Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number PA/07066/2018**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh	**Decision & Reasons Promulgated**
On the 6 April 2022	**On the 19 April 2022**

Before

UT JUDGE MACLEMAN

Between

BAKIR AHMED MOHAMMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr B Criggie, of Latta & Co, Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge Debra H Clapham dismissed the appellant's appeal by a decision promulgated on 8 October 2019.

2. On 22 November 2021, FtT Judge Scott Baker granted permission to appeal to the UT.

3. The appellant's grounds are as follows: …

> [4] … the FtT erred in its approach to … *AAH (Iraqi Kurds – internal relocation)* Iraq CG UKUT 00212 (IAC). The FtT dismisses the appellant's position on lack of a CSID card and … that he has no contact with … and cannot trace his family … the FtT has not provided sufficient reasoning for the assertions at [66 & 67] … this assessment has to be made with reference to both the CG and the expert report from Dr Fatah … In addition, the appellant's vagueness … has to be viewed through the prism of the psychological report by Dr Morrison … [which] concluded that the appellant suffered from mental health issues … difficulties with concentration, sleep disturbance and agitation.
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> [5] The report also concluded that the appellant's mental health was likely to deteriorate further were he to be returned to Iraq and there was a real risk of suicidal ideation. This aspect … has not been examined adequately by the FtT. At [68] the report is all but dismissed on the basis that there was little evidence of mental health issues bar the report and the report was based on one interview … the report was by an expert … a consultant clinical psychologist … the reasons given for failure to take into account his conclusions are inadequate and lack any reasoning. The Judge also appears to apply a higher standard of proof than is appropriate … the treatment of this aspect of the appeal shows insufficient reasoning.
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> [6] For the reasons … above … the FtT has erred in law by providing insufficient reasoning for making negative credibility findings … the FtT has not provided a sufficient analysis of the relevant CG and the report of Dr Fatah … In addition, the dismissal of Dr Morrison's report and the attendant mental health issues … shows lack of reasoning …

4. The SSHD's rule 24 response to the grant of permission says: …

> [3] The grounds are generally a challenge to lack of reasoning on key aspects … There had been previous determinations, most significantly a UT determination … finding the appellant not credible. Following *Devaseelan* principles the starting point was those previous findings, they stood as established … and this determination must be viewed in that context.
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> [4] The Judge addressed the country exert report at [66] and gave cogent reasons for finding that the appellant was an Iraqi national. The Judge addressed the expert psychological report at [68] but notes that the writer was ignorant of key facts. It was open to the Judge to conclude that this significantly undermined the value of that evidence.
>
> [5] … the Judge carefully considered the evidence and gave sound reasons for dismissing the appeal.

5. The appeal to the FtT was against a deportation decision, made following the conviction of the appellant after trial of assault and rape for which he was sentenced on 15 May 2014 to 7 years imprisonment.

6. At [64], Judge Clapham took as her starting point a "section 72 certificate", which she upheld, to the effect that the appellant "cannot rely on the Refugee Convention and is not entitled to humanitarian protection". No error is suggested therein. She went on:

> In any event, as Mr Criggie pointed out the … claim … in relation to Iraq is a "rehash" of a claim which has been examined on three separate occasions … the starting point for this determination is the previous determination as set out in … *Devaseelan*.

7. The decision continues at [65]:

> … the appellant claims that his parents were Iranian Kurdish refugees and that … leads to difficulties regarding re-entry to Iraq and internal relocation. The argument … is that he will be considered to be Iranian and … will be unable to obtain a CSID card. But these claims have to be considered in the light of the previous judgement of Senior Immigration Judge Macleman.

8. This is a reference to my decision in AA/03472/2010, promulgated on 22 December 2010, dismissing the appellant's appeal, having found him not to be a reliable witness.

9. Neither party suggested that there was any reason why I should not hear the appeal. However, I asked them at the outset whether they were satisfied that was appropriate, given that I had previously reached adverse credibility findings against the appellant. Mr Criggie said that it was undisputed that my previous findings stood as the starting point, and the present case turned on whether the FtT's reasons in relation to country guidance, the expert report, and the psychological report were legally adequate. As that was all subsequent to and separate from my decision in 2010, he was content that I should decide the case. Mr Diwyncz agreed with that analysis. I proceeded accordingly.

10. The FtT went on at [65]:

> In his judgement at [53] [SIJ Macleman] states that the appellant's account of fear of terrorists "… taken in the round, is not reliable even to the lower standard of proof. The judge also considered that the appellant was not a reliable witness as to his date of birth and at [31 – 37] doubts that the appellant is from Fallujah as claimed. The appellant stated in his oral evidence [in 2019] that he has made many attempts to contact his family and that he spoke to the Red Cross … but has heard nothing since. He has produced not a scrap of evidence to show … any attempts to contact his uncle or other family members in Iraq and accordingly I do not depart from the findings made by SIJ Macleman.

11. The appellant's grounds (although not the submissions) gloss over the fact that this was a *Devaseelan* case. They are framed as if the expert and the psychological report were to be viewed on their own from a neutral stance, or as if they were to be presumed to have their highest face value. That takes them out of context and does not reflect the reality of the case.

12. A criticism might have been advanced of stating a conclusion at the end of [65] before turning to the new evidence and considering matters in the round; but that was not said, and decisions are to be read fairly and as a whole.

13. At [66], on the expert report, the Judge unsurprisingly notes that it is written on the basis that the appellant's claim is true. She further notes confusion and vagueness in his account including that given in the social

work report in relation to his conviction. She says that it is difficult to take anything he says as the truth and so does not find that he is "anything other than an Iraqi citizen".

14. It has not been suggested that there was anything in the report to enhance the possibility that the appellant was telling the truth. Accordingly, I do not consider that the Judge went any further than she was entitled to do in explaining why the report, although by an undoubted and well-respected expert, did not advance the appellant's case.

15. It might have been puzzling if the Judge had thought otherwise. If anything, she might have gone further in doubting credibility, as the appellant continues to deny his criminal offence, and states that his conviction arose from racial prejudice of the victim and of the jury.

16. The Judge dealt with the psychological report at [68]. She observed there is little other evidence of mental illness. Mr Criggie did not refer to any other evidence to that effect. Her observation that the report was based on only one interview is also correct. The grounds and submissions ignore the point that the author of the report was "not aware of certain cogent facts". The Judge does not spell out what those were, although she records at [50] the submission that the author was not told of the appellant's conviction (or, of course, of his denial of the facts).

17. The Judge is not shown to have gone wrong in giving the report as little weight as she did. That implies no criticism of the author or his expertise; it was based on placing the report in context.

18. Mr Criggie observed that country guidance has moved on since the time of the FtT hearing, and that further guidance on documentation issues is anticipated. That is correct, but I was not taken to any guidance which would assist the appellant, unless on credibility findings more favourable than he has so far achieved.

19. There was nothing at all in the country expert report, and very little in the psychological report, by which the FtT might have been drawn to revisit previous adverse findings.

20. Although this was not quite the line of challenge, the Judge perhaps went further than was justified in making observations on how the appellant might seek to document himself. In absence of any reliable evidence of his identity, origins, or family, it is impossible to speculate on how he might return, and that might perhaps have been better left as a failure to establish any primary facts by which the appeal might succeed.

21. The grounds and submissions disclose no error of law by the FtT in the reasons given for the negative credibility findings, and no inadequacy of analysis by reference to country guidance or in relation to the country expert and psychological reports. The decision of the FtT shall stand.

22. No anonymity direction has been requested or made.

H Macleman

7 April 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.