



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

Appeal Number: IA/00366/2020

THE IMMIGRATION ACTS

**Heard at Bradford
Via Teams
On 11 August 2021**

**Decision & Reasons Promulgated
On 17 September 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Greer

For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a female citizen of Iraq who was born in 1986. She appealed to the First-tier Tribunal against a decision of the Secretary of State dated 20 July 2020 refusing her claim for international protection. The First-tier Tribunal, in a decision dated 3 December 2020, dismissed her appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The appellant claimed that she had worked for the Iraqi Nationality Directorate issuing nationality certificates to Iraqi citizens. In 2017, she

refused to participate in a fraud by issuing a certificate to an individual whose identity card she was told was not genuine. She claims that she was subsequently threatened and assaulted as a consequence of her refusal.

3. In a thorough and cogently argued decision, the judge made a number of findings of fact. In some instances, she accepted the appellant's account of past events but ultimately she rejected the credibility of the core of the appellant's account. At [41], the judge found that the appellant's credibility had been harmed by a 'core inconsistency' in her evidence, namely her claim in cross examination that she had not been to the police after she had been assaulted, a claim which contradicted what she had said in her asylum interview (Q187). The parties now agree that the judge erred by finding this part of the appellant's evidence inconsistent. The appellant had been asked in cross examination a specific question - whether she had reported the threats to the police 'when they *started* happening.' [my emphasis]. Her evidence had been consistent in that she had not reported the threats at first but had done so later. The judge had, as the grounds put, imagined an inconsistency where none existed.
4. Both parties agree that the question before the Upper Tribunal is whether that error on the part of the judge was material. Mr Diwnycz, who appeared for the Secretary of State at the Upper Tribunal initial hearing, told me that he relied on the judge's alternative findings regarding the availability to the appellant of internal flight within Iraq. He accepted that, if those alternative findings could not stand, then the judge's error was material as it would not be possible to determine to what extent the incorrect finding at [41] had informed the judge's overall credibility assessment at [44]. Mr Greer, who appeared for the appellant, submitted that the internal flight findings were tainted by the judge's error and therefore could not stand. To avail herself of the option of internal flight, the appellant would need to redocument herself. That redocumentation process, in turn, would depend on the cooperation of family members in Iraq. Having found the appellant and her husband to be unreliable witnesses [47], the judge rejected their claims to have lost touch with family members in Iraq. Mr Greer submitted that, if the entire credibility assessment was vitiated by the judge's error, then the findings on internal flight also could not stand.
5. I agree with Mr Greer's submissions. Mr Diwnycz did not seek to argue that the error at [41] did not vitiate the entire credibility assessment only that the alternative internal flight findings, being severable from the analysis of the appellant's core asylum claim, defeated the appeal. There will, of course, be instances different parts of a judge's analysis can be separated but, in this case, I find that the judge's conclusions as to internal flight are predicated on her view that the appellant and her husband are unreliable witnesses. As that view has been vitiated by error, it must follow that the internal flight findings cannot stand. In the circumstances, I set aside the decision. There will need to be a fresh fact-finding exercise which is better conducted in the First-tier Tribunal to which the appeal is now returned for that Tribunal to remake the decision.

Notice of Decision

The decision of the First-tier Tribunal 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 following a hearing *de novo*.

LISTING DIRECTIONS: return to First-tier Tribunal sitting at Bradford; not Judge Monaghan; first available date; Kurdish Sorani interpreter; 2 hours.

Signed

Date 11 August 2021

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.