



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

Appeal Number: PA/08299/2019

THE IMMIGRATION ACTS

**Birmingham Civil Justice Centre
On 15th June 2021**

**Decision & Reason Promulgated
On 24th June 2021**

Before

**UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

Between

B M M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DIRECTIONS AND REASONS

UPON HEARING Mr E Nicholson of counsel on behalf of the appellant and Mr C Bates, Senior Home Office Presenting Officer on behalf of the respondent

AND UPON THE TRIBUNAL treating the hearing listed on the 15th June 2021 as a Case Management Review Hearing

IT IS DIRECTED THAT:

- i) The conclusion and directions of Upper Tribunal Judge Lindsley set out in her 'error of law' decision promulgated on 29th September 2020 that:
 - a. The findings at paragraphs 48, and 53 to 57 of the decision of the FtT regarding the appellant's contact with his family, the extent of any family support available to him, and the documentation available to the appellant are preserved; and
 - b. the appeal will be re-heard in the Upper Tribunal; andare set aside.
- ii) The appeal is remitted to the First-tier Tribunal for hearing *de novo* with no findings preserved save that "the appellant had a CSID card which is in Germany".
- iii) The appellant shall file and serve a consolidated bundle of the evidence upon which he relies (including background material and an updated witness statement) within 14 days.
- iv) The parties shall make enquiries of the German immigration authorities regarding the availability of the appellant's CSID, or a copy thereof. If the appellant's solicitors are able to obtain the appellant's CSID, it shall be held by the appellant's solicitors pending the outcome of the appeal.
- v) The parties shall be notified of a hearing date before the First-tier Tribunal in due course. The Tribunal shall arrange a Kurdish Sorani interpreter.

REASONS

1. The appellant's appeal against the decision of First-tier Tribunal Judge Fowell promulgated on 11th November 2019 was determined by Upper

Tribunal Judge Lindsay under Rule 34, without a hearing. She noted that the respondent did not object to the matter being determined on the papers, and that the appellant had requested an oral hearing. She considered the representations made by the parties but concluded that the “error of law” stage of the appeal could be dealt with on the papers as all the necessary arguments had been put forward at length by the appellant’s representatives in writing. She went on to find that the decision of First-tier Tribunal Judge Fowell is vitiated by a material error of law. She found that in determining the credibility of the claim, the First-tier Tribunal Judge had proceeded upon mistakes as to the appellant’s evidence and made assumptions as to the plausibility of the appellant’s account of events. She found the errors to be material to the finding that the appellant is not a credible witness, and she set aside that finding.

2. At paragraphs [15] to [16] of her decision, Upper Tribunal Judge Lindsley concluded that some of the findings made by the First-tier Tribunal Judge regarding the appellant’s contact with his family and the availability of documentation can be preserved. Having set aside the decision of the First-tier Tribunal, Upper Tribunal Judge Lindsley adjourned the remaking of the appeal and made directions for the parties to provide written submissions dealing *inter alia* with the legal issues, propositions and areas of factual dispute which the Tribunal should resolve in remaking the appeal. She expressed the view that the issue appears to be whether the appellant’s protection claim is credible and continues to place him at real risk of serious harm with no sufficiency of protection or reasonable possibility of finding safety. She directed that on receipt of the parties submissions, the Tribunal would consider whether a case management hearing is necessary or whether the appeal can simply be listed for a resumed hearing, either as a remote hearing or a face-to face-hearing so the decision can be remade.
3. On behalf of the appellant, written submissions were settled by Mr Nicholson of counsel, and filed with the Tribunal. The appellant

submitted that Upper Tribunal Judge Lindsey had been wrong to suggest that the issues to be determined at the adjourned hearing are limited to the appellant's protection claim. This morning, we were provided with a skeleton argument settled by Mr Nicholson in which the appellant submits that the findings preserved by Upper Tribunal Judge Lindsey cannot be seen in isolation from those which the Upper Tribunal set aside as being unsafe. For his part, Mr Bates acknowledged and candidly accepted that on the whole, it is difficult to separate the preserved findings from the overall conclusion in the error of law decision that the First-tier Tribunal Judge erred in relation to the assessment of the appellant's credibility.

4. Although it is unfortunate that these issues have come to the fore at this late stage, we are satisfied that the appropriate course is for us to treat the hearing before us as a Case Management Review Hearing, in the way that was perhaps anticipated by Upper Tribunal Judge Lindsley. Having now also had the benefit of hearing the parties submissions regarding the extent to which any of the findings of the First Tier Tribunal Judge can properly be preserved, we accept that the findings made by the First-tier Tribunal Judge regarding the appellant's contact with his family and the documents available to him, cannot be considered in isolation from the erroneous assessment of the appellant's credibility by the First-tier Tribunal Judge. We are therefore satisfied that in the circumstances, it is appropriate for us to take the exceptional course of setting aside the directions made by Upper Tribunal Judge Lindsey. We do so having had the benefit of hearing the oral submissions made by the parties as to the appropriate course for the disposal of the appeal, following the decision that the decision of the First-tier Tribunal must be set aside.
5. The assessment of a claim for asylum such as this is always a highly fact sensitive task. We accept the submission made by both Mr Nicholson and Mr Bates that the most appropriate course is for the appeal to be remitted to the First-tier Tribunal for hearing afresh. It is common ground between the parties that there is one discrete finding that can be

preserved. That is, “the appellant had a CSID card which is in Germany”. We accept that save for that discrete finding no other findings can be preserved. We have decided that it is appropriate to remit this appeal back to the FtT for hearing afresh, having considered paragraph 7.2 of the Senior President’s Practice Statement of 25th September 2012. The nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

6. The availability of the appellant’s CSID is relevant to the issues that arise in this appeal. It is therefore appropriate for us to direct that the parties shall make enquiries of the German immigration authorities regarding the availability of the appellant’s CSID, or a copy thereof. If the document is obtained by the appellant’s representatives, it should be retained by them for safe-keeping pending the outcome of the appeal.

Signed **V. Mandalia**

Date: 15th June 2021

Upper Tribunal Judge Mandalia