



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-005936
First-tier Tribunal No:
PA/55073/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 13 August 2023**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

**MMR
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A. Razzaq-Siddiq, Counsel instructed by Hanson Law
For the Respondent: Ms S. Cunha, Senior Home Office Presenting Officer

Heard at Field House on 21 July 2023

Order Regarding Anonymity

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.

DECISION AND REASONS

Introduction

1. The Appellant in these proceedings has appealed against the decision of Judge Khurram (promulgated 21 September 2022) and hereafter “the Judge”, in which she dismissed the Appellant’s international protection and human rights appeals.
2. Permission to appeal to the Upper Tribunal was initially refused by Judge Lester on 6 November 2022 but permission was later granted by Upper Tribunal Judge Pickup on 27 January 2023 who concluded that all of the grounds were arguable.

The decision of the Judge

3. We summarise the following findings of the Judge which are materially relevant to the error of law appeal before us:
 - a. Quite properly the Judge started her findings of fact by reference to the earlier decision of Judge Aziz who, in a decision promulgated on 19 December 2018, dismissed the Appellant’s first international protection and human rights appeals (para. 39). The Judge quoted extensively from the binding Tribunal authority of Devasseelan [2002] UKIAT 00702* at para. 40.
 - b. The Judge laid out in detail the material findings made by Judge Aziz in the 2018 judgment.
 - c. At para. 42, the Judge concluded that Judge Aziz had made a variety of significant adverse credibility findings against the Appellant (in respect of his historical claim for international protection) and that the Appellant was effectively seeking to relitigate on the same facts but had not provided good reason for why he had failed to adduce relevant evidence in the 2018 hearing.
 - d. The Judge also refused to accept that the litany of discrepancies in numerous aspects of the Appellant’s claim as identified by Judge Aziz were attributable to any incompetence on the part of his previous representatives, para. 42.
 - e. The Judge therefore concluded that there was no good reason to depart from the findings of Judge Aziz in respect of the claim as it was made in 2018.
 - f. From para. 43 onwards, the Judge dealt with issues which had not previously been considered by Judge Aziz namely the Appellant’s sur place activities in the United Kingdom, in particular his membership of the New Generation Movement (NGM); his attendance at a number of demonstrations outside the Iraqi consulate in the UK where the focus of the protests related to human rights abuses and his Facebook

activity, including posting photographs of himself attending demonstrations, posts and then reposting of material criticising the Iraqi regime, the PUK and the KDP.

- g. The Judge concluded that the Appellant's UK activities were not an indication of a genuine political view (para. 44) and laid out the reasons for finding this at paras. 45 & 46.
 - h. She also found that the Appellant's Facebook activities were not sufficiently far-reaching in order to show that a real risk of persecution/serious harm arose from their existence and also found that the Appellant would close his Facebook account prior to return, applying XX (PJAK, sur place activities, Facebook) Iran (CG) [2022] UKUT 23 (IAC), see paras. 47, 48 & 54.
 - i. In respect of the Appellant's involvement in demonstrations in the UK, the Judge concluded that the Appellant had not shown that he had a particularly prominent role and that there was insufficient evidence to find that the Iraqi authorities were monitoring these demonstrations, paras. 50 & 53.
 - j. At para. 51, the Judge also noted the timing of the Appellant's involvement in demonstrations, the NGM and his Facebook activities and observed that these all commenced after the dismissal of his previous appeal by Judge Aziz.
 - k. This led the Judge to the conclusion that the Appellant's sur place activities were not borne out of any genuine political conviction and found that the Appellant had not established that he would continue his political activities if returned to Iraq, para. 52.
 - l. The Judge also decided that the Appellant had not given credible evidence about his family tracing attempts since 2020 and therefore concluded that she should not depart from Judge Aziz's findings that the Appellant was still in contact with family members in Iraq; continued to be married and that he had not lost his Iraqi passport or CSID card, paras. 67 & 68.
4. The Judge ultimately dismissed the Appellant's international protection and human rights appeals.

The error of law hearing

5. Before us, Mr Razzaq-Siddiq indicated that he was relying solely upon one ground of appeal out of the six which had been raised by his instructing solicitors in the grounds of appeal dated 5 October 2022.
6. Mr Razzaq-Siddiq asserted that the Judge's assessment of the Appellant's credibility in the context of the new evidence (i.e. the evidence which postdated the 2018 judgment by Judge Aziz) was incompatible with the

binding guidance given in Devaseelan. In essence, he contended that the Judge had not independently assessed the post 2018 evidence and had unlawfully accepted the earlier adverse findings of Judge Aziz without the requisite analysis required by Devaseelan.

7. We are grateful to Mr Razzaq-Siddiq for narrowing the very broad nature of the grounds of appeal before us to one single ground of appeal. In our judgement however there is no material error in the Judge's application of the Devaseelan guidance.
8. It is important to firstly note that thrust of the Appellant's case before the Judge was relatively narrowly defined, as described at para. 28 of the judgment: 1) the Appellant's sur place activities in the UK and the issue of his re-documentation on return to Iraq.
9. The Judge however properly understood that she was required to consider the challenges made to the adverse credibility findings made by Judge Aziz in 2018 in respect of the Appellant's material history in Iraq.
10. In our judgement there is no merit in the argument that the Judge did not properly understand the approach as laid out in Devaseelan - the Judge quoted the relevant guidance at para. 40 and we would be slow under these circumstances to conclude that the Judge did not understand it or adhere to it.
11. Nonetheless we also do not accept the Appellant's assertion that the Judge considered herself effectively bound by the adverse credibility findings made by Judge Aziz (nor that she adopted them without proper assessment) - it is absolutely plain that the Judge understood that Judge Aziz's findings were the starting point for her consideration and she gave adequate reasons for concluding that the Appellant's criticisms of Judge Aziz's adverse findings were not made out at para. 42.
12. Furthermore, we reject the Appellant's argument that the Judge's assessment of the earlier Judge Aziz decision somehow unlawfully infected her later findings on the Appellant's sur place activities. As we have already laid out in this judgment, the Judge gave detailed reasons for concluding that the Appellant's involvement in demonstrations in the UK, his Facebook activity and membership of the NGM were not sufficient to show a real risk of persecution/serious harm on return to Iraq applying the relevant authorities.
13. In reality, the Judge did not make adverse credibility findings in respect of the new evidence (and plainly gave some weight to the NGM letter to the extent that it assisted with the issues on appeal at para. 46) other than to make the perfectly lawful finding that the Appellant had not established that these activities reflected a genuine and sincere political view.
14. The Judge also manifestly understood that even mendacious sur place activities could be sufficient to establish a real risk of persecution or serious

harm (para. 52) and lawfully concluded that the Appellant's UK activities were not prominent enough to bring him into that category.

15. It was also perfectly permissible for the Judge to find that the Appellant would not genuinely seek to be overtly political in Iraq because his political expressions in the United Kingdom were manufactured and not part of a sincere political view. This is plainly relevant to the question of future risk and the Judge's findings were open to her.
16. We also find that the Judge's conclusions in respect of the earlier Judge Aziz findings relating to the Appellant's contact with his family in Iraq and his access to his own passport and/or CSID card were lawful.
17. We do not expressly deal with the other grounds as raised by the Appellant as Mr Razzaq-Siddiq did not pursue them either in his opening submissions or in his response to Ms Cunha's broad submissions in which she sought to respond to all of the grounds as settled in writing.
18. For completeness though, we see nothing in the other grounds as articulated in writing to show that there was any other material error in the Judge's decision.

Notice of Decision

The Appellant's appeal against the decision of the Judge is dismissed.

I. Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 August 2023

