



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

Appeal Number: PA/08950/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 5 February 2020**

**Decision & Reasons Promulgated
On 7 February 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms Jones, Senior Home Office Presenting Officer.

For the Respondent: Ms Harris.

DECISION AND REASONS

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1993 and is a male citizen of Iraq. He appealed against a decision of the Secretary of State dated 29 August 2019 refusing him international protection. The appellant has been in the United Kingdom since 2016; an earlier appeal had been dismissed by the First-tier Tribunal in June 2018. The appeal which is subject of these proceedings arose after the appellant made further submissions. The First-tier Tribunal, in a decision promulgated on 14 November 2019, allowed the appeal. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appellant's account of past events in Iraq had been rejected by the First-tier Tribunal in 2018. The appellant's credibility had been roundly rejected. The success of the second appeal turned on the question of the appellant's contact or lack of contact with family members still living in Iraq. The judge [17] was satisfied that the appellant was unable to obtain the necessary identity documents in the United Kingdom (there is evidence before the Tribunal that the appellant had attempted to obtain documents from the Iraqi Embassy in London) and that the appellant would be highly unlikely to be able to obtain proof of his Iraqi identity once in Iraq itself. The judge found that 'it is apparent that [the appellant's] family are no longer way they were when he left Iraq. The correspondence between [the appellant] and the Red Cross strongly supports his contention that he does not know the whereabouts of his family.'
3. The Secretary of State challenges the decision on the basis that the judge has failed properly to take account of the findings of fact of the previous tribunal subject to the guidance in *Secretary of State for the Home Department v D (Tamil) [2002] UKIAT 00702 **. The previous Tribunal had found that the appellant was not telling the truth when he said that he was no longer in touch with his family. The second should have taken the findings of the first Tribunal as his starting point in the assessment of the credibility of the evidence. His failure to do so was an error of law.
4. Although the case for the Secretary of State was advanced eloquently by Ms Jones, I find that the appeal should be dismissed. First, I agree with Ms Harris, who appeared for the appellant before the First-tier Tribunal and the Upper Tribunal, that the judge was well aware of the findings of the first Tribunal. At [13], he acknowledged the concession made by Ms Harris that the appellant did not seek to revisit the bulk of the issues (many concerning the credibility of his account) considered by the previous Tribunal. The judge records that, in consequence of that concession, the Presenting Officer limited cross-examination to the supplementary questions raised by Ms Harris. The answers to those questions appear [13] to have elicited the response that the appellant was actively seeking to locate his family with the help of the Red Cross. Significantly, Ms Drogma, the Presenting Officer, did not seek to challenge the credibility of the appellant's claim that he lost touch with his family. Ms Harris submitted that, whilst the previous Tribunal in 2018 had made an unchallenged finding that the appellant was not telling the truth regarding contact with his family, the second judge was required to make findings as at the date of the hearing before him that is, October 2019. It had been open to the Secretary of State to submit that the appellant's answers in October 2019 should be treated as unreliable but he chose not to do so. In the absence of any challenge to credibility of the appellant's claims regarding his family in October 2019, I agree with Ms Harris that the judge has not obliged to reject the appellant's evidence. I acknowledge that a different judge may have reached a different conclusion; however, that is not the point. I am satisfied that, in the light of the manner in which the hearing proceeded before the First-tier Tribunal and, in particular, the submissions put or not put to him by the Presenting Officer, the judge reached findings

available to him and the evidence and in accordance with the principles of *D (Tamil) [2002] UKIAT 00702* * .

5. I also agree with Ms Harris that, even if the judge had found that the appellant was in contact with his family or able to contact them, then, as the judge puts it at [18], 'there is no guarantee that [the family members] would have retained the appellant's identity documents' which are required for him to obtain a CSID or INID. That finding is in line with existing country guidance (see *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC)*).
6. The remaining grounds of appeal founder on the fact that I uphold the judge's finding that the appellant has lost touch with his family. In line with *SMO*, I am satisfied that the appellant cannot obtain identity documentation whilst in the United Kingdom (there was no challenge to the judge's findings in respect of the appellant's embassy visit) and the fact that he cannot contact his family in Iraq and/or that they would not be able to provide him with the documents which are required indicate that he cannot access such identity documentation once in Iraq. It follows that he would be exposed to a real risk of ill-treatment contrary to Article 3 ECHR if returned at the present time.

Notice of Decision

The appeal is dismissed.

Signed

Date 5 February 2020

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.