



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

Appeal Number: PA/50796/2021
(UI-2021-001356); [IA/01820/2021]

THE IMMIGRATION ACTS

**Heard at Bradford
On 22 September 2022**

**Decision & Reasons Promulgated
On 6 November 2022**

Before

**UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE KELLY**

Between

**HHSQ
(ANONYMITY DIRECTION 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. By a decision promulgated on 3 August 2022, the Upper Tribunal found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. The Upper Tribunal's reasons were as follows:

1. The appellant is a citizen of who was born on Iraq. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 5 February 2021 refusing his claim for international protection. The First-tier Tribunal, in a decision dated 7 September 2021, dismissed his

appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. On 16 December 2021, Mrs Aboni, Senior Presenting Officer, wrote to the Upper Tribunal as follows:

The respondent does not oppose the appellant's application for permission to appeal. The respondent invites the Tribunal to preserve the findings of the First-tier Tribunal rejecting the appellant's account (#20) and to determine the appeal with a fresh oral (continuance) hearing to consider the issue of return /documentation following the promulgation of "SMO2".

The findings of fact at [20] are as follows:

I have stood back and considered all of the evidence in the round and given as much weight as I feel able to the evidence that is supportive of the Appellant's claim. I have reminded myself of the low standard of proof to be adopted. However, I find the Appellant's credibility to be generally undermined and I find his narrative account to be implausible. Even upon the low standard of proof I am not satisfied that the Appellant had an affair with his step mother or that he is at risk of harm by his family, her family or her tribe. I find that he has given an account that, when considered in the round, is implausible. Further, he is generally an incredible witness. I find that he has fabricated an account to pursue an unmeritorious claim for asylum.

3. The appellant did not attend the initial hearing in the Upper Tribunal at Bradford on 30 May 2022. I am satisfied that the notice of hearing had been served upon him at his last known address. I decided to proceed with the hearing in the absence of the appellant/any representative.

4. I am satisfied that the judge erred in law in his finding that the appellant will be able to re-document himself by proxy and agree with the Secretary of State that the decision of the First-tier Tribunal should be set aside.

5. The appellant has had the opportunity to make representations either in writing or by attending the initial hearing regarding the Secretary of State's submission that the findings of the First-tier Tribunal are not affected by the error of law and should stand. The appellant has made no such submissions and I cannot see any obvious reason why the findings of fact at [20] should not stand. I direct that the findings shall stand accordingly. The decision can be remade in the Upper Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside. The findings of fact at [20] shall stand. The decision shall be remade in the Upper Tribunal (Upper Tribunal Judge Lane; 2 hours; Kurdish Sorani interpreter; first available date; Bradford) following a resumed hearing.

2. At a resumed hearing at Bradford on 22 September 2022, Mr Diwnycz, Senior Presenting Officer for the respondent, told us that the Secretary of State accepts that the appellant does not possess a valid CSID identity

document. Mr Diwnycz said that he did not seek to cross examine the appellant regarding his most recent witness statement (in which the appellant asserts that he does not have a CSID and has lost touch with family members in Iraq). The appellant's home area is Kirkuk and Mr Diwnycz told us that the most recent CPIN report of July 2022 indicated that it would be necessary for the appellant on return to Kirkuk to seek to obtain a new INID identity document which would require him to attend a registration office in person to provide bio-metric data. Moreover, the appellant would be returned from the United Kingdom to Sulaymaniyah, Erbil or Baghdad. If returned to any of those cities, the appellant would have to travel undocumented to Kirkuk which Mr Diwnycz accepted would expose the appellant to a real risk of harm (see *SMO & KSP (Civil status documentation; article 15) Iraq CG* [2022] UKUT 110 (IAC)).

3. In the circumstances, we allow on Article 3 ECHR grounds the appellant's appeal against the decision of the Secretary of State to refuse him international protection.

Notice of Decision

The appellant's appeal against the Secretary of State decision dated 5 February 2021 is allowed on human rights (Article 3 ECHR) grounds.

Signed

Date 22 September 2022

Upper Tribunal Judge Lane

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.