



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

**Case Nos.: UI-2024-  
000879**  
**First-tier No:  
PA/53183/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 13 May 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MALIK KC**

**Between**

**IH (IRAQ)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE  
FOR THE HOME DEPARTMENT**

Respondent

**Representation**

For the Appellant: Mr Reuben Soloman, Counsel, instructed Freedom Solicitors

For the Respondent: Mr Esen Tufan, Senior Presenting Officer

**Heard at Field House on 15 April 2024**

**DECISION AND REASONS**

*Introduction*

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Gaskell promulgated on 20 January 2024. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse his protection and human rights claims.

## *Discussion*

2. I am grateful to Mr Reuben Soloman, who appeared for the Appellant, and Mr Esen Tufan, who appeared for the Secretary of State, for their assistance and able submissions. It is common ground that the Judge's decision is wrong in law and should be set-aside. The Appellant, who is a citizen of Iraq, arrived in the United Kingdom on 30 August 2018 and made a protection claim. The Secretary of State refused that claim, and the associated human rights claim, on 7 February 2020. An appeal from that decision was dismissed but the Secretary of State made another appealable decision on 12 May 2023 on receipt of further submissions. The Secretary of State accepted in his decision that the Appellant is likely to hold a genuine opposition to the government. The Judge misunderstood the Secretary of State's position and erred in proceeding on the basis that it was not accepted that the Appellant held a genuine political opinion. The Judge erred in rejecting the claimed atheism solely on the basis of his rejection of the Appellant's account as to his political opinion. The Judge's conclusion as to the identity documents does not engage with the previous judicial findings and the objective evidence. In the circumstances, I agree with the parties that the Judge's decision is wrong in law and should be set-aside.
3. Mr Soloman invited me to uphold that Judge's finding at paragraph 23(a) of his decision and consider substituting a fresh decision allowing the underlying appeal. The Judge stated that he would "draw the following conclusions regarding Iraq" from "the Country Guidance cases and the Country evidence". The Judge added that "an individual who is, or who is perceived to be an opponent of the Kurdish and/or Iraqi governments is likely to be at risk of persecution from both state and non-state actors in Iraq". However, as Mr Soloman fairly accepted, this is not a direct quote from any of the country guidance cases or the country information notes. Mr Tufan, relying on Rule 24 response, submits that the Judge has misstated the position in that respect too. The difficulty is that there is no explanation in the Judge's decision as to this generic finding. The Judge has not referred to any particular parts of the country guidance cases or the country information notes to justify this finding. The finding is not adequately reasoned and cannot stand. I set-aside the Judge's decision in its entirety and, having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, remit the appeal to the First-tier Tribunal to be heard afresh by a different judge. It will be for the First-tier Tribunal to consider and, if needed, decide whether an individual who is, or is perceived to be an opponent of the government, is likely to be at risk of persecution.

## *Decision*

4. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

*Anonymity*

5. I consider that an anonymity order is justified in the circumstances of this case having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective. I make an order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

Zane Malik KC  
**Deputy Judge of Upper Tribunal  
Immigration and Asylum Chamber  
Date: 7 May 2024**