



IAC-AH-SAR-V1

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

Appeal Number: PA/09818/2019

THE IMMIGRATION ACTS

**Heard at Bradford
via Skype for Business
On 11 September 2020**

**Decision & Reasons Promulgated
On 16 September 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MHS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Wtb, solicitors

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1990 and is a male citizen of Iraq. By a decision dated 30 September 2019, the Secretary of State refused the appellant's claim for international protection. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 21 January 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the initial hearing in the Upper Tribunal on 11 September 2020, Mr Holmes, who appeared for the appellant before the First-tier Tribunal and Upper Tribunal, developed the grounds of appeal. He submitted that the appellant's case had always been that when his home town of Sinjar had been invaded by Isis, he and his family had fled. His claim had subsequently been misconstrued by the respondent, the decision letter wrongly claiming that the appellant had claimed that he had been specifically targeted by Isis. Such a claim had never been the appellant's case. That error had been picked up, in turn, by the judge with the result that it had tainted her decision. Secondly, the judge had failed to deal with the submission advanced before the First-tier Tribunal that it was reasonably likely that, given the level of destruction in the appellant's home area, the records of the government which the appellant would need to access in order to obtain a replacement identity card, had been destroyed. Thirdly, the judge's findings at [37] that the appellant would be able to obtain a replacement CSID through the Iraqi consular facilities in the United Kingdom ignored the fact that the appellant did not have access to his passport or any other document capable of proving his identity. Finally, at [23] the judge had written:

"The appellant has given vague evidence which is lacking in detail which he could reasonably be expected to have provided regarding how his journey out of Syria to Europe has been funded, how he has supported himself on that journey and how his family have supported themselves since being displaced from their home village. His evidence regarding his access to his volume and page references which could be required to re-document himself was also vague and not consistent with caselaw or background evidence. All of these aspects of the appellant's case are important to the narrative that he has provided and I would have expected him to have been able to provide evidence that was detailed and coherent in answer to clear and open questions which were put to him. I find that his failure to do so is undermining of his credibility and that this is particularly relevant to the issue of re-documentation."

3. The appellant complains that the judge has not explained in sufficient detail why she considered his evidence to be vague and inconsistent. In his asylum interview at Q124 *et seq*, the appellant had been asked about his journey from Iraq. He had given the date of his departure details of his journey by foot and by car, the countries through which he travelled and the funding arrangements provided by his father and maternal uncle. The interviewer had asked why the appellant had failed to mention travelling to France and the appellant replied that he had 'forgotten' [Q134]. He went on to explain how he had remained in the so-called 'Jungle' which I understand is in Calais.
4. In his submissions, Mr Lindsay for the Secretary of State, complained that Mr Holmes was in no position to give evidence as to what had been said at the First-tier Tribunal hearing. No witness statement had been produced nor had a record of proceedings been requested from the First-tier Tribunal. However, Mr Lindsay subsequently acknowledged that the

Secretary of State had not replied to the directions issued by the Upper Tribunal (following the beginning of the coronavirus emergency) and that it had been open to the Secretary of State to take the initiative by filing and serving her own record of the proceedings.

5. As regards this latter point, I located the typed record of proceedings in the tribunal file. I read out to both advocates the part of the record of proceedings which concerned the cross examination by the presenting officer of the appellant. I gave both parties the opportunity to comment. I find that there is no reason to suppose that the judge's record is inaccurate nor does either party submit that it is. That record indicates that the appellant gave short and concise answers to the questions put to him. I am unable to identify any answer which the appellant gave in court which might reasonably be described as vague or inconsistent. As I noted above, the appellant did forget at the asylum interview to mention that he had travelled to France but this part of his journey was referred to elsewhere in his evidence and also later in the same interview where he refers to having resided in the Calais area. In so far as the appellant made an error at interview in his account of the countries through which he travelled, it was manifestly not so serious an error as to justify the judge's description of it as vague and inconsistent.
6. In the passage of the decision which I have quoted above, the judge complains that the appellant was vague in his evidence as regards to how he funded himself on his journey and how his family have supported themselves since being displaced from their home village. The appellant has consistently stated that he was funded by his father and maternal uncle, that he only remained for six days with his family in Syria and so he did not know how they had coped financially after he had left and that it was 'financially hard' for his family now they have returned to Kurdistan. I do not know what part of that evidence the judge considered to be vague or lacking in detail. Clearly, her findings at [23] contributed to the judge's conclusion that the appellant's evidence could not be trusted. Moreover, I believe there is some force in the appellant submission that his relatively straightforward claim has been elaborated by the Secretary of State only then to be rejected. I find that there is sufficient error in the judge's analysis of the appellant's evidence such as to justify the setting aside of this decision. There will need to be a new fact-finding exercise at a hearing *de novo*. In the light of that conclusion, I do not propose to deal with the other grounds in detail. I do, however, consider that the judge's findings on the appellant's ability to obtain identity documentation while still here in the United Kingdom is not in accordance with country guidance and consequently flawed for the reasons advanced by Mr Holmes.

Notice of Decision

The decision of the FTT is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that tribunal to remake the decision at or following a hearing *de novo*.

Signed
September 2020
Upper Tribunal Judge Lane

Date 11

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.