



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

Case No: UI-2023-003549

First-tier Tribunal No: HU/58629/2022

(LH/01041/2023)

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

30<sup>th</sup> November 2023

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**DSJ**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Wood of Immigration Advice Service.

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

**Heard at Phoenix House (Bradford) on 17 November 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 appeals with permission a decision of First-tier Tribunal Judge O'Hanlon ('the Judge') promulgated following a hearing at Newcastle on 9 June 2023, in which the Judge dismissed the appellant's appeal against the refusal of his claim for international protection and/or leave to remain in the United Kingdom on any other basis.

2. The appellant is a citizen of Iraq of Kurdish ethnicity born on 23 March 1996, who claimed a fear on return to Iraq from the Popular Mobilisation Force (PMF) as a result of his Kurdish ethnicity, from Daesh (also known as ISIS), and from the Karwei tribe.
3. The Judge's findings are set out from [31] of the decision under challenge. The appellant's identity, date of birth, nationality, and Kurdish ethnicity were not in dispute.
4. At [41] the Judge finds the appellant's account of incidents with the PMF members at the café where he worked lacked plausibility. The Judge found it lacked credibility that the appellant will be physically attacked in the manner he claims simply due to his Kurdish ethnicity given the density of the Kurdish population in the area in question.
5. The Judge did not feel able to place great weight upon medical evidence in support of the appellant's claim that he was stabbed by members of the PMF in Jalawla [42].
6. The Judge noted the appellant made no reference to fear of the Karwei tribe in his screening interview which was found, notwithstanding the correct self-direction in relation to the weight that should be given to answers in a screening interview, to reduce the credibility of this aspect of the claim [44].
7. Having assessed the weight that could be given to the appellant's claim to face a real risk from Daesh, the Judge concludes at [49] "*.... No evidence has been put before me as to the claimant relationship between Daesh and the Karwei tribe and having considered all of the evidence before me in the round, I do not find the Appellant's account of the claimed incident with the Daesh members to be plausible, internally consistent or consistent with the background evidence that Daesh had been militarily defeated at the time of this claimed incident. I find that the Appellant's account has somewhat expanded over time to incorporate the claimed fear of the Karwei tribe in an attempt to bolster his asylum claim.*"
8. At [51] Judge finds not being satisfied that the appellant's account of events in Iraq which would cause him to have a well-founded fear of persecution or harm in the event of return are likely to be true.
9. The Judge then proceeded to consider the feasibility of return. The Judge analyses the appellant's claims in relation to the whereabouts of his CSID card before writing at [57]:
  57. Having considered the Appellant's account regarding the whereabouts of his CSID card (which he refers to as a taskara) I do not accept the Appellant's account. I find that the Appellant's account that the family home had been burned down to be lacking in credibility and given the lack of detail and general information about this claimed incident diminishes the credibility of the Appellant's account. I found that the Appellant's account to have lost contact with his family and the claimed burning down of the family home thereby destroying his CSID card and other documentation are attempts to bolster his asylum claim and I do not accept the credibility of the Appellant's account in relation to those aspects.
10. At [58] the Judge finds the appellant is either in possession of his CSID or can contact his family members to obtain it. The Judge rejects the appellant's claim as to the irretrievable loss of his CSID and rejects his account of the loss of contact with his family. At [59] the Judge finds the appellant's account of the risk in the event of return to his home area was not accepted. The Judge did not find it made out that even though the appellant's home area is in a formerly contested area the appellant would face any real risk contrary to Article 15(c) of the Qualification Directive, as the appellant did not have an actual or perceived association with ISIS so as to give rise to an enhanced risk and there was nothing to indicate that

being Kurdish alone was sufficient to give rise to a real risk on return, having considered the country guidance caselaw.

11. The Judge did not find the appellant was entitled to be recognised as a refugee, did not find he was entitled to a grant of humanitarian protection, and did not find it made out the appellant was entitled to a grant of leave on human rights grounds either.
12. The appellant sought permission to appeal claiming the Judge failed to take into account a material matter and/or failed to resolve conflict within the evidence. It is claimed that there is no reference to the evidence the appellant relied upon in the decision in relation to risk he would face on return.
13. The appellant also asserts that the Judge's finding at [49] that there was no evidence of the relationship between ISIS and the Kerwei tribe is incorrect as at [57 - 58] of the hearing bundle there is reference to Iraqi Peshmerga forces jointly recapturing an area from ISIS, with a portion of the Kurdish population returning after encouragement from the federal government, but that after the withdrawal of the Peshmerga forces from Jalawa in 2017, Arab tribes relocated to the city including the Kerwei tribe which was expelled for cooperating with ISIS.
14. It is argued that had the Judge considered the matters set out in the grounds the decision may have been different.
15. Permission to appeal was granted by another judge of the First-tier Tribunal on 22 August 2023 on the basis the two matters identified in the grounds identify arguable legal error.
16. The Secretary of State opposes the appeal. In a Rule 24 response dated 7 September 2023 it is written:

2. R opposes the Appellant's ('A') appeal. In summary, R will submit inter alia that the Judge of the First-tier Tribunal ('FtT') directed themselves appropriately.
3. The grounds state that the evidence relied upon by the SSHD was imprecise and there is no reference to the evidence that the A relied upon in the decision. R invites the Tribunal to note the findings in MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) where it was found;

“(2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons.”

4. It is submitted that at [41] the FtT] gives clear and detailed reasons as to the findings that A's oral evidence was lacking in plausibility at [41]. It is trite law that it is generally unnecessary and unhelpful for FtT judgments to rehearse every detail or issue raised in a case (see Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC)). As such, it is submitted that the FtT] clearly resolves key conflicts in the evidence from [41] to [60] and on a proper and holistic reading of the determination, there is no material error in the FtT]’s findings.

### Discussion and analysis

17. Ground 1 asserting a failure to take into account a material matter and/or failure to resolve the conflict within the evidence refers to there being no reference by the Judge to material provided by the appellant. It is settled law that a Judge is not required to set out each and every aspect of the evidence and it is accepted that the First-tier Tribunal is a specialist tribunal which is deemed to have taken the evidence into account and to know and apply the law correctly unless it is proven to the contrary.
18. Mr Wood placed reliance upon an article appearing at [57 - 58] of the appellant's appeal bundle. It appears to be a news article published by Shafaq.com which is a Baghdad-based news site. There is no reference to the

author of the article or the material relied upon to support the content. The article refers to Kurdish families and does specifically state that Kurds only represent 10% of Jalawla's population but is not clear whether that refers to a statement made at the date of publication of that article or at another time. There is also no clear date upon the article in question, the date of 14 February 2023 in the bottom right-hand corner appearing to relate to the date the article was printed rather than publication date. The line relied on by Mr Woods comes out of a paragraph from that article, which in full reads "*On 23 November 2014, the Iraq and Peshmerga forces jointly recaptured the subdistrict from ISIS. A portion of the Kurdish population returned after encouragement from the federal government. However, after the withdrawal of the Peshmerga forces from Jalawla in 2017, Arab tribes relocated to the city, including the Kerwi tribe which was expelled for cooperating with ISIS*".

19. There was therefore before the Judge a document that may suggest a connection between ISIS and the Karwei tribe but in the leading case relating to an error of fact, and whether it amounts to an error of law of *E&E v Secretary of State the Home Department* [2004] EWCA Civ 49, the Court of Appeal set out the requirements for a finding of unfairness as follows:
  - i) the must have been a mistake as to an existing fact including a mistake as to the availability of evidence on a particular fact;
  - ii) the factor evidence must have been established, in the sense that it was uncontentious and objectively verifiable;
  - iii) mistake must have played a material (not necessarily decisive) part in the Adjudicator's reasoning.
20. The Judge at [36] confirms he has looked at all the evidence cumulatively with the objective information. The Judge noted the appellant's evidence that his main fear was of the Karwei tribe as explained in his asylum interview and witness statement.
21. The Judge at [44] notes again that in his screening interview when the appellant was invited to give reasons for his fear on return he stated it was the fear of ISIS without making any reference whatsoever to the Karwei tribe. Even though a judge needs to be careful about the weight attributed to answers in a screening interview, the Judge was entitled to find that the credibility of the appellant's claim was reduced by his failure to make reference to the Karwei tribe in his screening interview on the facts of this case. That is a finding within the range of those available to the Judge on the evidence.
22. The appellants claim to face a real risk from the PMF was found to lack credibility for the reasons given by the Judge in the determination which have not been shown to be affected by legal error.
23. In relation to the specific claim the Judge failed to consider the news article referred to above, such claim is without merit. In [47] the Judge made specific reference to this article indicating it was clearly considered by the Judge as part of the assessment of the credibility of the appellant's claim.
24. There is specific reference to the appellant's evidence concerning the Karwei tribe at [49] in which the appellant claimed that he received a telephone call from members of the tribe threatening him because he had reported three ISIS members. It is within that paragraph that the Judge claims no evidence had been put forward as to any claimed relationship between ISIS and the Karwei tribe. That comment does, however, have to be put in context. The appellant claimed that a member of that tribe telephoned him threatening him as he had reported three ISIS members. Although the news article indicates members of that tribe were expelled from Jawala as a result of cooperating with ISIS it does not

necessarily establish that the Judge's findings are outside the range of those reasonably open to the Judge. After the sentence with which Mr Wood takes issue the Judge repeats there was no reference to the Karwei tribe by the appellant when explaining briefly his fear of returned to Iraq. The Judge also writes "*no evidence has been put before me as to the claimed degree of influence and power of the Karwei tribe and having considered all the evidence before me in the round, I do not find the Appellant's account of the claimed incident with the Daesh members to be plausible, internally consistent or consistent with the background evidence that Daesh had been militarily defeated at the time of this claimed incident. I find that the Appellant's account of somewhat expanded over time to incorporate the claimed fear of the Karwei tribe in an attempt to bolster his asylum claim*".

25. The core finding of the Judge is that the main plank of the appellant's claim lacks credibility which is a sustainable finding. As the events involving Daesh did not occur, the appellant's claim that the matter was reported to the police who spoke with him as a result of arrests being made, and the subsequent threat by the Karwei tribe for reporting the members of Daesh, would not have occurred either. Therefore the error of fact pleaded is not material to the Judge's decision that the appellant's case lacks credibility, and he faces no real risk on return.
26. The appellant fails to establish any conflict in the evidence that the Judge failed to resolve, material to the decision to dismiss the appeal.
27. Having considered the evidence available to the Judge, the determination, the grounds seeking permission to appeal, and the submissions made to me at the hearing, I find the appellant has failed to establish legal error material to the finding that the appeal must be dismissed. It has not been made out there is anything irrational or unreasonable in the Judge's approach to the evidence in light of the findings made. Whatever the demographics of the appellant's home area they did not establish any real risk on return. There is no credible challenge to the Judge's findings in relation to documentation.

### **Notice of Decision**

28. No legal error material to the decision to dismiss the appeal has been made out. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**20 November 2023**

