



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

**Appeal Number: PA/52667/2021
(UI-2022-001636); IA/08078/2021**

THE IMMIGRATION ACTS

**Heard at Bradford IAC
On the 9 November 2022**

**Decision & Reasons Promulgated
On the 28 November 2022**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**AHA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk, Counsel instructed on behalf of the appellant
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Anonymity :

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008:
Anonymity is granted because the facts of the appeal involve a protection claim. and 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.

DECISION MADE PURSUANT TO RULE 40 OF THE TRIBUNAL PROCEDURE
(UPPER TRIBUNAL) RULES 2008

1. The appellant, who is a national of Iraq, appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the “FtTJ”) who dismissed the appellant’s protection and human rights appeal in a decision promulgated on the 23 December 2021 .
2. Permission to appeal that decision was sought and on 29 March 2022 permission was granted by FtTJ Beach.
3. At the hearing, Mr Diwnycz on behalf of the respondent conceded that the decision of the FtTJ involved the making of errors of law as set out in the appellant’s grounds namely that there were material mistakes of fact (see paragraphs 1-6 of Ground 1) and a material error concerning the issues of documentation/redocumentation (Ground 5).
4. The appellant’s sur place claim and the issue of return (in the alternative) in the light of the issue of documentation /redocumentation and in the context of the country materials and the country guidance decision were the central aspects of the appeal.
5. The principal mistakes of fact centred around the consideration of the documentary evidence relevant to the sur place claim. This led to a number of adverse credibility findings being made against the appellant which were material to the overall assessment of his claim.
6. Both advocates invited the tribunal to remit the appeal to the FtT for a fresh hearing. Both advocates gave consent for a decision to be made under Rule 40.
7. The parties are in agreement that the FtTJ erred in law in his consideration of the sur place claim by not taking into account all of the documents available which affected the overall assessment of the credibility of his claim as set out in the grounds of challenge (Ground 1) and also the issue of return in the alternative in the context of the evidence (Ground 5). Both parties also agree that the points set out in the grounds, taken individually or cumulatively, establish material legal errors in the decision reached by the FtTJ.
8. In terms of remaking the decision, it is evident that both parties agree that the credibility findings are flawed so that none of the findings of fact are sustainable. Accordingly I am satisfied that it would in all circumstances be appropriate to set aside the decision in its entirety and for it to be remitted to the First-tier Tribunal to be heard fresh as both parties have invited the Tribunal to do. This course is consistent with the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal. Given the nature of the errors a fresh hearing is required. Accordingly the appeal falls within both paragraph 7.2 (a) and (b)

of the practice statement, and I therefore remit the appeal to the First-tier Tribunal for that hearing to take place.

9. Rule 40 of the Tribunal Procedure (Upper Tribunal) rules 2008 allows the Upper Tribunal to give a decision orally at a hearing. Rule 40 (3) states that the Upper Tribunal must provide written reasons with a decision notice to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings. Rule 40 (3) provides exceptions to the rule if the decision is made with the consent of the parties, or the parties have consented to the Upper Tribunal not giving written reasons. In this case the parties consented to a decision without reasons pursuant to Rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008. I am satisfied that the parties have given such consent at the hearing.

Decision

10. The decision of the First.-tier Tribunal involved the making of an error on a point of law; the decision is set aside and shall be remitted to the First-tier Tribunal to be heard afresh.
11. *Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

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Signed Upper Tribunal Judge Reeds
Dated : 9/11/ 2022