



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02749/2020

THE IMMIGRATION ACTS

Heard at Bradford
Via Teams
On 11 August 2021

Decision & Reasons Promulgated
On 11 October 2021

Before

UPPER TRIBUNAL JUDGE LANE

Between

SADR MOHAMMED ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Hussain

For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a male citizen of Iraq who was born on 1 January 1990. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 3 March 2020 refusing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 6 January 2021, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. I find that the Tribunal has erred in law such that its decision should be set aside. At [44], having rejected the appellant's claim that he would be at risk in Iraq on account of his profession (journalist) and because he had had an affair with a married woman, the judge considered the 'difficult' issue of the appellant's access to the identity documents which he needs to avoid ill treatment on return to Iraq (see *SMO, KSP and IM (Article 15(c);identity documents) Iraq CG [2019] UKUT 400*). At [44], the judge writes:

“This [access to identity documents] is a difficult issue because [the appellant’s] claim that the agent took his documents is plausible and consistent with what is known about how agents, aka people-smugglers, operate ... taking into account paragraph 339L, I find that there are aspects of the appellant’s claim that he has not made genuine efforts to substantiate. On this basis, I find that he has not proved that he does not have access to his documents, specifically a CSID through his family or otherwise.”

This paragraph is problematic. The observation that the appellant’s evidence that the agent took his documents (and he now cannot have access to those documents at all) is plausible would appear to be leading the judge towards a finding that the documents are inaccessible. Indeed, throughout the decision, the judge stresses that he accepts some parts of the appellant’s account and rejected others. However, we are then told that, because there are aspects of the claim which the appellant has not made genuine efforts to substantiate (we are not told which aspects, what he could have done to substantiate them or how the aspects of the claim in question may relate to his access to identity documents), it must follow that the appellant does have access to ‘his documents’ (i.e. existing documents rather than an ability to obtain replacements) and consequently the appeal should be dismissed. The meaning of the paragraph is obscure. Even if the judge had expressly found that the appellant’s family in Iraq had the appellant’s identity documents or could obtain replacements, it would have been necessary for him to make further detailed findings as to how the appellant would gain possession of the required documents before leaving the United Kingdom and how he would then use the documents to travel safely to his home area in Iraq. The appellant is entitled to know why his appeal has been dismissed; in so far as the ‘difficult’ question of identity documents is concerned, paragraph [44] fails to give him or any reader of the decision any cogent answers. The judge’s error at [44] vitiates the decision which I set aside.

3. Mr Hussain, who appeared for the appellant, sought to persuade me to preserve findings by which the judge accepted parts of the appellant’s account. In my opinion, the judge’s errors are such that the interests of justice require the appeal to be determined *de novo*; findings both positive and negative so far as the appellant is concerned are set aside.

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*.

Signed

Date 13 September 2021

Upper Tribunal Judge Lane