Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number UI-2021-001592**
(FtT ref PA/10285/2019)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
On the 27 July & 16 November 2022

Decision & Reasons Promulgated
On the 20 February 2023

Before

UPPEER TRIBUNAL JUDGE MACLEMAN &
DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

B A
(anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: *Mr S Winter, Advocate, instructed by Jones Whyte LLP, Solicitors, Glasgow*
For the Respondent: *Mr A Mullen, Senior Home Office Presenting Officer*

DETERMINATION AND REASONS

1. The appellant identifies himself as a citizen of Iraq, born in 1965. He sought asylum in the UK on 3 December 2015.

2. The appellant says that he worked for the *Baath* regime as an immigration officer in the Foreigners Residency Directorate. He applied policies directed against persons of Iranian descent, depriving them of nationality and removing them from Iraq. After the fall of the regime some of those affected took senior positions in government and in associated militias. They sought revenge on persons involved in carrying out those policies. Members of the Iraqi Congress party (ICP) threatened him in June 2003. He handed over hidden documents from the Directorate. He reported this to the US army, after which he was threatened again. From then on, he moved around within Iraq. Militias killed 16 of his former colleagues (named in his statement) from 2005 onwards. In March 2007, his brother was killed, perhaps because he was mistaken for the appellant. Another brother was kidnapped and released in 2007, kidnapped again in 2008, and has disappeared. In July 2007, the appellant left Iraq. In February 2019, members of militia groups or government forces approached his family asking about his previous employment and his whereabouts. The militias have now been incorporated into the government.

3. The SSHD refused the appellant's claim by a letter dated 15 October 2019. At [22] the letter said there was evidence that in 2018 in Baghdad the appellant applied to the US Dept of Homeland Security for a visa. This was known by comparison of his fingerprints. The SSHD having raised this with his representatives, the appellant said he had not left the UK since 2015.

4. At [43] the refusal letter considers the appellant's return to Iraq "without informing the Home Office" and the attempt to obtain leave to enter another country not to be the behaviour of "someone with a genuine well-founded fear of persecution".

5. The refusal letter accepts that the appellant is from Iraq [21] but at [44] declines to accept that he was employed by the government or threatened by militia; at [53], declines to accept that his brother was assassinated through mistaken identity; and at [54-58], applies section 8 of the 2004 as undermining credibility. Other reasons are given, but the alleged visa application in Baghdad is a significant part of the analysis.

6. FtT Judge David C Clapham SSC dismissed the appellant's appeal by a decision promulgated on 17 March 2020.

7. The appellant was granted permission to appeal to the UT, principally on the ground that the judge erred regarding the fingerprint match in Baghdad "where no actual evidence of the print was produced, the maker of the statement was not available for cross-examination and there was other evidence which may have rebutted that evidence".

8. The case came before UT Judge Macleman on 12 May 2021, when the SSHD conceded error, on the basis that while it was open to the FtT to conclude that the appellant had been in Baghdad in 2018, the judge took the fingerprint matter as conclusive without evaluating the strengths and

weaknesses of all the evidence on the point. By agreement, the case was remitted to the FtT.

9. FtT Judge Gillespie dismissed the appeal by a decision promulgated on 21 December 2021.

10. The appellant again sought permission to appeal to the FtT, on these grounds:

> Ground 1- allegation appellant in Baghdad in 2018
>
> 1. The FTT erred in law for the following reasons:
>
> (i) at paragraph 49 when finding that it was highly unlikely that the information received by the UK from the US government was incorrect given that fingerprints were found to match a US database. The FTT states that fingerprints are unique. The FTT finds that it has been proved that there was a thoroughness by the US authorities. The FTT misapplied the law by failing to recognise that the evidence of the fingerprint match could not be relied upon where none of the evidence from the US authorities was produced. The fingerprints were not produced which were said to match and neither was the fingerprint match or indeed the application that was said to have been made at the US Embassy and where Barbara Stubbs did not appear to adopt her statement or be subjected to cross-examination (*MH (respondent's bundle: documents not produced) Pakistan* [2010] UKUT 168 (IAC));
>
> (ii) at paragraph 49 the FTT erred in law by misapplying the law where the Home Office failed to produce the fingerprints, the fingerprint match, the report concluding there was a match in the fingerprint evidence, including whether the authors of the report met the tests set out in *Kennedy v Cordia Services LLP* 2016 SC (UKSC) 59 or the application said to have been made in the US Embassy. Although the respondent sought to rely on a statement from Barbara Stubbs she did not give evidence and could not be cross-examined. Particularly where there was other evidence indicating that he was in the UK rather than Baghdad (see for example pages 138, 141-142, 145, 159-160, 192, 207-208 of the Home Office bundle; statements and witness evidence from Fahad Tahir Al- Sharafy and Mr Al Shamarie). As such it could not be said that the respondent had met the burden and/ or standard of proof (*RZ (Eurodac- fingerprint match-admissible) Eritrea* [2008] UKAIT 00007). *Separatim* the FTT erred in law by effectively placing the burden on the appellant rather than recognising the burden of proving the allegation was on the respondent (*RZ, supra*);
>
> (iii) further and in any event, the FTT erred in law at paragraph 52 by failing to make any, or failed to make any adequate, findings on the evidence from the witnesses. Such evidence was material where the witnesses spoke to the appellant not returning to Iraq (*AR* [2017] CSIH 52 at paragraph 36 per Lord Malcolm). Although the FTT states at paragraph 53 that it considers the evidence and the FTT states at paragraph 55 that the evidence of the witnesses does not displace the other evidence the FTT does not explain why that is, or does not reconcile why that is when the FTT does not make any adverse reliability or adverse credibility findings against the evidence of the witnesses;
>
> (iv) the informed reader is left in real and substantial doubt as to whether the FTT finds what the appellant told his GP, as recorded at paragraph 52, being consistent with his position and if that is not consistent or is rejected

why that is and how that corroborative evidence is reconciled with the adverse findings;

(v) the FTT erred at paragraph 53 by operating on a misapprehension or misunderstanding when stating that the papers show that the appellant has had a bank account. As far as the author of the grounds can see there is no reference to a bank account in the papers. In any event the FTT leaves the informed reader in real and substantial doubt as to why at paragraph 53 the FTT is looking for evidence such as a bank statement, or other unassailable evidence, when the evidence was that he was homeless and was awaiting support regarding his asylum claim (see Home Office bundle at page 235). If he was not receiving support there would be nothing going into his bank statement and when he was being supported by Mr Alsharafy. *Separatim* the reference to "unassailable evidence" indicates that the FTT was applying a higher standard than appropriate as do the phrases "highly unlikely" which are used at paragraphs 41 and 49 of the FTT™s decision. The appellant is prejudiced where his appeal has been refused;

(vi) *separatim* the FTT erred in law at paragraph 55 by allowing the adverse credibility findings to sway the assessment of the witnesses (*TF & MA* 2019 SC 81 at paragraph 49 per Lord Glennie);

(vii) the FTT erred in law by misapplying the law. It could not be said that the appellant had the facility to access information about the assertion against him that would enable him to make a meaningful forensic rebuttal beyond mere denial. The appellant had requested at previous CMRs that the fingerprints, fingerprint match and the report showing the fingerprint match be produced. The respondent failed to do this with no explanation. The appellant was denied the opportunity of challenging same and thus the appellant was materially prejudiced *(YI (previous claims-fingerprint match-EURODAC) Eritrea [2007] UKAIT 00054)*.

Ground 2- mental health issues/ vulnerability

2. The FTT erred in law:

(i) at paragraph 43 the FTT finds that the appellant's failure to disclose that he was in Canada undermines his credibility. The appellant's position was that he had not been in Canada. In so finding the FTT has failed to take account of the appellant's mental health issues at that time or where the informed reader is left in real and substantial doubt as to how the FTT has assessed those when coming to an adverse finding and if those mental health issues do not give a reasonable explanation for any such discrepancy then why that is so. In particular the appellant was referred to the Glasgow Psychological Trauma Service in March 2016 where his difficulties were described characteristic of Complex Post Traumatic Stress Disorder together with a subsequent suicide attempt in June 2016 and other ongoing mental health issues throughout 2016-2017. There is no analysis of whether such mental health issues may provide a reasonable explanation as to why there is such an inconsistency (see pages 229, 237 and 239 of the Home Office bundle). There is no recognition that particular care must be paid in reaching the conclusion that inconsistencies should be treated as being lies where there is evidence of PTSD which has the effect of the appellant being unable to give an accurate account (TVN v Secretary of State for the Home Department [2021] EWHC 3019 (Admin)at para 34(ix)). *Separatim* the FTT has fallen into the same error in terms of the findings at paragraphs 45 (if there is an inconsistency which the appellant disputes) and 47-48; the error

also vitiates the finding of the FTT at paragraph 53 that the FTT finds it difficult to understand why the appellant feared deportation when that was the period he was suffering from serious mental health issues and the information demonstrated that he had a fear of being removed at that stage. In light of the foregoing the FTT's statement at paragraph 61 that it is not persuaded that the mental health issues have probative consequences is vitiated;

(ii) at paragraph 61 when finding that the symptoms are not at all inconsistent with the uncertainty his immigration history may have caused. However that emphasises the error in the previous paragraph of this application where there is no analysis of the mental health issues which were diagnosed in 2016. The information was that the mental health issues were attributable to trauma based experience in Iraq (see page 229 of the Home Office bundle). Dr Morrison himself states although the mental health issues are likely to relate to the stress of the ongoing asylum application, they are also likely to be caused by a subjective perception of fear that the appellant has about the potential repercussions for him should he be returned to Iraq. Although the FTT states that the symptoms are not at all inconsistent with the uncertainty his immigration history may have caused, that is to discount that they are also attributable to what happened to him in Iraq where the FTT has failed to exercise anxious scrutiny or where the informed reader is left in real and substantial doubt as to why the FTT finds as it does in light of the other evidence referred to herein. As a consequence the FTT has misapplied the law by failing to recognise that the psychological reports can assist in casting a light backwards and failing to assess, or failing to adequately assess, whether those are supportive of what happened to the appellant in Iraq and if not, why not *(R (Soylemez) v Secretary of State for the Home Department [2003] EWHC (Admin)* at paragraph 41).

Ground 3- documentary evidence

3. The FTT erred in law when looking at the various documentary evidence:

(i) has failed to make any findings in terms of the supporting statement from the appellant's wife (appellant's second bundle at pages 12-13). Such evidence is material where she supports the claim and what happened to the appellant together with ongoing interest in the appellant. If no adverse findings are made in relation to that evidence there is no analysis of whether the appellant's credibility is strengthened thus undermining the other adverse findings made;

(ii) has failed to make any findings in terms of the complaint made to the court in relation to the killing of the appellant's brother (appellant's second bundle at page 26). Such evidence is material where it supports the appellant's claim. If no adverse findings are made in relation to that evidence there is no analysis of whether the appellant's credibility is strengthened thus undermining the other adverse findings made;

(iii) at paragraph 42 by proceeding on a misapprehension or misunderstanding where the death certificate did not ask for a medical cause of death. The explanation given in the death certificate was consistent with the question asked in the death certificate (see Home Office bundle at page 94; appellant's second bundle at page 22);

(iv) in any event the reader is left with the impression at paragraph 42 that the FTT is finding that the death certificate is a forgery where the FTT states

that it is unlikely to be authentic. That is material where the FTT erred by failing to explain what evidence was relied upon to reach that conclusion. For example no expert report or evidence was offered to show that the death certificate was false (*AJ v Upper Tribunal* 2012 SLT 162 at paragraph 7 per Lord Clarke);

(v) the FTT erred by failing to make any findings as to whether there was a duty on the Home Office to verify some or all of the documentary evidence as outlined in the skeleton argument. It was not said that the documentary evidence was not central. The letter from Major McCrae, the death certificate and the complaint to the authorities were all central to the claim and it has not been said they were not easily verifiable. As such the FTT has failed to recognise that the Home Office were not able to impugn that documentary evidence. Although the FTT can come to its own view on reliability, the FTT has erred by failing to recognise that the documentary evidence was unchallenged and where that could have been verified by the Home Office but the Home Office chose not to do so.

Ground 5- miscellaneous errors

5. The FTT erred in law:

(i) at paragraph 41 in relation to the letter from Major McCrae (see Appellant's bundle at page 270). The FTT states that from the FTT's experience of dealing with this type of documentation the US military is jealous of its identity and anything it issues has an imposing logo and letterheading. However the FTT erred by holding itself out as an expert on documentation emanating from the US military without saying what qualifications it has on US military procedure and without saying what evidence it has to say that such a document could not have been issued in 2003;

(ii) at paragraph 45 by appearing to operate on a misunderstanding or misapprehension when finding that it was implausible that the last passport the appellant held was in 1978/ 1979. As far as the author of the grounds can see there was no such evidence;

(iii) at paragraph 45 there is no inconsistency in relation to the screening interviews of 3rd December 2015 and 28th January 2016. In both screening interviews the appellant accepted his passport was in Iraq;

(iv) at paragraph 45 the FTT has stepped outside judicial knowledge when finding that it doubts whether fingerprint technology was used on passports in Iraq in 1978/ 1979;

(v) at paragraph 50 the FTT leaves the informed reader in real and substantial doubt as to why the FTT says no reasonable explanation has been given for the appellant leaving Malta. The appellant explained that he would have to wait 3 years to make a family reunification application, he remained in a camp which was overcrowded and not given sufficient medical treatment;

(vi) in light of the grounds in this application the remaining findings of the FTT are vitiated.

Ground 6- expert report/ real risk

6. The FTT erred in law at paragraphs 56-58 for the following reasons:

(i) the FTT erred at paragraph 57 by failing to exercise anxious scrutiny or leaving the informed reader in real and substantial doubt as to why the FTT reaches the findings it does when the expert has had regard to the interview records and refusal letter (paragraph 37 of the expert report in the appellant's first bundle) and has regard to the appellant's claim (see paragraphs 42-57 of the expert report including the appellant's employment). As a result the FTT erred at paragraph 58 by having regard to irrelevant considerations and interposing its own view as to what is reasonable in terms of assessing plausibility as it has also done at paragraphs 53 (by the use of the phrase, "I find it difficult") and paragraph 61 ("It seems to me") (paragraph 2.25 of Asylum Law & Practice, Mark Symes and Peter Jorro, Second Edition, Bloomsbury Professional). In particular the FTT had no evidence to reach a contrary view from that narrated by the expert and where the FTT did not point to any evidential basis as to why it ought to reach a different view on risk from that of the expert whose qualifications and expertise were not questioned;

(ii) the errors demonstrate that the FTT has erred when assessing the credibility of the appellant. As such there is a real possibility that another FTT could reach a different decision where the expert is of the view, at pages 69-77 of the expert report, that the appellant is at real risk if he is returned. In light of that the FTT's findings at paragraphs 56-58 that the matters the appellant relies on are not sufficient to indicate he is at real risk are legally deficient where those demonstrate a lack of anxious scrutiny in relation to the expert report, or where it is inadequately reasoned in light of the expert report, or where such a finding is not supported, or is not adequately supported, by the expert report. It is not inevitable that the appeal would be refused where internal flight has not been assessed by the FTT. In particular there was no, or insufficient, evidence to show that the appellant or his family had links in any other area of Iraq (see headnotes 18 and 29 of *SMO & others (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)*);

(iii) further the findings are vitiated by the errors where for example the statement from the appellant's wife demonstrates ongoing interest in the appellant and which is consistent with the expert report.

11. The case came again before UTJ Macleman on 27 July 2022. In course of submissions, Mr Mullen came to concede that the FtT has again erred and that its decision fell to be set aside.

12. In an "error of law" decision dated 28 July 2022, the extent of the errors made was further considered, as follows.

13. The FtT was not bound by a "best evidence" rule and was entitled to admit evidence whether or not admissible in a civil trial - Tribunal Procedure (FtT) (IAC) Rules 2014, paragraph 14(2).

14. The SSHD's refusal letter at [10] lists documents considered, including "witness statement Barbara Stubbs (SSHD)". There was no direct reference before the UT to that document. Its contents seemed to be the only source so far made available for the allegation that the appellant was in Baghdad in 2018, as detailed at [22] of the refusal letter (the first paragraph so numbered – there is duplication of numbering). The matter

is also mentioned at [69 – 70]. There is reference to US Dept of Homeland Security "databases", fingerprint records held thereon, an application made by the appellant in Baghdad for a US visa, and the Iraqi passport which the appellant provided.

15. The appellant refers to *MH*. That case dealt with the requirement "in rule 13 of the FtT Rules for an unpublished document to be supplied to the tribunal if it is mentioned in the notice of or reasons for refusal or if the respondent relies on it." The case is reported for the proposition that the tribunal is likely to assume that a document mentioned but not supplied is no longer relied upon.

16. The rule referred to in *MH* is no longer in force, but a similar obligation arises from the 2014 rules, paragraph 24 (1) (d).

17. So far as *MH* lays down a principle, that does not appear to exclude reliance on a document whose contents are known to the SSHD but the original of which is not accessible – e.g., the passport exhibited to the authorities of the USA.

18. *YI* dealt with the position in cases where the SSHD alleged that an appellant was falsely denying his presence and a previous claim in another European country. The headnote says:

> An Immigration Judge needs to be satisfied on the specific evidence in each case, including EURODAC evidence if available, whether the Appellant has made a previous claim. The evidence could comprise not just fingerprints but other data from the alleged previous application, for example photographs, age, name and claim details. General evidence might also be properly admitted about the reliability of the EURODAC system and how it operates. An Immigration Judge will also, as a matter of fairness, need to be satisfied that the Appellant has had the facility to access information about the assertion against him that would enable him, if he so wishes, to make a meaningful forensic rebuttal beyond mere denial. An Appellant may not want to use such a facility if the match is genuine and further evidence would only make matters worse for him. It is therefore the availability of the facility rather than the take-up that is needed in a fair system.

19. Mr Mullen accepted that the approach required there applied to this case; that the appellant has not, to date, and despite his requests over a long period, been given such information as to enable him to attempt to rebut the allegation; and that the SSHD could be expected to produce the best evidence she has.

20. Mr Mullen accepted that there was error also in dealing with the evidence of the witnesses who said that the appellant was in Glasgow in 2018. That did not necessarily involve a finding adverse to the witnesses, and it was open to the Judge to reach the conclusion stated at [55], but the reasoning at [54] is inadequate to support it. It is hard to see why "unassailable evidence" of the appellant's continuous presence might be expected. The explanation for absence of bank records was not considered. Further, as

Mr Mullen observed, there might be daily bank transactions irrespective of the appellant's physical presence.

21. It was unnecessary to resolve the grounds beyond that, but the following observations were made with a view to assisting in reaching a further decision.

22. Whether to arrange for the witness Barbara Stubbs to be present was firstly up to the respondent; but her non-attendance was unlikely to be taken as adverse to the SSHD's case unless the appellant, after compliance with directions, sought her attendance and explained the general scope and purpose of proposed cross-examination.

23. The UT was not asked to make, and did not make, any directions for the SSHD to attempt to verify documents produced by the appellant. However, it was for both parties to consider their duties in providing and assessing materials needed to substantiate a case; see, for example, paragraph 339I of the immigration rules.

24. The following timescale was agreed.

25. The SSHD was directed to provide to the appellant and to the UT by 21 September 2022 all reports and other information comprising the best evidence reasonably available to her of the appellant applying for a visa and providing fingerprints to the authorities of the USA in Baghdad in August 2018; any other further evidence on which she sought to rely; and a skeleton argument, clearly referenced to all supporting materials.

26. The appellant was directed to provide to the SSHD and to the UT by 2 November 2022 all further reports and other information and evidence on which he sought to rely; and a skeleton argument, clearly referenced to all supporting materials.

27. This determination, up to this paragraph, incorporates the substance of the "error of law" decision dated 28 July 2022, referred to above.

28. The case came before us on 16 November 2022 for further hearing and final submissions.

29. Nothing further had been received from the SSHD. Mr Mullen advised us that his internal request for further information had produced no response.

30. The appellant has provided two supplementary bundles.

31. The first comprises a letter from North East Mental Health Services, dated 27 October 2022, and a report by Dr Rebwar Fatah of Middle East Consultancy Services, dated 18 October 2022, which incorporates and updates his previous report.

32. The second supplementary bundle comprises correspondence and a report from Oakwood Medical Practice (the appellant's GP's), a report from Stobhill Hospital, and evidence of medical prescriptions.

33. The appellant had one witness present, Mr Al-Sharafy, referred to above. His evidence goes to the appellant being in Glasgow at the time of his alleged visit to Baghdad. The respondent did not seek to cross-examine, so we treated the statement of the witness as adopted.

34. The appellant elected not to use an interpreter. We noted that he has a degree in English literature. It was agreed that he should be treated as a vulnerable witness, in light of the information about his mental health, by emphasising the need for short clear questions. We advised him to take the time he needed to reflect on his answers and that a break could be taken if appropriate. In the event, his oral evidence was brief and straightforward. He had no apparent difficulty in giving his evidence and in following the proceedings.

35. The appellant's evidence-in-chief is set out in detail in his original statement, pp 3 – 40 of his FtT bundle. His statements being adopted, Mr Winter had no further questions.

36. In cross-examination, the appellant said there had been no threatening visits to his wife's home since 25 February 2019. Asked whether there had been any other signs of continuing interest in him, he said that those who took power in 2005 remain in place and are allied to militias taking their lead from Iran. Asked if he had dealt personally with the cases of any of those leaders, he said that all of those who came originally from Iran pursued him and his colleagues in the Directorate. He had not been the victim of violence from militias or police but that was because he escaped in time, then hid in his own country from 2003 to 2007 before fleeing abroad. He had not been back since. His three sons live with his wife. There have been no reprisals against them, but they cannot attend university due to his inability to sign the necessary documents.

37. There was no re-examination.

38. (In response to our questions, the appellant explained that university admission procedure requires signatures provided in person by both parents, if living, and that a parent outside Iraq could attend to sign at the Embassy, where he could not go. Nothing turns on this passage of evidence.)

39. In Dr Fatah's report, Mr Winter referred to [129-130], on the militia feared by the appellant, *Hashd Al Shaabi*, and its incorporation into government in 2016; [149-150], on its activities in the area where the appellant's wife lives; [183], on its perpetration of atrocities, with impunity; and [184]:

> If Mr Alakabi is openly outspoken against *Hashd*, it is plausible that he could face a risk of detention, a lack of due process, and a risk of torture and other ill-treatment.

40. We were also referred to [456-458], in similar terms, and to [459]:

> If Mr Alakabi worked for the Foreigners Residency Directorate … he may be at risk from persons seeking revenge … the current period of unrest has given those oppressed under the *Baath* regime … the opportunity for revenge assassinations.

41. Mr Mullen referred to the report at [455], on general risk to Sunnis from militias, and to [459].

42. Mr Mullen relied on the refusal letter. The further main points we noted from him were these:

    (i) The appellant has not had the opportunity he should have had to challenge the allegation about a visa application and provision of his fingerprints in Baghdad, so "not much weight" could be given to the matter.

    (ii) The case did not turn only on credibility.

    (iii) The general conclusions reached by Dr Fatah, who is a well-qualified and acknowledged expert, were not disputed; but his report does not disclose a level of risk to the appellant entitling him to protection.

    (iv) There was no realistic basis for a finding that militia or government agents might still have the appellant as a target. He came to no harm in Iraq from 2003 to 2007. The men who allegedly visited his wife in 2019 did not identify themselves. They have not been back since. No pressure has been applied to his wife and sons.

    (v) The report and general background evidence are too vague and lacking in specific examples to establish a real risk to someone in the appellant's claimed position.

    (vi) It was not reasonably likely that the appellant's alleged work for the former regime would give rise to a risk of revenge over 20 years later.

43. Mr Winter relied on his skeleton argument. We noted the further main points:

    (i) No case was made for protection based on mental health difficulties. Rather, those are advanced to explain the appellant's behaviours, such as trying to make a claim in another identity at Cardiff in December 2017, and inconsistencies in his evidence.

    (ii) No case was advanced based on lack of documentation. The respondent holds documents which would enable safe return if there were no other difficulties.

    (iii) It was not argued that the allegation of the visa application in Baghdad had, in principle, to be given no weight whatsoever; but in

light of the respondent's failure to produce the evidence for scrutiny, it should be given minimal weight.

(iv) On general credibility, the appellant founded upon his detailed responses in his statement and skeleton argument to the points made in the refusal letter.

(v) The respondent founded upon the appellant not saying he was directly harmed, but that had to be put in context of the threats made, and of what happened to his brothers.

(vi) The background evidence and the expert report established that anyone threatened by the *Hashd Al Shaabi* militia is at risk of persecution. The citations above from the expert report showed that such a risk applies to someone in the appellant's position.

(vii) The appellant's account was consistent with the background evidence and the report.

(viii) Any absence of similar instances was made good by the appellant's evidence of 16 named victims and of what happened to his brothers.

44. We reserved our decision.

45. A visit to Baghdad to apply for a US visa, if proved, might not have been entirely fatal to the claim; but, along with a false denial, it would have dealt a blow from which the claim might not have recovered.

46. The Senior Presenting Officer is not personally responsible for the dearth of evidence of the alleged visit. However, given the centrality of the matter in the long history of the case, there has been a deplorable institutional failure.

47. In those circumstances, we are unable to give this matter any significant weight.

48. We accept, as the respondent has, that the appellant is Iraqi. We are not certain that his true identity is as presently stated, given his history of travelling and claiming under other names and dates of birth, with false passports obtained in Iraqi and other nationalities; a pattern repeated within the UK. That history, coupled with his decisions not to maintain his claims in Switzerland and in Malta, is obviously the main factor against his credibility.

49. We do not doubt that the appellant has suffered from mental agitation, anxiety, and depression, or that his condition is strongly linked to his history of applications for protection, with varying degrees of success, in several countries and identities, and his dissatisfaction with poor living conditions provided to him along the way. That might help to explain why he gives an imperfect account of himself. However, submissions have not

persuaded us that his mental condition helps us very much in deciding which of his inconsistent accounts, if any, is closest to the truth.

50. The SSHD's refusal letter is detailed and well-reasoned. As well as points mentioned above, it finds discrepancies between the appellant's account of his work and external sources on the activities of the Directorate, and on the activities of the ICP and its leader; and discrepancies within his account. Mr Mullen did not add to any of those points. We find that they are all legitimately taken but minor. Even cumulatively, they do not exclude a real possibility that the appellant worked for the Directorate and was targeted as a result.

51. What happened later to his brothers, and whether that had anything to do with his work, remains conjectural.

52. The long process of resolving the credibility of this claim does not reflect poorly only on the SSHD. It is hardly surprising, even if excuses can be advanced for his conduct, that the appellant's history of extensive deceit has produced scepticism from the respondent and from successive tribunals.

53. Having now found the appellant credible, to the lower standard, there remains the issue raised by Mr Mullen – does the level of interest shown in 2005, and by a visit to the family home in February 2019, translates into a real risk on return at this date?

54. It is common ground that someone currently targeted by *Hashd* for revenge qualifies for protection.

55. The appellant is not in the category of someone "openly outspoken against *Hashd*", as posited in the report at [184]. He might fall into the category of [459], of someone at risk of revenge for his work in the Directorate.

56. That work was, as Mr Mullen argued, a very long time ago. The further interest shown in 2019 was faint and has not been followed up. It is possible that the appellant might now return and remain unmolested. We also bear in mind, however, that Iraq is a vengeful place, where grudges go back a long way. Revenge, proverbially, is a dish best eaten cold. We conclude that on a favourable credibility finding, the background evidence and the report are sufficient to disclose a risk persisting even now.

57. We are grateful to both representatives for their assistance in resolving the case.

58. The decision of the FtT having been set aside, we substitute a decision allowing the appeal, as first brought to that tribunal, on protection grounds, within the terms of the Refugee Convention.

59. The appellant has, belatedly, sought an anonymity order, which is granted.

60. 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.

Hugh Macleman

21 November 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.