IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004176
First-tier Tribunal No:
PA/52929/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 February 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

HZA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr H Sadiq, Adam Solicitors
For the Respondent: Ms T Rixom, Senior Home Office Presenting Officer

Heard remotely at Field House on 14 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) 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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. By the decision of the Upper Tribunal (Judge Sheridan) issued on 23.11.24, the appellant, a citizen of Iraq, has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Andrew) promulgated 9.8.23 dismissing his appeal against the respondent's decision of 14.7.22 to

refuse his Further Submissions (FS) in support of a claim to international protection first made on arrival in the UK in November 2014. The claim was the subject of an unsuccessful appeal in September 2016 and an application for onward appeal was rejected as being out of time.

2. Following the helpful oral submissions of both representatives, I reserved my decision to be provided in writing, which I now do.

3. In summary, the grounds argue that the First-tier Tribunal adopted an inconsistent approach to the appellant's documentary evidence. It is argued that the judge was prepared to depart from the findings of the previous Tribunal but dismissed the claim on the same facts. The judge was satisfied on the Iraqi Citizenship Certificate (ICC) that the appellant was born in Mosul in 1999 as claimed, noting the identity to be supported by his father's identity card, sent to the appellant by his uncle. Complaint is made that whilst these documents were accepted, other documents, namely death certificates, also sent by his uncle, were given little weight. It is submitted that if the judge needed clarity as to how the documents were obtained, he ought to have asked the appellant at the appeal hearing.

4. It is further argued that the rejection of these certificates as reliable evidence of the death of the appellant's parents was based on speculation, the judge finding at [19] of the decision that it was "inherently implausible" that the deaths were registered on the same day that the parents are said to have died at the hands of Daesh following entry into Mosul and the chaos that must have ensued.

5. Little weight was also given at [20] of the decision to the 'Police documents' registering complaint with the Police on 25.10.17 over three years after their deaths.

6. Similarly, the grounds complain that the judge placed little weight on the letter from the Division Commander notifying the death of his employee on 8.11.17, which the judge pointed out to be "even later than the date of the initial complaint". The grounds explain that this letter was not addressed to the Police, as the judge had understood, but was from the Ministry of Defence to the 'Honourable Judge of Mosul Investigation Court', as corroboration of the appellant's account and for the purpose of an investigation into the deaths of his parents and the disappearance of his sister.

7. Based on the challenged findings summarised above, the First-tier Tribunal concluded at [23] that the appellant's father would have ensured that the appellant had a CSID identity document and at [24] that, as the Tribunal could not be satisfied that the parents were killed as claimed, they would be in a position to provide him with his CSID, so that he could travel to Mosul and obtain the appropriate INID.

8. I accept, as the grounds point out, that there is a double-negative error at [24] of the decision but I am satisfied that the judge intended to state that she not satisfied that the parents had been killed, as claimed by the appellant. A decision of the Tribunal is not to be subjected to a textual analaysis as if it were a statute or contract.

9. In granting permission to appeal on all grounds, Judge Sheridan considered it to be:

> "… *arguable that the judge failed to appreciate that the letter of 8 November 2017 was to a court/judge for the purposes of an investigation and not a letter to inform the police about the death of an employee. If that is correct, this mistake arguably undermines one of the main reasons given*

by the judge for not attaching weight to the letter. I also consider it arguable that it was not open to the judge to find that it was inherently implausible that the deaths would be registered on the day of the death. In the grounds it is stated that the place of death was close to where they lived and the death certificate records a relative as declaring the death. Arguably, in these circumstances, and irrespective of the situation in Mosul, it was not "inherently implausible" that the death would be recorded on the day of the death."

10. At the outset of the appeal hearing before me, Ms Rixom explained that the respondent did not oppose the appeal. It is accepted that the decision is so flawed by error of fact and reasoning that it cannot stand. She accepted that it was not "inherently implausible" for a death to be registered on the same day. Ms Rixom also pointed out what she identified as the clearest error that the judge has made no reference to or application of the SMO2 country guidance on identity documentation and that the findings that the appellant can return safely are not reasoned.

11. I entirely agree with Ms Rixom's submissions and Judge Sheridan's provisional assessment and am satisfied that the First-tier Tribunal Judge misunderstood the nature of the documentary evidence, which errors fundamentally undermine the whole basis of the conclusion on the appeal so that it cannot stand but must be set aside to be remade.

12. Both parties agreed that the matter needs to be remitted to the First-tier Tribunal, pursuant to paragraph 7.2 of the Practice Direction. Mr Sadiq asked that I preserve the positive finding as to identity at [16] of the decision. However, I find that would be to unnecessarily bind the hands of the First-tier Tribunal Judge hearing the remitted appeal. It may be that the same conclusion will be reached but that will be a matter for the First-tier Tribunal.

13. In the circumstances and for the reasons outlined above, the decision of the First-tier Tribunal is flawed for material error of law and must be set aside to be remade de novo.

Notice of Decision

The appellant's appeal to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade de novo with no findings preserved.

I make no order as to costs.

DMW Pickup

DMW Pickup

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 February 2024