



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

**Case No: UI-2023-001019**  
**First-tier Tribunal No:**  
**PA/52094/2022**  
**IA/05581/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 12 October 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**FAT**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms. S. Ferrin, Counsel instructed by Duncan Lewis  
For the Respondent: Mrs. R. Arif, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 14 September 2023**

**Order Regarding Anonymity**

**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.**

**DECISION AND REASONS**

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Hawden-Beal, (the “Judge”), dated 31 January 2023, in which she dismissed the Appellant’s appeal against the Respondent’s decision to refuse a grant of asylum. The Appellant is a national of Iraq.
2. Permission to appeal was granted by First-tier Tribunal Judge Gumsley in a decision dated 9 March 2023 as follows:

“2. As to the substantive grounds, I am satisfied that it is arguable that the FtT Judge has been inconsistent in expressing concerns as to the truth of the content of the warrants but seemingly finding as a fact that ‘the warrants would appear to be in existence’ and Dr Ghobadi’s expertise on the matter, who finds them genuine. Further, it is arguable that the FtT Judge erred by failing to give adequate consideration to the risks that might be faced by the Appellant, from the authorities and others at the airport and elsewhere upon return by reason of, if nothing more, the apparently accepted existence of the warrants.

3. Permission to appeal is therefore granted. As all appear to be linked, no restriction is placed upon which of the grounds as pleaded may be argued.”

### **The hearing**

3. The Appellant attended the hearing. I heard oral submissions from Ms. Ferrin and Mrs. Arif, following which I reserved my decision.

### **Error of law**

4. Grounds 2, 3 and 4 relate to the Judge’s treatment of the arrest warrants, and the risk on return to the Appellant on account of those warrants. I have carefully considered the Judge’s consideration of the warrants in the decision. At [42] the Judge states:

“The appellant has provided what he now claims are correct translations of the warrants which would seem to answer all the issues raised by Judge Anthony in her determination, but the appellant has not provided the previous translations such that I can compare them. Dr Ghobadi, whose expertise is not challenged by the respondent, considers them to be authentic and is satisfied, from his source that they have been issued by the courts in Rania.”

5. At [45] she finds:

“Even if the warrants are considered by Dr Ghobadi to be genuine, that does not mean that the contents of those warrants are genuine, in other words the information contained within those warrants which caused them to be issued is not confirmed to be genuine. Judge Anthony did not accept that the appellant had been credible in so far as his relationship with Abdullah Bur’s wife was concerned because of the discrepancies, even excluding the evidence about the warrants and his statements and evidence today do not persuade me to depart from that conclusion.”

6. It was submitted that the Judge had failed to provide reasons for finding that the contents of the arrest warrants were not genuine despite accepting that the documents were authentic. Dr. Ghobadi’s reports are found at pages 202 and 209 of the Appellant’s bundle. In these reports he had set out how he had authenticated the warrants, and how they had been checked with the Court at

Rania. Ms. Ferrin referred me to the warrants which had stamps from the Court at Rania (pages 207 and 214).

7. It was submitted by Ms. Ferrin that the contents of the warrants indicated that the Appellant was wanted for the crime of adultery and corroborated the Appellant's account. She submitted that the Judge's finding that the reports the warrants were genuine but that their contents could not be relied on infected the credibility findings. It went directly to the issue which was at the core of the Appellant's account.
8. I find that on the one hand the Judge appears to have accepted the evidence of the expert that the warrants are genuine but has also found that this does not mean that the contents of the warrants are genuine. I find that she has failed to give adequate reasons for finding that, while accepting the expert evidence, which stated that the warrants had been authenticated at the Court in Rania, she has not accepted their contents. I find that this is an error of law.
9. The third ground of appeal criticises the Judge for taking issue with the fact that the incorrect translations which had been submitted for the Appellant's appeal in January 2020 before Judge Anthony had not been provided for his appeal in 2023. Corrected translations had been provided which were certified and confirmed by Dr. Ghobadi as being correct.
10. The Judge states at [42] (see [4] above) that she has not been provided with the previous translations. At [43] she states "Yet again I do not have the translations which were before Judge Anthony to allow me to compare them".
11. It is not clear why the Judge needed the previous incorrect translations given that she has accepted that these warrants had been authenticated by an expert. His expertise was challenged neither by herself nor by the Respondent. The expert reports from Dr. Ghobadi and the accompanying corrected translations formed the new evidence before the Judge which, it was submitted, enabled her to depart from the previous findings of Judge Anthony. Given that the expert had found these arrest warrants to be genuine and the translations to be correct, it is unclear why the Judge found against the Appellant for not providing incorrect translations of the warrants.
12. It was submitted in the fourth ground of appeal that the Judge had failed to look at the case as a whole and consider the risk on return to the Appellant given her acceptance that the arrest warrants were in existence. At [48] she accepts that the warrants are in existence but finds at [51] that the Appellant is not at risk on return because of them. At [56] in conclusion she states:

"I am satisfied that the appellant is not at continued risk from the authorities even though Dr Ghobadi considers that the warrants appear to be genuine, because there is no evidence that the authorities have even started let alone continued to look for him and I am satisfied that he is not at risk from [AB] because he did not have the relationship with his wife as he claims."
13. It was submitted by Ms. Ferrin that there was no suggestion that these warrants were considered not to be genuine by the authorities, and therefore why the arrest warrants in and of themselves would not lead to the detention of the Appellant on arrival. I find that the Judge has failed to consider the risk on return

to the Appellant on account of there being two outstanding arrest warrants issued against him. I find that she has failed to give sufficient reasons for why the Appellant would not be at risk on return on account of this.

14. Ground one relates to this insofar as the warrants show that AB was interested in the Appellant, yet the Judge questioned whether or not he was still alive. At [49] she states that “there is no evidence before me to indicate that AB is still alive”. It was submitted that the Respondent had not queried whether AB was still alive and therefore no opportunity had been given to the Appellant to respond to this suggestion.
15. I find that, had the Judge been concerned that AB was no longer alive rather than that he was no longer looking for the Appellant, she should have given the Appellant the chance to address this issue, given that it had not been raised by the Respondent. This goes to her consideration of risk on return to the Appellant.
16. I find that the decision involves the making of errors of law in the Judge’s consideration of the arrest warrants, and the risk on return to the Appellant on account of them. I find that these errors are material. The contents of the arrest warrants corroborate the core of the Appellant’s claim, and the existence of outstanding arrest warrants is material to the risk on return.
17. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

*“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*

*(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”*

18. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). Given that the arrest warrants corroborated the Appellant’s account, I find that the credibility findings are infected. I therefore consider that no findings can be preserved, and that the extent of the fact-finding necessary means that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

### **Notice of Decision**

19. The decision of the First-tier Tribunal involves the making of material errors of law.
20. I set the decision aside. No findings are preserved.
21. The appeal is remitted to the First-tier Tribunal to be reheard.

22. The appeal is not to be listed before Judge Hawden-Beal.

K. Chamberlain  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
27 September 2023