



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

Case No: UI-2024-001277  
First-tier Tribunal No: PA/51489/2023  
LP/01126/2023

**THE IMMIGRATION ACTS**

**Decision and Reasons Issued:**  
**On 1 August 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MALIK KC**

**Between**

**RSS**  
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation**

For the Appellant: Ms Anna Sepulveda, Fountain Solicitors  
For the Respondent: Mr Christopher Bates, Senior Presenting Officer

**Heard at Field House on 19 June 2024**

**DECISION AND REASONS**

*Introduction*

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Broe promulgated on 7 February 2024. By that decision, the Judge dismissed the Appellant's appeal from the Secretary of State's decision to refuse his protection and human right claims.

### *Factual background*

2. The Appellant is a citizen of Iraq and was born on 15 February 1988. He arrived in the United Kingdom clandestinely and made a protection claim on 18 April 2018. The Secretary of State refused that claim on 13 February 2020 and an appeal from that decision was dismissed on 15 February 2021. He made further submissions on 13 August 2022. Among other things, he claimed to be at risk of persecution on account of his political activities and social media posts against the government. The Secretary of State treated those submissions as a fresh claim and refused them on 22 February 2023. The Judge heard his appeal from that decision on 30 January 2024 and dismissed it on 7 February 2024. Permission to appeal from the Judge's decision was granted on 21 March 2024.

### *Grounds of appeal*

3. The Appellant's grounds of appeal, in short, contend that the Judge acted unfairly in relation to a concession made by the Secretary of State.

### *Submissions*

4. I am grateful to Ms Anna Sepulveda, who appeared for the Appellant, and Mr Christopher Bates, who appeared for the Secretary of State, for their assistance and able submissions. Ms Sepulveda developed the pleaded grounds of appeal in her oral submissions. She invited me to allow the appeal and set aside the Judge's decision. Mr Bates relied on Rule 24 response and submitted that there was no error of law in the Judge's decision. He invited me to dismiss the appeal and uphold the Judge's decision.

### *Discussion*

5. The Secretary of State considered the account of the Appellant's political activities in her decision, at [20]-[29]. The Secretary of State, at [29], held:

“Applying the stage of (a), given the number of posts you it is accepted that you likely hold a genuine opposition to the Iraqi governments to some degree (or aspects of their respective human rights records), applying the posts at their highest.”

6. Mr Bates, relying on Rule 24 response, submitted that this was not “an outright concession” either that the Facebook posts should carry weight or that the Appellant genuinely holds political beliefs. He placed particular emphasis of the words “applying the posts at their highest”. The language of this passage is ambiguous. It is, however, plainly capable of conveying to the reader that the Secretary of State accepts that the Appellant holds a genuine opposition to the government to some degree or aspect of their human rights records.

The Secretary of State's review did not clarify the position as to the genuineness of the Appellant's claimed political beliefs. It essentially argued that the Appellant's activities in the United Kingdom would not receive adverse attention of the government authorities on return.

7. The Judge, at [11], stated that the Secretary of State:

"... accepted that he was 'likely (to) hold a genuine opposition to the Iraqi governments to some degree' but found that he was not of a profile which would attract the attention of the authorities in Iraq."

8. The Judge considered the evidence as to the Appellant's activities in the United Kingdom, at [23]-[25], and, at [26], arrived at this conclusion:

"The Appellant has not therefore proved that he has a genuine interest in the politics of Iraq or Kurdistan."

9. It is not clear from the Judge's decision as to whether the issue as to the meaning of the Secretary of State's decision, at [11], was ventilated at the hearing. If the Secretary of State's position was that the Appellant's claimed political beliefs are not genuinely held, she should have said so in her decision or in her review. The Appellant was entitled to assume, on the basis of the Secretary of State's decision, at [11], that it was accepted that he held a genuine opposition to the government to some degree or aspect of their human rights records. There does not appear to be any attempt by the Secretary of State to either withdraw the concession (if it was in fact a concession) or to clarify her position at the hearing. The Judge, likewise, did not inform the parties at the hearing that he was seeking to go beyond what he had understood to be the Secretary of State's position. In my judgment, this resulted in procedural unfairness.

10. The Judge, at [27], found:

"I find that neither the attendance at demonstrations or the Facebook activity have given the Appellant a profile which would cause him to be of interest on return."

11. This finding does not answer the point as to whether the Appellant's claimed political beliefs are genuinely held. On the analysis in *RT (Zimbabwe) v Secretary of State for the Home Department* [2012] UKSC 38 [2012] 4 All ER 843, a person cannot be expected to lie and feign loyalty to a regime in order to avoid the persecutory ill-treatment to which they would otherwise be subjected. The Judge, in the light of his finding, at [26], did not engage with questions as to how the Appellant would conduct himself on return, whether he would continue political activities in his home country and, if so, whether

those activities would place him at risk of persecution. The procedural error made by the Judge is therefore material to the outcome.

12. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. In this instance, I am satisfied that the Judge's decision is materially wrong in law.

### *Conclusion*

13. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision and, applying the guidance in *AB (preserved FtT findings; Wisniewski principles) Iraq* [2020] UKUT 268 (IAC), preserve no findings of fact. 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, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Broe.

### *Decision*

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

### *Anonymity*

15. 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: 19 July 2024**