



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09559/2019 (P)**

THE IMMIGRATION ACTS

**Decided under Rule 34
On 18 November 2020**

**Decision & Reasons Promulgated
On 01 June 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a citizen of Iraq who was born in 1982. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 13 September 2019 refusing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 28 January 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The Upper Tribunal has taken a provisional view that the matters of error of law/setting aside the First-tier Tribunal decision can appropriately be disposed of without a hearing. Neither party has objected to that proposed form of disposal. Upon review of the papers, I find that the Upper Tribunal can fairly determine the appeal without a hearing.
3. By submissions dated 7 September 2020, the Secretary of State has stated that she does not oppose the appeal. In particular, she accepts that the First-tier Tribunal erred in law such that its decision falls to be set

aside by misunderstanding and /or overlooking part of the evidence adduced by the appellant. The appellant's witness (Mr S) had provided two witness statements. In the first, Mr S refers to the appellant telling him about problems the appellant had encountered in Iraq. The judge at [61], however, had found it 'very unlikely that the appellant would not have told his friend about [his problems] before his visit in 2017...I do not find the evidence of [Mr S] to be reliable...' It would appear that the judge has failed to have considered the first statement of Mr S since his findings directly contradict the evidence contained in that statement. If the judge has considered the first statement but found its contents unreliable then he has failed to give any reasons for so finding. Accordingly, I find that the Tribunal's rejection of Mr S's evidence cannot stand. I agree with both parties that the decision must be set aside for legal error. Since the error concerns the judge's overall assessment of the credibility of the appellant's evidence in the appeal, there will need to be a fresh consideration of that evidence and a fact-finding exercise *de novo*. That exercise is better conducted in the First-tier Tribunal to which this appeal is returned.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 28 January 2020 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (**not Judge Bell; 1.5 hours; Glasgow; first available date; Kurdish Sorani interpreter**) for that Tribunal to remake the decision at or following a hearing *de novo*.

Signed
2020

Date 18 November

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.