protection as a result of the section 72 certificate, his protection appeal could only succeed pursuant to Articles 2 or 3 ECHR.
37. It is noted in the Refusal letter that the Appellants original claim for asylum was based on fear that if returned he would face mistreatment due to his ethnicity as a Kurdish Iraqi. That letter records that the Appellant is from Jabara subdistrict in the Diyala Governorate. That is in the government-controlled areas of Iraq which was under the control of Saddam Hussain. The Appellant also refers to risk as a result of his conviction for murdering a person in the United Kingdom on the basis of a blood feud.
38. I find no risk made out on the basis of the Appellants ethnicity as an Iraqi Kurd on the evidence.
39. The Appellant in a letter of 5 August 2008, submitted with the ICD.0350 questionnaire, stated *"The Police and my Solicitor told me that the family of one of the men that came to my house to kill me said that if I came back to Iraq they would promise to kill me"*. That claim was rejected as it was said to Appellant had not provided a detailed and specific account as he had not specified whose family wanted to kill him if he returned to Iraq and that if the police and solicitor had been given this information they were told would have told him who had issued such threats. The claim was rejected as it was said the Appellant had provided no evidence to support his claim. It is that material which the Appellant claims he has now provided, which I have referred to above.
40. An issue the Appellant does not adequately deal with which arises from the refusal letter is that he claims that the victim's family and his family originate from the same area and that he will face a real risk there as a result of it being a close community in which his presence, if returned to his home area, will become known. I accept that Jabara is in Diyala Governorate but the Appellant claims his mother, brother and sister live in Kirkuk, approximately 150 km away from Jabara in a different Governorate, with insufficient evidence having been provided to show that even if the victim's family will be aware of the Appellant's present in the close community of their hometown they would have the means to be able to detect him in another part of Iraq to which he could internally relocate. The claims made to this effect by the Appellant have not been substantiated.
41. It is stated in the Refusal letter that the Appellant's evidence regarding cause of death for his brothers was not internally consistent and coherent as he initially made no reference to brothers who had been killed as a result of a family feud or any other reason [53].
42. The Appellant claims that the family of the person he killed want revenge by way of blood. Despite this there is no evidence of blood being taken. At its highest the Appellant refers to a fence being shot at and threats but no more. Had it been the case that all the victim's family was interested in was targeting the Appellant that may provide an explanation, but JM claims that the family wish to target SM indicating they wish to kill him but have not done so.
43. Further inconsistency in the Appellant's evidence was identified at [63] of the Refusal Letter. It is said that the Appellant has given two differing accounts of who is living in Kirkuk. At page 16 of the OASys Report dated 23 October 2019 the Appellant stated his mother lives with his brother and sister in Kirkuk, although in his interview on 11 March 2020 he claimed that just his mother and sister are living Kirkuk. It is also noted in reply to question 6 of the SEF interview that the Appellant claimed to have only one sister but in reply to question 10 to have four brothers and four sisters all in Iraq. Lack of clarity in the evidence damages the Appellant's credibility.
44. It cannot be disputed that the Appellant has been convicted of murder as the Crown Court judge's sentencing remarks are in the appeal papers. He was also recommended for deportation.

45. It is not disputed that blood feuds exist in Iraq and there is a CPIN and other country information dealing with this point in the evidence.
46. The question is whether the Appellant's claim that he will face death or serious injury as a result of an ongoing and active blood feud is credible. I do not find he has established that it is.
47. In addition to the concerns set out above the Appellant's brother SM lives in the IKR with no evidence of any ongoing threat he faces in a completely different part of the country.
48. The Appellant claims the Victim's uncle is a powerful politician with a senior role within the PUK, yet SM appears to have been able to live in Sulaymaniyah without being killed, which is the headquarters of the PUK.
49. The issue of internal relocation was raised in the Refusal Letter and the Appellant has failed to adduce sufficient evidence to warrant a finding that it would be unreasonable to expect him to internally relocate to the IKR. It is a preserved finding of the First-tier Tribunal that he has access to the documents he requires to be able to live a normal life in Iraq such as his CSID.
50. The burden of proving his case is on the Appellant. I do not find, even to the lower standard of proof, that the Appellant has established that he will face a real risk of harm if deported to Iraq sufficient to entitle him to a grant of international protection under Articles 2 or 3 ECHR. I do not find the Appellant's claims otherwise to be credible.

### **Notice of Decision**

51. Appeal dismissed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4 April 2024**