



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2021-000621**  
**First-tier Tribunal No:**  
**PA/00034/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 17 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**MSZ**  
**(ANONYMITY ORDER MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr Holmes, Counsel instructed on behalf of the appellant.  
For the Respondent : Mr McVeety, Senior Presenting Officer

**Heard at Bradford (IAC) on 5 April 2023**

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Sills (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection and human rights appeal in a decision promulgated on the 7 July 2021.
2. Anonymity had been granted by the FTT and was granted because the facts of the appeal involved a protection claim. Neither party applied for or made any submissions that the order should not continue. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

3. Permission to appeal the decision of the FtTJ was sought and on 14 October 2022 permission was refused but on renewal was granted by UTJ Gill on 26 January 2023.
4. The background to the appeal is set out in the decision of the FtTJ, the decision letter and the bundles provided. The appellant claims to be a citizen of Iran. His immigration history is as follows. He arrived in United Kingdom on 16 July 2019 clandestinely and claimed asylum on 22 August 2019. He left Iraq, with his parents on an date unknown, after being picked up in a car travelling to a house in Turkey. He was taken from the house by 2 people and put into the back of a lorry. He travelled for approximately 4 months, to France and other locations and on dates unknown and arrived in the UK.
5. The basis of the appellant's claim was that he believed he was a national of Iran, he could not confirm his nationality, but his mother was an Iraqi national. It was stated that he left Iran when he was very young and moved to live in Iraq. It was further claimed that his parents left Iran because of the problems his father was experiencing and that he had come under threat due to his involvement with the Democratic party selling guns and transporting them. It was said that threats continued in Iraq, and he had to leave there.
6. The respondent refused the application in a decision taken on 16 June 2020 (" the decision letter"). The respondent accepted that the appellant was of Kurdish ethnicity. The appellant was unable to give details of his father's political activity, but this was considered reasonable. His responses about the threat to his family were lacking in detail and it was reasonable to expect the appellant to have a better understanding of why his family was under threat. The appellant claims that his father was making massive threats towards the Iranian government towards the end of the interview. It was unreasonable that the appellant was only aware of this when he was living in Turkey. The appellant's account of his father's activities with the Democratic party were lacking in detail and inconsistent and it was not accepted that his father was so involved. As to his claim have no family in Iran this was unsubstantiated. The protection claim was refused but he was granted a period of leave by reason of his age.
7. The appellant appealed the decision taken by the respondent and the appeal came before FtTJ Sills. In a decision promulgated on the 7 July 2021 the FtTJ dismissed the appeal. He set out his assessment of the evidence and his findings of fact between paragraphs 11 - 21 and summarised them at paragraph 22. The FtTJ found that there were a number of matters on which the appellant could not be reasonably be expected to have much knowledge, particularly relating his father activities. However, on the facts of the case, the FtTJ identified other aspects of the appellant's account which did not support his protection claim, even when taking account of the appellant's age. Having considered the evidence about how the appellant claimed to have lost contact with his family, the judge was satisfied that it was not credible for the reasons that he had set out earlier in his decision. He did not accept that it was reasonably likely to be true that his family had first fled Iran and then Iraq fearing for their lives and would send their son into Europe without any means of remaining in contact with him when there were obvious ways to maintain contact (which the FtTJ had set out earlier in his decision). As to his family circumstances, the FtTJ did not accept that the appellant knew he was born in Iran but did not know where he was born in Iran. It was noted that he remained in contact with his family in Iraq but despite this did not provide any more detail about his past. In relation to the documents that had been obtained from Iraq, the appellant was unable to give much detail,

including how was obtained, about the claimed ID for his father and the judge concluded that he was not satisfied that it was reliable evidence when considering it “in the round.” Thus he did not accept the appellant’s account that he was born in Iran to an Iranian father nor that he appellant previously lived in Iran or left Iran as a young child. The FtTJ did not accept that the appellant’s father was involved in any pro-Kurdish Iranian political activity whether in Iran or Iraq and did not accept that the appellant had left Iraq for the reasons that he claimed. At paragraphs 23 –25, the FtTJ applied his factual findings to the issue of nationality and risk on return and concluded that as he rejected the appellant’s account and found that he was not from Iran had not been habitually resident there, he dismissed his appeal on asylum grounds. The FtTJ noted that the only basis upon which it was said that the appellant would be at risk in Iraq was on the basis of lack of documentation. The judge addressed this at paragraph 25 his decision and was satisfied that the appellant had relevant documentation available to him and that it remained with his family in Iraq and that it could be provided to the appellant prior to or on return. The FtTJ was satisfied that the appellant could return to the family home and live with his family again in the IKR, whether with his parents, or with his aunt. The FtTJ dismissed the appeal.

8. The appellant sought permission to appeal which was granted by UTJ Gill on 26 January 2023.\_

The hearing:

9. At the hearing before the Upper Tribunal, Mr Holmes of Counsel appeared on behalf of the appellant and Mr McVeety, Senior Presenting Officer appeared on behalf of the respondent.
10. Mr Holmes relied upon the written grounds and supplemented them with the, following submissions.
11. He submitted that the first two grounds should be considered together and that they were linked to the factual background to the appeal. The background was that the appellant was a child when he left Iraq with his parents, and they were separated on the journey. Mr Holmes submitted that the FtTJ was concerned about the issue of his journey, and it took “centre stage” in his decision.
12. Dealing with ground 1, he submitted that there was a failure of the FtTJ to factor into his credibility assessment the respondent’s failings to comply with their duty to attempt to trace the appellant’s family. He submitted that at the FtT hearing the family was a live issue and the respondent’s case was to criticise the appellant for failure to produce evidence of contact to his family for example, the absence of evidence from the Red Cross. He submitted that it was the appellant’s case that the respondent should not make such complaints when they had not complied with their own tracing duties. Mr Holmes referred to the decision letter and that the respondent acknowledged that the tracing duties had not been complied with and where it was suggested that it would be contrary to his best interests to trace the family wherever they may be in Europe or in Turkey(see paragraphs 98 and 99). In any event the respondent did not comply and the significance of this to the FtTJ’s assessment of the appellant’s evidence and his overall credibility was central to the appeal.
13. In respect of tracing, Mr Holmes submitted that this was not an account where the appellant had provided no information or had provided minimal information about his family. He provided their last known whereabouts in Turkey (Izmir), he

had provided details of the school attended and provided the last address in Iraq. In his interview, the appellant repeated in various elements of the information and gave a telephone number for his mother. Therefore this was a case on its face where the appellant had come to the respondent and given all information to allow them to make enquiries about members of his family.

14. Mr Holmes submitted this issue was of significance because it took up most of the FtTJ's reasoning in the appeal at paragraphs 15-20 and when summarising his conclusions at paragraph 22. Thus there were a number of paragraphs linked to the question whether the appellant was in contact with his parents or not. The FtTJ at paragraph 15 characterised this is an important issue in the appellant's appeal. The judge's summary and conclusions upon the appellant's credibility was set out at paragraph 22 and referred to a "number of matters" and that those "matters" were twofold firstly, contact with the appellant's family, and where the judge did not accept the appellant's evidence about not knowing where he was born ( see paragraph 13). Thus he submitted all credibility issues were focused on the issue of contact and it was plainly a material issue. Mr Holmes submitted that the lack of tracing was a material consideration and was an evidential matter as the appellant had given details of how to contact members of his family, but the respondent did not engage with this, and it was important when assessing the appellant's credibility.
15. In summary Mr Holmes submitted that before the FtTJ could conclude that the appellant was not credible about the issue of contact with his family, the FtTJ should have factored in how he had gone about this with the respondent. If he had provided little or no information it may not take matters further but here the appellant provided significant information.
16. Dealing with ground 2, Mr Holmes in his submissions referred to the background of the appellant sent into Europe as an unaccompanied child and that the FtTJ when considering the appellant's narrative of how he was separated from his parents in Turkey failed to grapple with the reality of how children on the refugee trail are dealt with. This was acknowledged in the decision of AA (unattended children) Afghanistan CG [2012] where the Upper Tribunal recognised the reality that agents separated children from their families during their journey and this was the appellant's case. It was his case that he was separated at the beginning of the journey and an interview he said it was always the intention of his parents and questioned whether he was told the truth by them. It is a practice of the agents who facilitated his travel. Mr Holmes submitted that the FtTJ did not deal with this, and it was essential to take into account of the circumstances when reaching a view on the appellant's credibility.
17. In respect of ground 3, Mr Holmes indicated that he did not wish to add anything further to the written grounds. They submitted that the FtTJ had erred in law by engaging in speculation as to how the appellant's parents would act in any given circumstances.
18. At paragraph 17 of his decision, the judge expressed surprise that the appellant's parents did not have Facebook accounts which they could then use to keep in touch with the appellant. It is submitted that aside from the point made in ground to that the appellant's parents and/or aunt might deliberately be keeping the appellant in the dark, it was wholly speculative of the judge to suggest how the appellant's parents would have acted in any given circumstances. This includes where they take the decision to send their child alone in the company of complete strangers on a route that is known to claim hundreds of lives every

year. In attempting to put himself in the shoes of the appellant's parents, the judge failed to assess the case on the basis of the evidence, but rather has assessed the case on the basis of how, to the judges mind, the evidence should have looked.

19. Mr McVeety on behalf of the respondent confirmed that there was no Rule 24 response filed but that the position of the respondent was that there was no error of law or any material error of law in the FtTJ's decision.
20. As to ground 1, he submitted that a failure by the respondent not to conduct family tracing could not lead a FtTJ to allow an appeal. He submitted that if there had been any disagreement by the appellant's solicitors in this regard appropriate measures could have been taken as set out in paragraph 72 of the Supreme Court's decision in TN and MA (Afghanistan) v SSHD [2015] UKSC 40. Mr McVeety stated that whilst he accepted that Counsel for the appellant did make oral submissions on family tracing, any failure of the judge to deal with it was not material to the outcome. He referred to paragraph 73 of the above decision and that in deciding whether the tribunal accepted the appellant's account, the tribunal must act on the evidence which it has and that "if the appellant has identified people who might be able to confirm his account, but the respondent has not pursued that lead, the tribunal might fairly regard the appellant's willingness to identify possible sources of corroboration as a mark of credibility, but this would be an evidential assessment of the tribunal. There is no presumption of credibility." He submitted that the judge had not been bound to consider it in his favour and the FtTJ considered the evidence that had been submitted (including documentary evidence). Thus any failure to consider the issue of tracing was not material.
21. Mr McVeety submitted that the FtTJ made findings that were open to him on the evidence. The appellant's case was that he did not know what had happened ( see paragraph 12) and the FtTJ had to look at the appellant's background in assessing his claim. The factual findings made about the lack of evidence about the appellant's past had not been challenged in the grounds and the judge also looked at the appellant's journey to the UK.
22. Mr McVeety submitted that the decision in AA (Afghanistan) (as cited) did not assist the appellant as the relevant paragraph at 115, did not apply to the factual circumstances of the appellant. The references were made to Afghan children who were travelling alone and unaccompanied whereas here the appellant left Iraq with his family. The appellant was taken with his parents on the basis that his parents were at risk. They then went to Turkey, and it is claimed that they were separated at that point. It was not the appellant's case that they had sent him abroad unaccompanied. He submitted that the FtTJ found on the evidence that the appellant's parents made no effort at any point to keep in touch. Reference is made to a phone with a number but that no other methods have been used.
23. As to the other grounds he submitted their may have been speculation about the Facebook contact, but when looking at the decision it is not a case where the FtTJ was stating "what would I do? " but considered the circumstances of the family who were together.
24. By way of reply Mr Holmes submitted in respect of ground 1, the error was material. He submitted that disagreed with the submissions made as to the effect of the decision in TN and MA (as cited). He submitted that paragraph 73 sums up the significance of the failure to trace family members and it was an evidential

failure which formed part of the assessment and characterised this as a mark of credibility. The appellant had provided information needed to undertake an evidential assessment and it did not happen. Nor did this feature in the FtTJ's decision as the FtTJ did not deal with the submissions made on an evidential footing. The appellant came forward with the information, but the respondent did not consider it and what was crucial was that the FtTJ failed to deal with it also. This failure was material to the credibility assessment.

Discussion:

25. Dealing the issue of family tracing, Mr Holmes submits that the FtTJ erred in law by not considering the issue of the respondent's failure or duty to conduct family tracing.
26. There is no dispute that oral submissions were made which referred to family tracing as reflected in the excerpt of the transcript provided, although no reference was made in those oral submissions to the Supreme Court's decision in TN and MA. However as a general principle a FtTJ is not required to refer to every piece of evidence or submission made but deal with the relevant issues. This was recognised by the FtTJ at paragraph [10] where he stated "I have taken account of everything I have heard and considered all the documentary evidence I have been referred to by the parties. I shall refer to the evidence and submissions so far as necessary to explain my findings and reasons."
27. Notwithstanding the submissions made by Mr Holmes the issue of tracing did not appear to be a significant issue during the evidence. Had that been the case, there were appropriate steps to take if, either prior to the hearing or at the hearing itself there remained a question of how the tribunal should approach an asylum appeal where the respondent has failed in a tracing obligation. It was open to the appellant's solicitors to ask the respondent to carry out a further tracing process or secondly to ask the tribunal to adjourn the appeal for that to be done ( see paragraph [73] of TN and MA).It is not suggested that either step was taken.
28. When looking at the decision letter, it is plain that the respondent did set out her recognition of the duty to consider family tracing (see paragraphs 97 - 99 of the decision letter). Contrary to the submissions made, the respondent did set out the assessment undertaken, and it was one "based on the information available to the Home Office" at the time of the decision(see paragraph 99). The respondent's reasons for not conducting any further enquiries were based on the evidence that the whereabouts of the appellant's parents were unknown, and the appellant stated that had no contact with them since he claimed to have separated from them in Turkey during the journey to the United Kingdom. It is further noted that the appellant had confirmed to be in contact with his aunt, but no evidence had been forthcoming and as recorded at paragraphs 38 and 57 the appellant's solicitors had sent a letter confirming the translation of his father's ID, but no evidence had been received by the respondent.
29. The decision letter further stated that this could be reviewed, again this is consistent with paragraph 73 of TN and MA and any steps that could be subsequently requested on behalf of the appellant.
30. As the decision letter stated, the matters set out at paragraphs 97 - 99 were based on the evidence available at the time of the decision letter (16<sup>th</sup> of June 2020) and this included the appellant's own evidence that his parents were in

Europe. Before the FtT the appellant had given oral evidence about his statement at A144 that he did not consider it was a good thing to do to contact the Red Cross and that he stated that his social worker had told him that he should wait before seeking the assistance of the Red Cross. The FtTJ noted the intervention of the social worker at A118 which was that it would be difficult for the Red Cross to find the appellant's parents as he did not know where they are. The judge found that it was "possible that the social worker did not think that there was any point contacting the Red Cross" (see paragraph 20 of the FtTJ's decision). Thus the contents of the decision letter were consistent with that evidence.

31. Whilst Mr Holmes submits that the appellant had given full information to the respondent for tracing to take place, that is not reflected in the material before the respondent. The respondent was entitled to take into account the appellant's evidence that the last known location was in Izmir Turkey (page 20RB), but the appellant was not able to give any further information about his parents to the respondent. It was entirely reasonable not to make enquiries relating to Turkey given that no details were given beyond a vague location and on the appellant's own account his parents were on the way to/in Europe, and he did not know where. This is reflected in the interview responses set out between questions 37 - 40.
32. Furthermore whilst it was submitted that the appellant gave a telephone number, this has to be seen in the light of the other answers given by the appellant. He was asked if it was possible to contact his family by telephone (see B4). His reply was "no because I do not have a phone number for anyone." This was in fact an evidential issue assessed by the FtTJ at paragraph 16 of his decision.
33. As to the other information identified, the appellant was not able to provide the full details of the last address in Iraq and the decision letter at paragraph 39 considered the information about his address but that it could not be verified.
34. In any event the appellant's evidence at the time of the decision letter and at the hearing before the FtTJ was that he was in contact with a family member, namely a maternal aunt and as set out in his witness statement he had had contact with his aunt through Facebook messenger and they spoke regularly (see paragraphs 13 and 14 of the witness statement). The most recent evidence before the FtTJ was that he remained in contact with her and that she had been able to send documents about the family members for use in his asylum appeal.
35. Consequently as submitted by Mr McVeety even if there was such a failure by the FtTJ to address the submissions made about family tracing, it was immaterial and it has not been demonstrated in the submissions advanced on the part of the appellant that it had any effect upon the outcome of the appeal. The FtTJ was required to consider the evidence by reference to the position at the time of the appeal applying the well-established principles in Ravichandran v SSHD [1996], an approach endorsed by the Supreme Court at paragraphs 38 and 70 of TN and MA and the FtTJ correctly directed himself to this at paragraph [22] of his decision when setting out his final summary of his findings of fact and assessment of the evidence including the issue of credibility. That was the correct approach on the issue of credibility as set out at paragraphs 72 and 73 of TN and MA which states as follows:

"72. I would hold that the *Ravichandran* principle applies on the hearing of asylum appeals without exception, and *Rashid* should no longer be followed. The question whether the appellant qualifies for asylum status is not a question of discretion. It is one which must be decided on the evidence before the tribunal or court, and there

is no legal justification for approaching that question with a presumption that the appellant is credible arising from a failure of the respondent properly to discharge her obligation in relation to family tracing. Discretionary leave by definition involves a discretion, but it is a discretion which belongs to the respondent and not to the court. The respondent must of course exercise her discretion lawfully, with proper regard to any policy which she has established, but I agree with Sir Stanley Burnton that it is not proper for a court to require the respondent to grant unconditional leave to an appellant who would not be entitled to such relief under current policy (or have a current right to remain in the UK on other grounds, such as article 8), as a form of relief for an earlier error or breach of obligation.

73. There remains the question how the tribunal should approach an asylum appeal where the respondent has failed in her tracing obligation. If the appellant believes that he may have been prejudiced, it would be open to him to ask the respondent to attempt to carry out a tracing process and to ask the tribunal to adjourn the appeal for that to be done. There would be force in the argument that it should not make a difference whether the appellant has by then turned 18, since that would not remove an obligation which had arisen under the Reception Directive and the effects of which were intended to last beyond their minority (as the OCC has submitted). However, in deciding whether it accepts the appellant's account, the tribunal must act on the evidence which it has. In that respect I agree with what was said by Lloyd LJ in *DS (Afghanistan) v Secretary of State for the Home Department* (set out at para 43 above). If the appellant has identified people who might be able to confirm his account, but the respondent has not pursued that lead, the tribunal might fairly regard the appellant's willingness to identify possible sources of corroboration as a mark of credibility, but this would be an evidential assessment for the tribunal. There is no presumption of credibility."

36. When looking at the material before the respondent and the FtT it is difficult to see what could be done on the basis of the information provided by the appellant.
37. Furthermore the decision in TN and MA does not support the submissions made on behalf of the appellant as it has not been established that there was any causative link between any claimed breach of duty and the appellant's claim for protection. Paragraph 52 of the decision stated (citing EU (Afghanistan) v SSHD [2013] EWCA Civ 32:-

" 52. Sir Stanley Burnton acknowledged that the respondent's breach of her tracing duty could have evidential relevance, because in assessing the risk to a claimant on return to his or her country of nationality the lack of evidence from the respondent as to the availability of familial support was a relevant factor. The failure to endeavour to trace a claimant's family might also result in a claimant, who had lost contact with his family, putting down roots here and establishing an article 8 claim. But Sir Stanley Burnton emphasised the need for the claimant to establish some causative relevance of the respondent's breach to the protection claimed.

38. Applying those principles, the appellant has not established any causative link between any failure to trace and the issues relevant to this appeal in the light of the appellant's own evidence that he was in regular contact with his aunt and therefore there was availability of familial support and further, she had been in the position to provide him with evidence in support of his claim (see paragraph 73 of TN and MA as cited above). This was an issue considered by the FtT who undertook an evidential assessment of the documents provided, as corroborative evidence but gave reasons why that evidence did not provide support for the appellant's account as set out in his findings of fact at paragraph [21]. Those findings have not been challenged in the grounds or the submissions made.



39. Whilst Mr Holmes submits the relevance of tracing should be seen in the light of the FtTJ's assessment of the evidence concerning the separation of his parents from him, on any reading of the factual findings made those relating to the separation from family members are not based on the lack of contact but how this occurred. Thus even if the appellant had separated from his parents in the way that he had claimed the FtTJ identified in his factual assessment of the evidence, the lack of credible evidence as to what steps were taken by his parents to remain in contact ( see the factual findings made between paragraphs 15 - 19 of his decision).
40. This links to ground 2. Mr Holmes submits that the FtTJ failed to grapple with the reality of children on the refugee trail and relies on paragraph 115 of AA (unattended children) Afghanistan CG [2012] UKUT 16 which reads as follows:

"115. The point was reinforced by the report of the UNHCR Policy Development and Evaluation Service study 'A study of unaccompanied Afghan children in Europe' June 2010, entitled 'Trees only move in the wind' (p21), which contained the following paragraphs:

*"The organized smuggling networks involved in the movement of young Afghans to Europe clearly extend from the UK in the west to Turkey, Iran, Pakistan and beyond in the east.... The risks encountered by children who use the services of such networks are incalculable, especially as the boys' parents, relatives and friends who have arranged a contract with a local agent in the country of origin have no direct contact with the smugglers themselves.*

*Throughout the journey, the smugglers maintain tight control over the children through fear and intimidation, especially if the boys or their families are having difficulty in paying. They confuse the children through deliberate misinformation with regard to their options, so as to convince them to continue their journey and thereby exact the highest possible fee. ... this study suggests that there is a deliberate strategy among the smugglers to constantly split up the groups of children who are travelling together, keeping the level of anxiety high, and preventing people from building up friendships and trust that might threaten the authority of the smugglers and their assistants."*

41. This was not a decision that was cited to the FtTJ however the FtTJ did engage with the submission at paragraph 19 of his decision. As Mr McVeety submitted, the decision of AA does not undermine the FtTJ's assessment of the evidence. Firstly, the decision generally related to the circumstances of lone children who were smuggled from Afghanistan through Europe and to the United Kingdom. The objective material cited at paragraph 115 refers to the strategy of the smugglers splitting up children who had been travelling together. However it does not suggest that smugglers routinely prevented children from remaining in contact with their family. Furthermore, the factual account of the appellant was not that he had been sent out of Iraq on his own to seek safety but that he had travelled with his parents out of Iraq and then into Turkey but was later separated from them on the basis that he would go first to be followed by his parents. On any fair reading of the FtTJ's assessment of the evidence, he acknowledged the difficulties of children in those particular circumstances but when taking into account the evidence he found that the appellant's account was not a credible account based on the factual evidence surrounding the separation from his family members and that the parents did not make any plans or provide any mechanisms by which he or they could keep in touch with him.
42. The findings of fact between paragraphs 15-19 can be summarised as follows:

- (a) despite travelling together as a family, and the separation from the appellant, his parents made no plans to meet in Europe.
  - (b) The appellant's father did not give him a contact number so that he could stay in contact with them.
  - (c) The FtTJ considered the appellant's account that his father would find him through the 2 people who accompanied him on the journey but found that on the appellant's own evidence, he stated that he could not communicate other than very little with them as they spoke a different language and contrary to the appellant's evidence they did not have any role in keeping the appellant in touch with his parents.
  - (d) At [16] the FtTJ considered the evidence as to how he would contact his mother and that he had a telephone number but in evidence stated that it was an Iraqi telephone number, and he was sure that the number would not work because his parents were in Turkey and there was no coverage for his mother's phone there. The FtTJ did not find that it was reasonably likely that the appellant would separate from his parents with a telephone number which would not work and upon which no one had checked it worked before separation.
  - (e) At [17] the FtTJ took into account the evidence that he remained in contact with his aunt who had Facebook and despite her limited education was able to use Facebook. Given that both the appellant, and his aunt were using that method to contact each other, and the appellant used Facebook when in Iraq, the judge did not find it was reasonably likely that his parents had not set up accounts to keep in contact that way.
  - (f) At [18] the judge found that on the evidence there were a number of fairly straightforward ways for the appellant to remain in contact with his parents, such as a parent setting up a Facebook account, having a functioning telephone in Turkey and giving the appellant that number or keeping in contact with their family in Iraq. The judge concluded that in his view it was not reasonably likely that "A's parents would not take any of the straightforward steps to ensure they could keep in touch with their 15 or 16 year old son when he left them to set off on his own, under the control of agents.."
43. This leads to ground 3 which challenges paragraphs 17 - 18 of the FtTJ's decision. However when considering those findings they are ones that were open to the FtTJ to make. They were not speculative findings nor were they in my view findings made from the FtTJ's own "western" perspective or viewpoint or as Mr McVeety submitted "putting himself in the appellant's shoes." The FtTJ considered the issue of contact or lack of it in the context of the evidence as a whole including the evidence of the appellant. The findings made at paragraph [18] that there were a number of fairly straightforward ways for the appellant to remain in contact included, but were not limited to, setting up a Facebook account. This is based on the evidence from the appellant that both he and his aunt had Facebook set up for them (see paragraph 17) both had used it in Iraq, and he had used it outside of Iraq and thus this would have been a way in which to make effective contact. The FtTJ also identified the issue of telephone contact at paragraph 17 which he had addressed in the evidence at paragraph 16 as set out above. Thus the FtTJ concluded that it was not credible in the circumstances

in which they were that no one would check whether the telephone number worked and that it was not reasonably likely that the appellant would separate from his parents without any telephone number that he had for them by having a number which was not even tested. The finding made at paragraph 16 links to those findings at paragraph 17 and 18 where the FtTJ concluded overall that there were a number of methods in which the family could keep in contact and that it was not reasonably likely that his parents were not have taken any of those steps which the judge considered to be “straightforward” when the appellant left with the agents.

44. In summary this was a carefully reasoned decision by FtTJ Sills who had the advantage of hearing the evidence and considering the evidence as a whole. The FtTJ properly recognised that the appellant was a minor not only at the time he left Iraq but that at the time of the hearing he remained a minor albeit turning 18 later that month. As the FtTJ stated, he kept the appellant’s age “at the forefront” of his mind which was entirely the correct approach and was evidenced in his assessment of the evidence. As Mr McVeety submitted the evidence before the FtT was limited but the FtTJ nonetheless carried out an assessment of the relevant evidence which included the issue of where he was born (see paragraph 13), the lack of documents (paragraph 14), the evidence that related his parents (15 - 18) and the documents that the appellant had provided from his aunt for which there had been no explanation as to how they had been obtained and this had not been addressed but also the contents was not fully translated and no explanation was provided about those documents (see paragraph 21). Consequently the summary of the findings of fact set out at paragraph 22 were ones that were reasonably open to the FtTJ on the evidence that was before him. The concluding part of the assessment set out at paragraphs 23 - 25 has not been challenged in the grounds and on the factual assessment made, were findings that were open to him on the evidence.
45. For those reasons, the decision of the FtTJ did not involve the making of an error on a point of law and the decision of the FtTJ shall stand.

### **Notice of Decision**

46. The decision of the FtTJ did not involve the making of an error on a point of law and the decision of the First-tier Tribunal shall stand.

Upper Tribunal Judge Reeds  
Upper Tribunal Judge Reeds

20 April 2023