



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/03555/2019 (V)

THE IMMIGRATION ACTS

**Heard at Bradford by Skype for Decision & Reasons Promulgated
business**

On 6 January 2021

On 28 January 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

AND

H A H

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms R. Pettersen, Senior Presenting Officer

For the Respondent: Mr T. Hussain, Counsel instructed on behalf of the appellant.

DECISION AND REASONS

Introduction:

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal (Judge Wilson) (hereinafter referred to as the "FtTJ") who allowed his appeal in a decision promulgated on the 20 November 2020.

2. Whilst this is the appeal of the Secretary of State, for ease of reference I intend to refer to the parties as they were before the First-tier Tribunal.
3. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
4. The initial hearing took place on 12 March 2020 but was adjourned due to the illness of one of the advocates. Directions were given on the same date but were not served until 24 April 2020.
5. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules, directions were sent out to the parties that the provisional view was that it would be appropriate to determine whether the decision involved the making of an error on a point of law without a hearing. Following further directions the appeal was listed as a remote hearing.
6. The hearing took place on 6 January 2021, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video as did the appellant so that he could listen and observe the hearing. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

7. The appellant is a national of Iraq. The history of the appellant is set out in the decision of the FtTJ and the decision letter dated 28 March 2019.
8. The appellant first entered the United Kingdom in 2000 and made an asylum claim on 28th of November 2000. His application for asylum was refused by the respondent on 8 July 2003. He appealed that decision on 23 July 2003 and the adjudicator dismissed his appeal in a written decision promulgated on 19 November 2003. The judge rejected the appellant's factual account of being at risk in Iraq and

expressly rejected his account that his uncle had been kidnapped and killed. The judge was satisfied that he was not in any danger from the KDP, Kurdish population generally or the Kurdish authorities and that he was of no interest to any of them and could return to Iraq safely.

9. Permission to appeal that decision was refused on 3 February 2004 and on 20 February 2004 he became appeal rights exhausted.
10. The appellant left the United Kingdom in 2007 but it appears that the authorities in France returned him to the UK in 2007. The appellant made a second claim for asylum but then withdrew the application in 2009 and returned to Iraq.
11. The appellant remained in Iraq until June 2014. The appellant claimed that militants killed his sister and brother in 2014 and therefore he left Iraq for a second time. His claim was that his sister was working as a policewoman for a bank and that militants had targeted her. He last saw her on 2 June 2014 and the next day the manager at the bank telephoned to say that his sister had been arrested by militants. When they went to find out what had happened they found that she had been killed the following day. As a result, the appellant stated that the family had to leave Iraq as they were likely to be targeted by the militants.
12. The appellant states that he, his mother and younger brother walked across the border to Turkey and that his elder brother was killed the same day. The family were in a refugee camp in Turkey, but he could not remain there and left his mother and younger brother whilst he found an agent to help him travel to Europe.
13. In October 2015 he found a place in a van going to Bulgaria and then travelled through a number of European countries before travelling to the UK. En route and whilst in Finland, he was arrested, and they took his Iraqi national ID card and that they continued to retain that identity document.
14. The appellant arrived in the UK in February 2016 and in March 2016 claimed asylum.
15. It appears that originally his case was considered by the third country unit but thereafter was considered as a fresh claim having lodged further submissions on 7 March 2018. This resulted in a decision letter of 28 March 2019 whereby the respondent refused his claim on all grounds.
16. The appellant lodged an appeal against this decision, and it came before the FtT on 30 October 2019.
17. In a decision promulgated on the 20 November 2019 the FtTJ allowed his appeal. The FtTJ found that the appellant had no documentation to enable him to return to Iraq and that the appellant would not be able

to obtain a CSID within a reasonable timescale. This was based on the appellant having no family left in Iraq and that the appellant confirmed at the hearing he did not know the page volume number or any details that might lead to the discovery of his information to enable the authorities to issue him with a CSID (at [18].) The judge found that without a CSID the appellant would be likely to face a real risk of destitution amounting to serious harm and any funds provided to him by the Secretary of State to assist his return would be exhausted. The judge found also that he could not relocate safely to the IKR.

18. Permission to appeal was sought by the Secretary of State and permission was granted by FtTJ Grant on 8 January 2020.

The hearing before the Upper Tribunal:

19. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
20. Ms Pettersen, on behalf of the SSHD relied upon the written grounds of appeal. There were also further written submissions dated 18 May 2020.
21. Mr Hussain, Counsel on behalf of the appellant, provided written submissions dated 15 May 2020 and 23 May 2020.
22. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions. I intend to consider their respective submissions when addressing the grounds of challenge advanced on behalf of the Secretary of state.

Decision on error of law:

23. Following the direction made by UTJ Plimmer in March 2020 at paragraph 5 of her directions, the respondent submitted a clarification of the written grounds of challenge. The UTJ did note that her provisional view was that the clearest ground of appeal appeared to be the submission that the FtTJ's acceptance that the appellant had no family was "inadequately reasoned".
24. Thus there are two grounds of appeal identified, firstly, ground 1 is that the FtT has had inadequate regard to the possibility of the appellant obtaining a CSID, by reference to exploring with the Finnish authorities the return of his own documents; background information and country guidance caselaw on the ability of an Iraqi national to

obtain a CSID from abroad even if not in possession of supporting documentation; and unreasoned findings as to the absence of family assistance in Iraq. Ground 2 is that the FtTJ has inadequately reasoned his acceptance of the appellant's credibility on key matters leading to an erroneous assessment of documentation and return to Iraq.

25. In considering those grounds I have had the opportunity to carefully read and consider the written submissions submitted by Mr Hussain on behalf of the appellant (dated 15 May 2020 and a skeleton argument 23 May 2020) and also the oral submissions of the advocates. It seems to me that ground 2 should be considered first because if there is a material error of law which arises on the basis of the arguments advanced there, it must follow that the FtTJ did not properly address the issues of redocumentation on the correct factual basis.
26. It is submitted on behalf of the respondent that the FtTJ has inadequately reasoned his acceptance of the appellant's credibility on key matters that arise for analysis on the facts of this appeal. Those relate to the whereabouts of his documentation, his ability to either obtain or replace them which involves consideration of the whereabouts of family members.
27. The written submissions set out that on these "key issues" the FtTJ unquestioningly accepted the appellant's evidence that he had no access to any documentation and that he had no family relatives in Iraq who could provide him with any assistance. The grounds expressly identify the following matters; the judge has not considered why the appellant cannot obtain his CSID and other papers from the Finnish authorities whom the appellant claims are in possession of them (see paragraph 7 and 15 and appeal hearing minute), the claimed lack of a CSID is a crucial point of the appellant's claim which was unresolved by the FtTJ and thus renders findings at paragraph [14 - 25] as inadequate. The judge found that the appellant had made no attempt to contact the Iraqi embassy in the UK (paragraph 19) which impacted on the appellant's credibility, having been in the UK for so many years yet making no attempt to obtain support. As regards family members, the appellant has 21 aunts and uncles but claims none are in Iraq and the findings at paragraph 16 - 18, 21 and 24 overlook this material point and are a "bare acceptance" of the appellant's claim that he has no family support either to obtain the CSID or to help him to relocate.
28. By way of response, Mr Hussain on behalf of the appellant submits that the FtTJ did not err in law in respect of the findings made as to documentation and that he had no family support in Iraq. In his oral submissions Mr Hussain reminded the tribunal that the FtTJ had the advantage of hearing oral evidence from the appellant and that this was a well-reasoned decision and one where the judge accepted the

appellant's account as credible and was therefore entitled to find that he was not in touch with family members nor would he have access to any documentation to enable him to return safely. Thus Mr Hussain submitted that the grounds were simply an attempt by the respondent to re-argue their case and that the appeal should therefore be dismissed.

29. In answer to my question as to whether the judge had made factual findings concerning the claimed events in Mosul, Mr Hussain submitted that the judge did not expressly deal with these events. However, it would not have taken the matters any further as without a CSID he would not be able to travel anywhere in Iraq. Whilst he accepted that it would have been better for the FtTJ to have considered the circumstances in Mosul, he submitted that the omission was not material due to the fact that without a CSID the appellant would not be able to negotiate the checkpoints and therefore would be left stranded in Baghdad which would be in breach of Article 3.
30. Ms Pettersen by way of reply submitted that those observations made on behalf of the appellant did not deal with the position advanced by the respondent that the judge had failed to take account of documents that the appellant would have access to if he were to contact the Finnish authorities nor did it properly deal with the appellant's failure to attend at the Iraqi embassy both of which were points relevant to assessment of the appellant's credibility.
31. I have carefully considered the submissions made on behalf the advocates and have done so in the light of the material before the judge and his decision. Having done so, I am satisfied that ground 2 is made out and that the respondent has demonstrated there is an inadequacy of reasoning in the decision to deal with the key factors in this appeal. I shall set out my reasons for reaching this decision.
32. The FtTJ allowed the appeal on humanitarian protection grounds for the reasons that he set out at paragraph 25. The judge stated that he was satisfied "of the real risk that he would suffer serious harm as defined in paragraph 339CA of the immigration rules specifically that he would suffer inhuman or degrading treatment or punishment in Iraq, or that he would suffer a serious and individual threat to his life or person by reason of indiscriminate violence in situations of internal armed conflict there. His appeal consequently succeeds."
33. It is unclear to me upon what basis the judge found that the appellant would suffer a "serious and individual threat to his life by reason of indiscriminate violence in a situation of internal armed conflict" given that the FtTJ made no assessment of Article 15 (c) by reference to the country materials or by any reference to the appellant's own personal circumstances. However, it is clear that the judge did not allow the appeal having made factual findings that the appellant

would be at risk either in Mosul; on humanitarian protection grounds or on Refugee Convention grounds.

34. Nonetheless, it is common ground the judge appeared to allow the appeal on the basis that the appellant had no documentation available to him and that he was not in contact with any family members who would be able to obtain the requisite documentation, a CSID, within a reasonable timeframe (see paragraph [23]).
35. Ground 2 relies on the failure of the FtTJ to make factual findings as to the appellant's personal circumstances relevant to those issues. It was common ground that the appellant's home area was Mosul, however there are no factual findings as to the events that the appellant claimed took place there in 2014 which gave rise to the appellant's return to the UK for a second time.
36. The appellant's fresh claim was advanced on the basis that following his return to his home area in 2009 he remained living there with his family members until 2014. He claimed that his sister was killed by militiamen in June 2014 when she had been working as a policewoman at a bank and that she had been specifically targeted by militants. His claim was that the bank manager had telephoned him to say that his sister had been arrested at the bank by militants and that the next day she was found dead. The appellant's claim was that he left Iraq because he was related to a policewoman and also on account of his ethnicity. It was further claimed that after he left Iraq he went to Turkey with his mother and younger brother and that his elder brother was killed. His claim was that he had left his family members in Turkey and had not seen them since and had no other relatives remaining in Iraq who could provide support or assistance.
37. There were no factual findings made as to those events in Mosul either by reference to the appellant's factual account or in the context of the objective country materials. The decision letter expressly challenged the appellant's claim that his sister and brother were killed by militia in Iraq (set out at paragraph 54 of the decision letter) and that the appellant had failed to evidence that his brother and sister died, how it occurred and whether it was at the hands of the militia.
38. Whilst Mr Hussain submits that the failure to consider the circumstances in Mosul was not material to the FtTJ's assessment, I do not consider that that is correct. The question of documentation and availability of documentation and return to Iraq relies upon factual findings being made as to the existence of family members, what happened to them and whether steps had been taken to locate or trace them and in the light of previous credibility findings. It is also relevant to consider those issues in the context of the country materials and in particular the events and conditions in the home area.

39. Whilst Mr Hussain submits that the decision was well reasoned, in my judgement, the FtTJ did not address any of those factual issues and as identified by the respondent and as to the question of family members in Iraq, the FtTJ operated on a bare acceptance that he had no family members living in Iraq the militia having killed his sister and brother in 2014 (see paragraph [17] of the decision). The FtTJ also set out at [17] “ he further stated that time he saw his mother and his younger brother was in a refugee camp in Turkey and confirm during the course of his evidence that he had no idea where they were now, or indeed whether they were still alive.” At [21] the judge stated, “I am additionally satisfied that because he has no family or other members likely to be able to provide a means of support him once he is back in Iraq, without a CSID he is likely to face a real risk of destitution amounting to serious harm when any funds provided to him by the Secretary of State to assist his return are exhausted.” There are no reasons given by the FtTJ for reaching those conclusions or accepting the appellant’s evidence on those key issues as to the whereabouts of family members or his documentation. At best the reasoning appears to stem from the appellant’s further submissions made on 7 March 2018 that he had no family members, but I can see no other reasoning as to why the judge accepted the appellant’s evidence. Mr Hussain has not pointed out to the Tribunal any reasoning to underpin such an assessment beyond his general submission that the appellant had given oral evidence which the FtTJ accepted.
40. As set out the decision letter expressly challenged the appellant’s account of events in Mosul and the whereabouts of the family members but the FtTJ did not assess that claim in the light of the appellant’s evidence or against any background evidence available to resolve those issues of fact. I accept the respondent’s submission that instead, the FtTJ expressed his satisfaction with the appellant’s evidence on this issue, and in fact on all material issues, without supporting this with any reasoning or any critical analysis.
41. In particular, the respondent points to the cross-examination of the appellant and that it was elicited in cross examination that the appellant had a large number of aunts and uncles but that he claimed that none were in Iraq. The grounds attach a copy of the appeal hearing minute which evidences this, and it is also set out in the handwritten record of proceedings. It has not been submitted on behalf of the appellant that the contents of the appeal minute hearing was incorrect in any way. Given this evidence and the express challenge made by the respondent in the decision letter, the judge was required to resolve those issues by analysing the evidence and giving reasons for reaching his view rather than a bare acceptance of the appellant’s claim that he has no family support or any family members available in Iraq to assist in re-establishing himself, or re-documenting himself.

42. A further point identified by the respondent is the FtTJ did not take into account any previous adverse credibility findings in his assessment of the appellant's claim.
43. There is no dispute that the appellant's claim for asylum was dismissed by a judge having reached adverse credibility findings. The judge expressly rejected that the appellant's uncle had been kidnapped and killed in Iraq and found that his account was not only incredible but was a fabrication. Whilst the present FtTJ stated that he did not have the decision and that the only information that he had was the "selective quoted text" in the decision letter, there was sufficient material quoted in the decision letter for the judge to proceed on the basis that the appellant's previous claim as regards what happened to family members had been rejected as a fabrication. I would accept that the decision was of some age, having been made in 2003 and as identified by the judge at [13]. However, the previous adverse credibility findings made played no part in the FtTJ's decision-making process or in his assessment of credibility. No consideration was given his failure to contact the Iraqi embassy during the lengthy period of time that he had been in United Kingdom which was a further matter which impacted on his credibility nor his failure to make any requests for his documents from the authorities in Finland whom the appellant claimed was in possession of them (see paragraph 7, 15 and the appeal hearing minute). Consequently, his claimed inability to obtain a CSID which is a key point in the assessment made by the judge, was unresolved and which in my judgement rendered his assessment at paragraphs [14 - 25] to be inadequately reasoned.
44. In my judgement without those issues being considered and in the absence of any reasoning on those issues, they undermine the FtTJ's assessment that the requisite documentation cannot be obtained which led to the appeal being allowed. For example, the country guidance decisions make reference to applications being made by an appellant and being supported by evidence from family members (see paragraph 26 and 101 of AAH(Iraq)). Thus the relevance of the identity and whereabouts of family members are key to the assessment of the availability or otherwise of documentation and the ability to be able to return to Iraq either to his home area or in terms of relocation.
45. Each case must be analysed on a fact specific basis and for the reasons set out above, I am satisfied that the decision of the FtTJ is inadequately reasoned on the key factual areas which were necessary to underpin a proper analysis of the risks on return to Iraq.
46. In reaching that decision I recognise that allegations made concerning the failure to give adequate reasons are frequently made and as Brooke LJ observed in the course of his decision in *R (Iran) v The Secretary of State for the Home Department* [2005] EWCA Civ 982,

the obligation on a tribunal is to give reasons in sufficient detail to show that the principles on which the tribunal has acted and the reasons that have led to the decision. On the fact this particular appeal I am satisfied that it does fall within that category and that there was a failure to give adequate reasons for his decision.

47. Consequently, I am satisfied that it has been demonstrated that the decision of the FtT did involve the making of an error on a point of law and that the decision should be set aside. In the light of that assessment, it is not necessary to consider ground 1 because the assessment of a return to Iraq relies upon the factual findings being adequately reasoned.
48. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

49. As it will be necessary for the appellant to give evidence and to deal with the evidential issues, further fact-finding will be necessary alongside the analysis of risk on return in the light of the relevant evidence, and the up-to-date country guidance decision of *SMO and others* and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing. I further note that the appellant also seeks to rely upon further and more recent evidence in support of his human rights claim on Article 8 grounds in relation to his British citizen son living in the United Kingdom.
50. For those reasons, the appeal shall be remitted to the FtT for a further hearing.

Notice of Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT shall be set aside and to be remitted to the First-tier Tribunal.

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Upper Tribunal Judge Reeds

Dated 19 January 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.