



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/02893/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Manchester  
On: 27<sup>th</sup> January 2016**

**Decision & Reasons  
Promulgated  
On: 4<sup>th</sup> February 2016**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**DMAK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Iraq born on the 1<sup>st</sup> January 1993. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge DA Thomas) to dismiss his appeal, on asylum and human rights grounds, against the Respondent's decision to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999.

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<sup>1</sup> Permission granted by First-tier Tribunal Judge Osbourne on the 25<sup>th</sup> June 2015.

## Background and Matters in Issue

2. The Appellant claimed to have a well founded fear of persecution in Iraq for reasons of his imputed political opinion. He is a Sunni Kurd from Sulaymaniyah. He claims to have worked as a driver for Susa prison and to have wrongly been accused by the governor of having assisted a high-profile Islamist prisoner escape. The Appellant was told by the governor that if this man escaped, he would be forced to serve the remainder of the escapee's sentence. He fears that he will be subject to ill treatment. He further fears harm from the terrorists who organised the escape.
3. The Appellant was twice interviewed by an immigration officer. His initial 'screening interview' took place on the 28<sup>th</sup> December 2013 at Yarlswood but it was in his second 'substantive' interview on the 16<sup>th</sup> January 2015 in which the Appellant fully set out his case. The Appellant had neither solicitor nor independent interpreter present. The Appellant supplied one item of corroborative evidence in support of his claim, a card which purported to be his identity card issued by the Iraqi Correctional Service.
4. The details of his claim can be summarised briefly. He was twice followed whilst driving by unidentified men in a BMW. On a third occasion these men pulled him off the road at gunpoint and told him that they knew he worked in the prison and that he had to help them get a certain prisoner, named S, out. They said if he helped them he would be paid; if he refused he would be killed. The Appellant went to the prison and reported the incident to the governor who told him that the prisoner in question had two heavy sentences, one for twenty years and one of execution. He said that this man could not be allowed to escape and that if the Appellant helped him he would serve his sentence. This is the rule in Iraq. Subsequently the prisoner did escape. The Appellant feared that the governor would be as good as his word and went into hiding. He claims that the police came looking for him at home. His family arranged for an agent to take him out of the country.
5. The refusal letter is dated 23<sup>rd</sup> January 2015. The Appellant's account is summarised and rejected. The Respondent found there to be numerous internal inconsistencies in the account, for instance in the Appellant claimed in his screening interview to have been "rescued by the police" whereas he had made no mention of this in his substantive interview. The Respondent was unimpressed by the ID card which *inter alia* bore a photograph of someone who didn't even look like the Appellant. The Appellant had been asked to describe his uniform and his answers did not accord with country background information held by the Home Office in respect of what Iraqi prison guards wear.

6. When the matter came before the First-tier Tribunal the Appellant's account was similarly rejected. The determination identified the following inconsistencies as reason to disbelieve the Appellant:
- i) The interview record shows that the Appellant referred to a "female" prisoner having escaped yet in his oral evidence he denies this and attributes the record to interpreter error;
  - ii) The ID card is not reliable evidence because one side (in Arabic) was not translated, the English side does not provide any of the biographical details one would expect to see on such a document; the man in the photograph (whom the Appellant accepts does not look entirely like him) is not wearing a uniform;
  - iii) It is "not credible" that the Appellant would have told the Governor of the prison about the planned escape;
  - iv) At the time of the escape the Appellant was with two other guards so could not reasonably be suspected of involvement in it;
  - v) There is no country background evidence to support the Appellant's claim that in Iraq it is the law that guards who allow prisoners to escape have to serve the sentence *in lieu*;
  - vi) The Appellant does not even claim to be a guard but a driver so even if that was the law he could not be held responsible;
  - vii) It is "not credible" that the Appellant would have been at his uncle's house when police came looking for him at his family home;
  - viii) The Appellant's claim to have had an arrest warrant issued in his name but that he left it with his agent is rejected as not credible.
7. The Appellant drafted his own grounds of appeal. There is one central point. That is that the Appellant never said that it was a female prisoner who escaped. The interview record is wrong. The Appellant has had a registered certified interpreter, Mr Ali Sarmeny, listen to the entire recording of the interview. Mr Sarmeny has written a letter dated 1<sup>st</sup> June 2015 wherein he confirms that having heard the whole recording he nowhere heard the Appellant mention the escape of a female prisoner. The Appellant further maintains that it is an error of fact to assert that drivers who work for the Iraqi prison service wear uniforms.
8. Permission was granted on the grounds that it was arguable that the determination contains an error of fact, in that the Tribunal has expressly held against the Appellant the inconsistency in his claim,

then denial, that it was a female prisoner that escaped. If Mr Sarmeny is correct and the interview record is wrong, there would be a material unfairness to the Appellant which arguably impacts on the whole decision.

9. At the hearing the Appellant appeared in person. He has had no legal assistance throughout his entire asylum process and for that reason I permitted him to make further submissions about the content of the determination. He wished to make the further submission that he had never stated that the photograph on the card did not look like him; what he had said was that the way the card was printed may have made the photograph look different. He maintained that the picture was him.

### **My Findings**

10. Although no explanation is offered as to why the word “female” makes at least two appearances in the interview record, the Respondent now accepts (by way of letter dated 22<sup>nd</sup> January 2016) that the Appellant has never claimed that a female prisoner escaped. Paragraphs 22-23 of the determination specifically reject as not credible the Appellant’s explanation that the interpreter made a mistake in his interview. We now know that he was quite right to make that claim. The determination therefore contains a material error of fact.
11. I am further satisfied that the photograph on the ID card (I was shown the original by Ms Johnstone) does in fact look like the Appellant. The ‘concession’ made by him was, in effect, that in the printing the picture had become slightly distorted. It depicts a man who looks just like the Appellant, albeit with more hair. I would note that the Appellant is quite distinctive looking.
12. Although not raised by the Appellant I am further satisfied that the First-tier Tribunal was not rationally entitled to describe as “not credible” the assertion that he informed the Governor of Susa prison about the planned escape. The reason given for that conclusion is that he would not have done this given the possible consequences for him if there was in fact an escape. This appears to overlook the fact that the Appellant was, by his account, an employee of the Iraqi prison service and that in that capacity he might be expected, as a basic duty, to be loyal to his employers and not allow prisoners to escape. It also fails to take into account the evidence that the Appellant had been threatened and that he had already sought the protection of the police by telling them about what had happened. In that context his visit to the Governor was entirely consistent. Similarly the First-tier Tribunal appear to reject without reason the Appellant’s evidence that he had gone to his maternal uncle’s house for dinner on the evening that police came to his family home. That is simply said to be “not credible”; upon reading the determination I do

not understand why.

13. Ms Johnstone argued that notwithstanding any errors in the determination the overall decision was sustainable. The Tribunal had given a number of other reasons why the account was rejected and taken cumulatively they were sufficient for the appeal to be dismissed even if the reasons infected by error are taken out of the equation.
14. The Appellant's challenge to this determination was at first blush unpromising. My initial view was in accordance with that formed by the Respondent. However having read the refusal letter, interview record and determination with care, and bearing in mind that the standard of proof is relatively low and that this was an appellant without legal representation, I am not satisfied that the overall credibility findings can survive uninfected by the errors identified above. The Tribunal's starting point was that there was a glaring and material inconsistency in the Appellant's evidence and that he had wrongly sought to blame this on an interpreter. From there various matters are dismissed as "not credible" without in my view, rational or sufficient reason. No alternative findings are made in respect of whether or not there would be a viable internal flight alternative for this Appellant. The decision is therefore set aside in its entirety.
15. The Appellant tells me that he has now managed to obtain a translation of the identity card. He can now admit this into the evidence. In view of the extent of fact finding required it is appropriate to remit this matter to the First-tier Tribunal. The Appellant should bear in mind, should he continue to represent himself, that at the next hearing the burden is on him to demonstrate that a) he remains at risk in his home area of Sulaymaniyah and b) that if returned to Iraq it would be unreasonable for him to relocate to Baghdad.

## **Decisions**

16. The decision of the First-tier Tribunal contains error of laws and it is set aside.
17. The decision is to be remade in the First-tier Tribunal.
18. The First-tier Tribunal made a direction for anonymity and that stands.

Upper Tribunal Judge Bruce  
29<sup>th</sup> January

2016