



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

Case No: UI-2024-002052

First tier number: PA/53863/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 13<sup>th</sup> of December 2024

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**MH**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Hingora  
For the Respondent: Mr Diwnycz , Senior Presenting Officer

Heard at Phoenix House (Bradford) on 22 July 2024

**DECISION AND REASONS**

1. The appellant is a citizen of Iraq who was born on 13 July 1997. He entered the United Kingdom illegally by boat on 2 January 2022 and claimed asylum. His application for international protection was refused on 12 June 2023. He appealed to the First-tier Tribunal which dismissed his appeal. The appellant now appeals to the Upper Tribunal.
2. Granting permission, Deputy Upper Tribunal Judge Doyle wrote:

The FTTJ assesses credibility between [36] and [57]. He finds the appellant does not tell the truth, and carries those findings to his overall assessment of each ground of appeal. At [72] the FTTJ describes the appellant as “an unreliable witness”. The adverse credibility findings arguably turn on s.8 of the Asylum and

Immigration (Treatment of Claimants etc) Act 2004 alone. It is arguable that inadequate reasons have been given for the FTTJ's findings.

3. In my opinion, the judge has fallen into legal error in his assessment of the credibility of the appellant's account of past events. Whilst the Upper Tribunal should hesitate before interfering with the findings of the First-tier Tribunal which has heard the evidence and whose task it is to assess that evidence robustly, the reasoning for the judge's decision is, as Judge Doyle observed when granting permission, wholly focussed on the appellant's failure to claim asylum in a country nearer to Iraq. The judge cites section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and at [52-53] he writes, '[the appellant's failure to claim *en route* to the United Kingdom] also goes to the question of plausibility. If fleeing some local trouble in Iraq the United Kingdom is a long way to flee. Safety could have been obtained far closer to home at less expense, and with less physical danger, than would be involved in the overland and overseas journey to the United Kingdom ... However if the journey was made for economic reasons it does make sense.' In the context of the judge having dismissed the challenges to the appellant's credibility raised in the respondent's decision letter [37-49], the sole emphasis on Section 8 factors is striking and, in my opinion, distorts the reasoning of the decision. It is not, of course, an error of law to rely only on Section 8 (there may indeed be cases where the section 8 factors are so strong, an appellant's account will be rendered incredible, although the judge does indicate that this one such case). However, in the instant appeal the judge has, in essence, rejected the credibility of an account which he otherwise finds is plausible and consistent with the country material solely because the appellant has chosen to travel to the United Kingdom to seek international protection. When one reads the decision as a whole, this amounts to an insufficiency of reasoning.
4. I set aside the First-tier Tribunal's decision. As the error of law goes to the core of the credibility assessment, there will need to be a fresh fact finding hearing before the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
**Dated: 22 November 2024**