



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/12478/2019

**THE IMMIGRATION ACTS**

Heard remotely via Skype for Business  
On 19 February 2019

Decision & Reasons Promulgated  
On 4 March 2021

Before

UPPER TRIBUNAL JUDGE LANE

Between

AAAD  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Greer

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a citizen of Iraq, appeals to the Upper Tribunal against a decision of the First-tier Tribunal dismissing his appeal against the Secretary of State's refusal, dated 5 December 2019, of his claim for international protection.
2. The appellant, a male Sunni Muslim from Baghdad, had been accused, arrested and released in 2005 following the assassination of a Shia army officer, a crime for which the appellant's brother had been tried and executed. The appellant relocated to Sunni areas of Iraq but, on his return to Baghdad in 2009, he was detained and accused of

being a Sunni terrorist. He was held in detention for five years until 2014. The Secretary of State had rejected the appellant's claim of having been detained but the First-tier Tribunal [30] accepted that part of his evidence. The appellant fled to the United Kingdom via Turkey in 2014/2015. He returned to Iraq (he claims using a false identity) in 2016, re-entering the United Kingdom in 2017.

3. There are two grounds of appeal. First, the appellant argues that the judge erred in law by failing to take into account relevant considerations, including the fact of the appellant's detention for 5 years and that he used false documentation on his return to Iraq in 2016, when assessing the risk to the appellant should he return now to Iraq. The appellant asserts that, having found that he had been detained as claimed and his brother executed, the judge then ignored that finding.
4. I do not find that the judge has erred in his assessment of risk on return. At [32(i-viii)], the judge has given detailed reasons which he says 'drives' his finding that the appellant is not at risk by reference to the risk factors identified in the relevant country guidance (*SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [20199] UKUT 400*). I do not accept the argument advanced in the grounds that, by finding that the 'appellant and his family have remained unharmed' in the years since 2005, the judge has reached a finding which is not consistent with his acceptance of the claim that the appellant had been detained for 5 years. It is, in my opinion, obvious that the judge makes this statement subject to the fact of the detention to which he immediately refers in the following sub-paragraph. Moreover, it is also necessary to have regard to the specific finding which the judge made concerning the detention at [31]. The judge finds that the appellant was detained 'on a fishing trip', those detaining him seeking to determine whether the appellant was of interest as a security threat. When his captors concluded that he was not, his detention had continued until a bribe might be extracted for his release and for no other reason at all. When the judge says that the appellant had not been 'harmed' since 2005 it is clear that he had those circumstances of the appellant's detention in mind. Ultimately, the appellant had remained in detention for the financial gain of his captors and not because of the 'family of the man whom [the appellant's brother] had been convicted of killing seeking revenge' [32].
5. Secondly, the appellant asserts that the judge failed to make reference to the precautions taken by the appellant (including using a false identity) when discussing his return to Iraq in 2016. In my opinion, the judge was well aware of those precautions. His finding regarding the 2016 return is specific; it is that, notwithstanding any precautions the appellant may have taken, the fact that he returned at all undermines his claim to have a subjective fear of living in Iraq. That finding is rational, was available to the judge on the evidence and is sound in law.
6. Thirdly, the appellant complains that the judge refers to his brother M continuing to live in Baghdad whilst failing to refer to the fact that M is elderly, no longer of fighting age and unlikely to 'fit the profile of a suspected Sunni terrorist.' The appellant claims that a comparison between his own circumstances and those of M is consequently unfair. I disagree. I find that it was open to the judge to find that the

presence of M in Baghdad undermines the appellant's claim that he fears returning to live in that city. Significantly, M had, like the appellant, also been detained, in his case for 2 years, after he had been 'abducted' in 2008. The judge finds that, like the appellant, M had not been of any interest to any state/non-state actor [32(ii)]. The detention and release of M and his ability to live safely in Baghdad thereafter is a patently strong indicator that the appellant would also not be at risk. The judge did not err in law by comparing the circumstances of the two brothers in assessing risk to the appellant on return to Iraq.

7. Finally, the appellant argues that the judge ignored two of the risk factors identified in SMO, namely: '(i) Opposition to or criticism of the GOI, the KRG or local security actors; and (ii) 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' [314]. As regards (i), the grounds ignore the particular finding which the judge made in respect of the appellant's detention, that is that the appellant turned out never to have been a security threat and had been kept in detention for the financial gain of his captors and for no other reason; the appellant, therefore, has never been critical of or 'in opposition to ... the GOI, the KRG or local security actors.' Further, if the appellant has the characteristics described in (ii), those characteristics are shared by his brother M, who continues to live safely and unmolested in Baghdad.
8. For the reasons I have given, I am satisfied that the judge has not erred in law. Accordingly, this appeal is dismissed.

### **Notice of Decision**

The appeal is dismissed.

Signed

Date 25 February 2021

Upper Tribunal Judge Lane

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

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