



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

Case No: UI-2024-000918  
First-tier Tribunal No: RP/50100/2023

**THE IMMIGRATION ACTS**

**Decision and Reasons Issued:**

**On 22<sup>nd</sup> of May 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MALIK KC**

**Between**

**SECRETARY OF STATE  
FOR THE HOME DEPARTMENT**

Appellant

**and**

**HM  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation**

For the Appellant: Mr Kevin Ojo, Senior Presenting Officer

For the Respondent: Mr Chowdhury Rahman, Counsel, instructed Solmon Solicitors

**Heard at Field House on 19 April 2024**

**DECISION AND REASONS**

*Introduction*

1. This is an appeal by the Secretary of State from the decision of First-tier Tribunal Judge Caswell promulgated on 19 January 2024. By that decision, the Judge allowed HM's appeal from the Secretary of State's decision to refuse his protection and human rights claims.

*Discussion*

2. I am grateful to Mr Chowdhury Rahman, who appeared for HM, and Mr Kevin Ojo, who appeared for the Secretary of State, for their assistance and able submissions. HM is a citizen of Iraq and was born on 9 October 2004. He arrived in the United Kingdom on 18 October 2021 and made a protection claim. The Secretary of State refused that claim, and the associated human rights claim, on 31 July 2023. On HM's appeal, the Judge, at [31], found that there was no real risk of persecution or serious harm on return to Iraq. However, the Judge, at [32], held that there was a real risk of treatment contrary to Article 3 of ECHR because of lack of identity documents. The difficulty is that the Judge, at the end, at [33], and under the heading "decision", allowed the appeal both on asylum grounds and human rights grounds. The short point made by Mr Ojo in this appeal is that the Judge, on her own findings at [31], should have dismissed the appeal on asylum grounds. Mr Ojo makes no challenge to the Judge's findings, at [32], as to Article 3 and is content for those findings to stand. Mr Rahman accepts that HM, on the findings made by the Judge, is not a refugee and cannot succeed on asylum grounds. Mr Rahman submits, with no objection from Mr Ojo, that the Judge's findings as to Article 3 shall stand. I am satisfied that the Judge erred in law in allowing HM's appeal on asylum grounds. I set aside the Judge's decision as to the protection claim but uphold her unchallenged findings as to the human rights claim. I substitute a fresh decision, with agreement of both parties, allowing HM's underlying appeal on Article 3 grounds alone.

*Decision*

3. The First-tier Tribunal's decision is set aside and is re-made. HM's appeal is allowed on human rights (Article 3) grounds alone.

*Anonymity*

4. I consider that an anonymity order is justified in the circumstances of this case having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective. I make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

*Fee award*

5. I make no fee award.

*Zane Malik KC*  
**Deputy Judge of Upper Tribunal**  
**Immigration and Asylum Chamber**  
**Date: 13 May 2024**