



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003901

First-tier Tribunal No: PA/50327/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th November 2023

Before

UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SJ
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms F Mustafa, Solicitor; Wai Leung Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 20 October 2023

Although this is an appeal by the Secretary of State for the Home Department, we shall refer to the parties as they were in the First-tier Tribunal.

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

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Iqbal ('the judge') dated 11 August 2023 allowing the Appellant's appeal under the Refugee Convention and on human rights grounds.
2. The Secretary of State applied for permission to appeal on the ground the judge had misdirected herself in law. The Secretary of State submitted the judge's finding that the Appellant's account at its highest **did not** (our emphasis) demonstrate a well-founded fear of persecution on return at §30, was inconsistent with the later finding at §38 that the judge accepted the Appellant has a well-founded fear of persecution and/or that his Article 2 and 3 rights under the ECHR would be violated.
3. Permission was granted by First-tier Tribunal Judge Austin on 8 September 2023 on the ground that §30 and §38 were contradictory and the discrepancy could not readily be explained by a typographical error.
4. The Appellant's alleged well-founded fear of persecution arose from his father being killed in 2020 and his brother being abducted by the Hashd al Shaabi. As a result, the Appellant fled Iraq, on his mother's instruction, as he feared he would be killed or abducted on return. The judge found that the Appellant had not established a well-founded fear of persecution on return for the above reason.
5. The Appellant additionally argued that he did not have any identity documentation when he arrived in the UK such as his CSID and birth certificate which he left in Iraq. He did not know the number of his CSID or his family number and he had no contact with his family. The judge noted that it was not in dispute that he did not arrive with any identity documentation and further accepted that the appellant had no contact with his family since being in the United Kingdom.
6. In the light of the CPIN of July 2022 and applying SMO [2019] UKUT 400 and SMO [2022] UKUT 110, the judge found that to obtain an INID, the Appellant would have to personally attend a Civil Status Affairs Offices (CSA) to enrol his biometrics. As it was unclear how he would be able to obtain such documentation through proxy, without civil such documentation he would be unable to travel to his home area through checkpoints without a relevant ID card which would place him at risk of encountering treatment/conditions that are contrary to §339C and §339CA of the immigration rules and/or Article 3 of the ECHR.
7. The judge further noted that, as the Appellant was not from Baghdad, he would be unlikely to be able to obtain a replacement document there or within a reasonable time. She concluded that he would likely face a risk of ill-treatment contrary to Article 3 and the qualification directive on return if required to travel internally without such a document (in attempts to travel to his CSA to obtain the same).
8. To contextualise the contradiction in the decision that the Secretary of State seeks to highlight, in the conclusive sentence of §30, the judge stated as follows:

"I find therefore having considered the Appellant's account as (sic) its highest there is nothing before me to demonstrate even to the lower standard of proof applicable that the Appellant has a well-founded fear of persecution on return."

9. Whereas, at §38, the judge stated as follows:

“Therefore on the totality of the evidence before me and for the reasons, I set out above I do accept, to the lower standard of proof applicable that the Appellant has a well-founded fear of persecution for a Convention reason and/or that his Article 2 and 3 rights under the ECHR would be violated”.

10. At the hearing before us, the Appellant’s solicitor, Ms Mustafa, accepted that the judge had erred or perhaps made an accidental slip at §38 in allowing the appeal on the basis that the Appellant has a well-founded fear of persecution. She maintained that the second part of §38 allowing the appeal under Article 3 ECHR, as the Appellant was undocumented, was free from error. Consequently, we were urged to find that the erroneous conclusion allowing the appeal in respect of the refugee claim should not affect the remainder of the judge’s findings at §31 onwards which were self-contained.

11. For the Secretary of State, Ms Cunha accepted that the grounds did not challenge the judge’s findings at §31 to §37 that the Appellant could not access documentation in Iraq and he would therefore face a real risk of ill-treatment in breach of Article 3. There was no application to amend the grounds.

12. In light of the above submissions, we find that the judge has erred in concluding her decision by stating that the appeal is allowed under the Refugee Convention when her previous findings, unchallenged by the Appellant, stated that a well-founded fear of persecution had not been established.

13. We further find that the remainder of the decision pertaining to Article 3 ECHR is free from error and must remain undisturbed as the Secretary of State has not sought to challenge that aspect of the appeal.

14. We therefore set aside §38 in its entirety and replace it with the following wording:

“The Appellant’s appeal in respect of the Refugee Convention is dismissed for the reasons given. The appeal in respect of the Appellant’s rights under Article 3 ECHR is allowed for the reasons given”.

Notice of Decision

The Secretary of State’s appeal is allowed and the appeal is dismissed in respect of the Appellant’s Refugee Convention claim.

The appeal remains allowed under Article 3 ECHR.

P. Saini

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 November 2023