



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

Case No: UI-2023-001573  
First-tier Tribunal No: PA/52269/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 15 July 2023**

**Before:**

**UPPER TRIBUNAL JUDGE GILL**

**Between**

**The Secretary of State for the Home Department      Appellant**

**And**

**Mr H I      Respondent**

**Representation:**

For the Appellant:      Mr S Walker, Senior Home Office Presenting Officer.

For the Respondent:      Mr Sobowale, of Counsel, instructed by Duncan Lewis Solicitors.

Heard at Field House on 28 June 2023

**Anonymity**

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify him. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. I make this order because this is a protection claim. The parties at liberty to apply to discharge this order, with reasons.

**DECISION AND REASONS**

1. The Secretary of State has been granted permission to appeal the decision of Judge of the First-tier Tribunal Phull (hereafter the “judge”) who, in a decision promulgated on 3 April 2023 following a hearing on 1 February 2023, allowed the appeal of Mr H I (hereafter the “claimant”), a national of Iraq born on 22 March 1998, against a decision of the respondent of 30 May 2022 to refuse to grant asylum and humanitarian protection and to refuse his human rights claim.
2. The grounds contend that the judge erred by failing to give reasons why she departed from the undisturbed determination of Judge of the First-tier Tribunal Lodge in reaching her findings in the claimant’s favour of the events that he said had occurred in Iraq and which he relied upon in support of his protection claim. The grounds contend that, although the judge referred to the guidance of the Tribunal in

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Devaseelan v Secretary of State for the Home Department \* [2002] UKIAT 702, she failed to apply the guidance.

3. At para 7 of his amended Rule 24 response dated 22 June 2023, Mr Sobowale set out the evidence that was before the judge and which was not available at the time of the hearing before Judge Lodge. This included the following:
  - (i) a witness statement from Mr S S (AB/85-88) and a photograph (AB/48) that Mr S S took of the claimant receiving treatment in a clinic following the incident when he was attacked by two men after his grandmother, upon discovering him with his aunt, shouted to people to come and “*kill these people*”; and
  - (ii) a witness statement from the appellant dated 2 September 2022 where (at paras 3-4) he explained that he had lost contact with Mr S S at the time of the hearing before Judge Lodge but was able to re-establish contact at the end of 2020.
4. At the hearing before the judge, the Presenting Officer accepted that the individual receiving treatment in the photo that Mr S S took was the appellant.
5. On the basis of what I have explained at paras 3-4 above, Mr Walker accepted that the main basis of the Secretary of State's grounds fell away. He accepted that there was no material error of law in the decision of the judge, in light of paras 3-4 above, although it was unfortunate that the judge did not explain these matters in her decision. I entirely agree.
6. Mr Walker accepted that I should dismiss the Secretary of State's appeal.
7. For the reasons given above, I dismiss the Secretary of State's appeal on the ground that there is no material error of law in the judge's decision.

### **Decision**

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside.

Accordingly, the decision of the First-tier Tribunal to allow the claimant's appeal against the Secretary of State's decision on asylum grounds and on human rights grounds (Articles 2 and 3) stands, as does her decision to dismiss the appellant's appeal on humanitarian protection grounds.

Signed  
Upper Tribunal Judge Gill

Date: 29 June 2023

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#### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is “sent” is that appearing on the covering letter or covering email