



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

Appeal Numbers IA/04461/2021  
(PA/51760/2021) UI-2021-001391

**THE IMMIGRATION ACTS**

**Heard at Manchester on  
25 March 2022**

**Decision and Reasons  
Promulgated  
21 June 2022**

**Before**

**Deputy Upper Tribunal Judge Sills**

**Between**

**HMM  
ANONYMITY DIRECTION MADE**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**ERROR OF LAW DECISION**

**Representation:**

For the Appellant: Mr Howard  
For the Respondent: Mr Tan

**Introduction**

1. The Appellant (A) appeals against the determination of First-Tier Tribunal Judge Mack (the FTT Judge) dated 28 October 2021, dismissing his appeal against the refusal of his protection claim.

**Factual Background**

2. A is a citizen of Iraq, born on 19 February 2001. The basis of A's protection claim, as summarised by the FTT Judge, is as follows. A stated he was an ethnic Kurd from Ranya. His problems stemmed from his brother's relationship with a girl from the Jaffe tribe. His brother was killed by her family as a result. A's father fled, and A went into hiding with an uncle before fleeing Iraq.
3. A's protection claim was refused on 18 March 2021. His appeal was dismissed by the FTT Judge in a determination dated 28 October 2021. The FTT Judge found that A's account was not credible and dismissed the asylum appeal. The FTT Judge found that A would not face a risk of an ECHR Article 3 breach due to a lack of documentation. The FTT Judge dismissed his appeal on ECHR Article 8 grounds.
4. A applied for permission to appeal arguing that the FTT Judge had erred in two ways which I summarise. First, the FTT Judge had applied the incorrect standard of proof. The grounds highlighted the language used at paras 53 and 55. The credibility findings undermined the requirement to carry out a global assessment of the evidence. The findings were based on assumptions, probabilities, and the incorrect standard of proof. Second, at paras 72 and 74 the FTT Judge failed to note that a negative contact with family would be difficult to prove. The findings were based on assumption. In the absence of a CSID, A would face destitution.
5. Designated Judge Shaerf granted permission on 2 February 2022. In granting permission Judge Shaerf suggested that while the language used by the FTT Judge may have been too robust, there were a number of apparent inconsistencies in the claim sufficient to raise serious doubts about the credibility of the account. The FTT Judge had arguably failed to consider the difficulties A would face travelling from Baghdad to the Kurdish Autonomous Region. Judge Shaerf highlighted the second ground as being the stronger ground. The Respondent (R)'s Rule 24 response opposed the appeal.

### **The Hearing**

6. At the hearing, Mr Howard argued that the repeated use of the word incredible showed that the FTT Judge had not applied the correct standard of proof, and that the standard of proof applied was too high. In relation to the second ground, he argued that the incorrect standard had been applied, that A could not be expected to show a negative, and that if the FTT Judge had erred in finding that A could obtain his CSID from family, the FTT Judge had failed to apply the principles from SMO in relation to redocumentation. Mr Tan argued that the FTT Judge had applied the correct standard of proof and had made a clear finding that A had access to his CSID. I reserved my decision.

### **Findings**

7. I consider ground one first, and the submission that the FTT Judge applied too high a standard of proof. Mr Howard argued that the

description of A's evidence as 'incredible' at paras 39, and 50-52 showed that too high a standard of proof had been implied. At para 39 the FTT Judge found that it was incredible that A did not know who was threatening him in Iraq, and would not have asked for more information from his uncle about what had happened. She went on to find that it defied rational explanation that A would not know who he should fear. At para 50 the FTT Judge refers to A failing to answer the question as to whether he had asked his uncle about the whereabouts of his family, as his uncle was in contact with his family, and describes a 'weak incredible fabricated narrative'. At para 51 the FTT Judge found it was literally incredible that A did not know where he lived and worked with his uncle. This was not remotely plausible. At para 52 the FTT Judge states that it is 'simply incredible' that A would not know how to contact his uncle.

8. It is important to note that the criticism is of the language used and the argument is that this demonstrates that the Judge applied too high a standard of proof. I do not accept this submission. I note first of all that at para 20 the FTT Judge directed herself correctly as to the standard of proof, including the need to look at the case in the round. While the case must be considered in the round, there also needs to be analysis of particular issues in the case first. The FTT Judge committed no legal error in expressing views on particular pieces of evidence in this way. Further, the strident language is consistent with the FTT Judge's ultimate finding at para 55 that even on the lower standard the FTT Judge did not accept A's account. Hence the FTT Judge found not that A's claim was not likely to be true, but there was not a reasonable degree of likelihood that it was true.
9. Mr Howard was of the view that it would have been permissible for the FTT Judge to state that various the aspects of A's evidence were not credible, but not for the FTT Judge to state incredible. It is debatable whether there is a difference between not credible and incredible. If there is a difference, an incredible claim must be less likely to be true than a not credible claim. Thus if 'not credible' is acceptable in the context of the lower standard of proof, then incredible must also be. The language used is in line with the FTT Judge's subsequent global finding that there was not a reasonable degree of likelihood that A's claim was true. I find that the FTT Judge applied the correct standard of proof and the first ground identifies no error of law. I dismiss the first ground of appeal.
10. The second ground concerns A's claim that he would face serious harm on return due to a lack of documentation. I have already found that the FTT Judge did not err in referring to A's claim that he did not know how to contact his uncle at para 52 as incredible. Mr Howard objected to the FTT Judge's statement at para 72 that she did not accept that A was not in contact with family and could not avail himself of his CSID as this was a double negative. The double negative simply reflects the nature of the claims. A's claims were that he did not have contact with

family and did not have a CSID. The FTT Judge had to decide whether she did or did not accept A's claims and stated so in terms.

11. Further the FTT Judge gave sustainable reasons for finding that she did not accept that A was not in contact with his family and did not accept that he could not avail himself of his CSID. The FTT Judge states at para 72 'the appellant's core claim has been rejected. I have found the issue as to his credibility is settled'. Having found the core of A's claim not credible, which included assessment of his claims about his contact with his family, the FTT Judge was also entitled to reject his claims not to have contact with his family, and not to have a CSID. The FTT Judge's findings and reasons on these matters disclose no error of law. Having found that A had not established that he had lost contact with his family and could not access his CSID, it was not necessary for the FTT Judge to consider whether A could re-document himself. A had not established that he needed to re-document himself. I thus dismiss the second ground of appeal.

### **Notice of Decision**

The appeal is dismissed.

Signed

Date 22 April



2022

Deputy Upper Tribunal Judge Sills

### **Direction regarding anonymity - Rule 14 of the Upper Tribunal Rules**

**Unless and until a tribunal or court directs otherwise, the Appellant is 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 Appellant and the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.**

Signed

Date 22 April

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a horizontal line that extends to the right and then curves back up.

2022

Deputy Upper Tribunal Judge Sills