



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**Case No: UI-2021-000242**  
**First-tier Tribunal No: PA/50603/2020**  
**IA/00183/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 03 February 2023**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**  
**DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON**

**Between**

**FOA**  
**(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Howard, from Fountains Solicitors

For the Respondent: Mr Williams, a Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 19 January 2023**

**Order Regarding Anonymity**

The First Tier Tribunal made an order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

We make such order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. 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.

**DECISION AND REASONS**

## **Procedural History**

1. The Appellant, an Iraqi national, born on 2 September 1989, claimed to face real risk of persecution on return to Iraq from his family and the authorities on the basis that his family had threatened to kill him because he had his first tattoo when he lived with his family in 2013, and because he wanted to open a tattoo shop, and tattoos were forbidden by Islam. First-tier Tribunal Judge Pinder (the Judge), in a decision promulgated on 22 June 2021, dismissed his appeal on asylum and humanitarian protection grounds but allowed his appeal under Article 3 ECHR. Unless otherwise stated, all paragraph references in our decision refer to the FTT decision.
2. The grounds are lengthy, and permission to appeal was initially refused by Judge Shaerf, and was subsequently granted by the Upper Tribunal, because “For the reasons identified in the renewal grounds it is arguable that the FTT made inconsistent findings regarding the appellant’s ability to relocate away from his home area.”
3. Permission was granted on the other grounds, with the direction that “...the appellant’s representatives should carefully reflect on whether they wish to maintain every ground of appeal in the light of FTT Judge Shaerf’s observation that some of the grounds are based upon submissions not advanced before the FTT. The appellant’s representative should be prepared to demonstrate the submissions made to the FTT and why the FTT erred in law in relation to a particular issue, if submissions were not made.”

## **The hearing, decision and reasons**

4. The matter came before us on 19 January 2023. Mr Howard notified us by email prior to the hearing that the Respondent had granted humanitarian protection to the Appellant.
5. Mr Williams and Mr Howard had discussed the case prior to the hearing. Mr Williams submitted that the Appellant’s appeal had to be treated as abandoned on the basis of s104 (4A) and s104 (B) of the Nationality, Asylum and Immigration Act 2002 (the NIA 2002) because:
  - a. S104 (4A) provides that an appeal brought by a person while he is in the UK shall be treated as abandoned if an appellant is granted leave to enter or remain in the UK, subject to the provisions of S104 (B);
  - b. S104 (B) provides that section 104 (4A) will not apply to an appeal in so far as it is brought on a ground specified in s84 (1)(a) or (b) or s84 (3) (asylum or humanitarian protection) where an appellant gives notice in accordance with the Tribunal Procedure Rules that he wishes to pursue the appeal in so far as it is brought on that ground.
6. Mr Williams submitted that where an Appellant wishes to pursue the appeal pursuant to s104 (4B), Rule 17A of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides for an appellant to give notice within 28 or 30 days, depending on the method of delivery of the grant of leave, and makes specific provision for the Tribunal not to extend the time-limits for the giving of notice.
7. Mr Howard accepted that notice had not been given.

8. We find that the FTT had erred in law in relation to the issue of humanitarian protection. This is because the FTT made the following findings:
  - a. The Appellant did not have any identity documents;
  - b. He did not have family support; and
  - c. He would be returned to Baghdad.
9. On the basis of these findings, the Respondent's own guidance by way of the 'Country Policy and Information Note on Internal relocation, civil documentation and returns' provides for the grant of humanitarian protection.
10. We accept that the Respondent had already corrected this error by granting humanitarian protection, and that the appeal fell to be treated as abandoned pursuant to the provisions of s104 of the Nationality, Asylum and Immigration Act 2002.

### **Notice of Decision**

11. The appeal is treated as abandoned pursuant to the provisions of s104 of the NIA 2002.

**M Robertson**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**26 January 2023**