



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02622/2020**

THE IMMIGRATION ACTS

**Heard remotely via Skype for Decision & Reasons Promulgated
Business
On 9 April 2021 On 21st April 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wood

For the Respondent: Mrs Pettersen, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a male citizen of Iraq who was born in 1991. He appeals against a decision of the First-tier Tribunal dated 12 November 2020 dismissing his appeal against the Secretary of State's refusal of his claim for international protection.
2. At the initial hearing on 9 April 2021, I told the representatives of both parties that I intended to set aside the decision of the First-tier Tribunal. I shall now give my reasons.

3. The Secretary of State, by a Rule 24 statement dated 11 January 2021, accepted that the judge had made a material error of law. The judge had not addressed the availability to the appellant of a CSID or similar identity document in Iraq and, as a consequence, had not properly assessed risk on return to Iraq. No criticism attaches to the judge for that failure; at the First-tier Tribunal hearing, the judge had been informed by the respondent's Presenting Officer that the appellant 'could be returned direct to the IKR by direct flight' from the United Kingdom. Not surprisingly, in the light of that information, the judge had not considered how the appellant might safely navigate his way from Baghdad to his home area of Iraq. The information was, however, inaccurate; all forced returns to Iraq are to Baghdad.
4. The Rule 24 letter argues that, notwithstanding the judge's material error, the findings of fact should be preserved as the error of law had not 'infected' those findings. The grounds of appeal challenge the findings of fact including what the judge says about CCTV video evidence which, for various reasons, could not be shown at the First-tier Tribunal hearing [7].
5. Whether findings of fact should be preserved when an decision is set aside is often difficult to determine in practice (see the recent decision of the Upper Tribunal in *AB (preserved FtT findings; Wisniewski principles) Iraq* [2020] UKUT 00268 (IAC)). There exists no 'hard-edged answer' and experience indicates that any attempt to preserve some findings whilst discarding others can often lead to more problems than it may solve. I did not hear extensive argument on the judge's assessment of credibility but I do note that permission has been granted on all grounds and that those grounds contain challenges to the judge's fact-finding analysis. I consider that the challenge to the judge's assessment of the CCTV evidence, in particular, has some force. I have decided to set aside the decision and the findings of fact. I consider that doing so will ensure a fair determination of the appeal. The appellant will, with the assistance of his recently-appointed representative, may take the opportunity of a de novo hearing to produce his video evidence in a way in which the Tribunal may properly consider it whilst the Secretary of State will no doubt consider the evidence given to the last Tribunal and judge's analysis when preparing for the cross examination of the appellant.
6. There was a brief discussion of the relevance to the listing of the appeal of the remittal of *SMO, KSP and IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 400 by the Court of Appeal for reconsideration in the Upper Tribunal. The listing of this appeal is a matter for First-tier Tribunal and any representations regarding matters such as country guidance should be made to that Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the appeal following a hearing *de novo*.

LISTING DIRECTIONS: Manchester; first available date; not Judge Herwald; first available date; whether remote or face to face to be determined by the First-tier Tribunal; Kurdish Sorani interpreter; 2 hours.

Signed
2021
Upper Tribunal Judge Lane

Date 9 April