



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07597/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 23 September 2020**

**Decision & Reasons
Promulgated
On 29 September 2020**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**S A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bradshaw, Counsel instructed by Braitch RB
Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker.
2. This is an appeal by a citizen of Iraq against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State refusing him asylum.

3. The core ground of complaint is that the First-tier Tribunal Judge built an adverse credibility finding on his concerns that the appellant was able to produce an identification document when, as the First-tier Tribunal Judge understood the evidence, that identification document would have been taken from him when he was arrested. It is a perfectly fair observation that people who are arrested generally have their possessions taken from them and it is a perfectly reasonable inference that a person is in possession of an identification document because that is what they are issued. However, it is not the case that people always have their documents with them or indeed that they are necessarily taken from them when they are arrested. This was a great deal of conjecture on the judge's part on which he built much in his adverse findings.
4. There is before me a statement I admitted under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 because it deals with something that the appellant could be expected to deal with before the hearing. Here the appellant says that if he had been asked he would have explained that he did not have it with him when he was arrested and that is why it was available to be sent to him later by a member of his family. The difficulty with things not being put at the appropriate time is made clear in this case. Had the witness been asked how he has retained his identity card after he was arrested he might have given an unbelievable vague answer because he is not telling the truth or he might have given a very persuasive answer instantly and unhesitatingly because he was telling the truth. He has been deprived of the opportunity of spontaneously answering the question impressively but that cannot be remedied now.
5. Mr Clarke accepted, and with respect, he was doing no more than accepting what is clearly right, that this adverse credibility finding is really built on one foot and it goes to the very core of the matter (if I might be excused the mixed metaphor). The decision is unsatisfactory and it has to be set aside for error of law. The parties say, and on this occasion I agree, that this is a case that should go back to the First-tier Tribunal for fundamental findings of fact to be made properly. Regrettably, on this occasion they were not.

Notice of Decision

6. My decision is that the First-tier Tribunal erred in law, I set aside its decision and direct that the appeal be heard again in the First-tier Tribunal, no findings preserved.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 24 September 2020