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

Case No: UI-2023-004503

First-tier Tribunal No:
HU/00502/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

3rd January 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

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

Appellant

**and**

**[M A O]**
**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**
For the Appellant: Mr Tan, Senior Home Office Presenting Officer
For the Respondent: In person
Interpreter: Ms Niyan Rasool

**Heard at Manchester Civil Justice Centre on 19 December 2023**

**DECISION AND REASONS**

1. Whilst it is the Respondent who is seeking leave to appeal today, we have hereinafter referred to the parties as they were identified in the First-tier Tribunal. [MAO] will be referred to as the Appellant and the Secretary of State for Home Department will be referred to as the Respondent

2. The Appellant is a national of Iraq, date of birth 12 October 1989. He arrived in the United Kingdom on 17 July 2016 and claimed asylum. The Respondent refused his claim and his first appeal came before the Tribunal on 27 November 2019 and was dismissed. He lodged further submissions on 1 October 2021 which the Respondent considered on 21 December 2021 before rejecting the fresh submissions.

3. The Appellant appealed this decision and his appeal came before Judge of the First-tier Tribunal Davies (hereinafter referred to as the FTTJ) on 29 June 2023 who allowed the Appellant's appeal on humanitarian protection and article 3 ECHR grounds in a decision promulgated on 28 July 2023.

4. The Respondent appealed this decision arguing there had been a material error for the following reasons:

    a. The FTTJ made irrational conclusions in relation to the Article 3 risk facing the Appellant on return to Iraq, due to a lack of CSID document, as he found at paragraph [41] of his decision that the Appellant had not demonstrated he lacked access to his CSID.

    b. As the FTTJ found that the Appellant can obtain his CSID prior to return, but had chosen himself not to obtain it, the FTTJ incorrectly assessed the risk on return to the Appellant on the basis that he had no access or ability to obtain a CSID on return, despite simultaneously finding that the Appellant has the ability to obtain this document from his family prior to return, but has chosen not to.

5. Permission to appeal was granted by Judge Dixon on 6 October 2023 for the following reasons:

> "Although the Judge made findings that the appellant has access to his CSID (paragraph 41) he nonetheless went on to allow the appeal on the basis – it seems – that the appellant would encounter conditions contrary to Article 3 due to lack of the CSID. This is contradictory as argued by the respondent and appears to be an arguable error of law. I also note that the Judge has not made any findings on Article 8 which also appears an arguable error of law."

6. Mr Tan adopted the grounds of appeal and submitted there had been a material error in law. Judge Davies had made a number of findings that the Appellant could access his ID documents and was in contact with his family members. However, despite making those findings the FTTJ then allowed the Appellant's appeal on basis he did not have access to the documents. Those findings were contradictory.

7. In considering issue of return the FTTJ confused issues stating at paragraph [47] what the 2022 CPIN said about the returnability of a failed asylum. The Appellant is from Sulaymaniyah governate and could therefore be

returned- this argument had been made in the lower court and recorded by the FTTJ at paragraph [45] of his decision. The Appellant either can have his documents sent to him before he leaves the UK or be could be met at the airport by family members with such documents. There was no factual basis to find he would be at risk in return.

8. With regard to article 8 ECHR, Mr Tan accepted this had not been considered. The Judge noted it was a ground of appeal at paragraph [8] and Mr Tan conceded this was a "Robinson obvious" error.

9. [MAO] responded and said Mr Tan did not know what was happening in Iraq and that where he used to live people were being killed in broad daylight. The Respondent had no evidence to show he could get his passport and ID documents. [MAO] submitted the Respondent had not shown these documents would make his life safer. [MAO] further argued he has been living here for seven years and has three children and one newly born child here and his appeal should be allowed on human rights grounds.

10. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

## DISCUSSION AND FINDINGS

11. Having heard submissions, I found there had been an error in law both in respect of the drafted ground of appeal and the FTTJ's failure to deal with article 8 ECHR.

12. Mr Tan's submissions concerned the allowing of the Appellant's appeal on humanitarian protection and article 3 ECHR grounds. The FTTJ had noted in his decision that at his original appeal hearing Judge Tully had found the Appellant's CSID was with his family in Iraq and there was no credible reason why they could not access the document for him. The FTTJ acknowledged that Devaseelan [2002] UKIAT 00702 applied and that all the previous adverse findings on credibility remained unchallenged. Whilst the FTTJ took into account the Appellant's claim he had not had contact with his family in Iraq and consequently could not obtain his documents despite contacting with the Red Cross and asking a friend to search for his family, he nevertheless found, at paragraph [29] of his decision, that the Appellant had chosen to deliberately cut contact with his family as against him losing contact with them.

13. The FTTJ considered the Appellant's latest claims about contact with his family and made the following significant findings:

    a. Judge Tully's conclusions alone make it appropriate to reject the Appellant's claim of loss of family contact. There is nothing in the

brief reference in the witness statement to depart from that conclusion.

b. The Appellant's claim was further undermined by his oral evidence as he had not provided evidence of the Red Cross responding to his undated email to them.

c. The Appellant has been in touch with his family including his mother until her death, his uncle and his sisters.

d. The CSID was left at home.

e. The Appellant was a dishonest witness and he had either broken contact with his family or lied about his contact with them to make it more difficult to be removed from the UK.

f. The Appellant could have approached his uncle directly but chose not to do.

g. On the matter of the CSID, the Appellant had not shown that he lacked access to the CSID.

14. Having made these adverse these findings the FTTJ proceeded to find that removing the Appellant to Baghdad would be a breach of article 3 ECHR.

15. I am satisfied the FTTJ erred in his approach to the evidence. He had made clear findings that the Appellant had access to his CSID through his family. He found the Appellant may have chosen not to contact them as it may help his claim. The fact he has access to his CSID should have led to the FTTJ dismissing the appeal. His decision to allow the appeal both on humanitarian protection and article 3 grounds went contrary to the findings he had made. There is therefore a material error in law.

16. The grant of permission to appeal went further and identified the FTTJ had not considered article 8 ECHR in his decision. There was no cross-appeal in these proceedings, but Mr Tan acknowledged this was a "Robinson" obvious error. The FTTJ was aware of the article 8 issue and it was dealt with by the Respondent in the decision letter. I am satisfied the FTTJ should have dealt with this issue.

17. With regard to the Respondent's ground of appeal I am satisfied there is an error in law based on the FTTJ's own findings. I am satisfied that the only conclusion he could have come to was to dismiss the appeal on humanitarian and article 3 ECHR grounds. I propose to remake this aspect of the appeal and dismiss the Appellant's appeal on those grounds for the reasons set out above.

18. However, this leaves outstanding the article 8 decision. Paragraph 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements")

recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

a. the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

b. the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. Given the FTTJ has heard the evidence on the article 8 issue it would seem appropriate to remit the matter back to Judge Davies to deal with that aspect of the claim.

20. He may feel he needs to hear some further evidence given five months have passed as at today's date.

**Notice of Decision**

The decision of the First-tier Tribunal did involve the making of an error on points of law.

I have set aside the decision in relation to humanitarian protection and article 3 ECHR and remade the decision and dismissed the Appellant's appeal on those grounds,

I have remitted back to the First-tier Tribunal the issue of article 8 ECHR. I believe this should be relisted before Judge of the First-tier Tribunal Davies in Manchester for the reasons set out above.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
**20 December 2023**