



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07086/2019**

Appeal number:
(UI-2021-001026)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
on 21 April 2022

Decision & Reasons
Promulgated
on 14 June 2022

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

D F M

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr M Diwyncz, Senior Home Office Presenting Officer
For the Respondent: Mr P G Farrell, Solicitor

DETERMINATION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. FtT Judge Kempton allowed the appellant's appeal by a decision promulgated on 20 October 2021.

3. The SSHD applied for permission to appeal to the UT on 2 grounds.
4. Ground 1, headed “making a material misdirection of law”, is that the FtT failed to have regard to the appellant’s criminal conviction, which should have been found to exclude him from humanitarian protection in terms of paragraph 339D of the immigration rules.
5. Ground 2, headed “failing to give adequate reasons for findings on a material matter”, makes 2 complaints. The first is of contradictory findings over whether the appellant has documentation in Iraq. The second is that a finding of PTSD is not “determinative that the appellant has a disability and therefore faces a risk of ... serious harm within the scope of article 15(c)”.
6. On 16 November 2021 Designated Judge Woodcraft granted permission, on the view firstly that the Judge arguably did not consider the appellant’s recent sentence of 18 months imprisonment for violence, possibly disclosing a “serious crime”, and secondly that when looking at evidence about difficulty in obtaining a CSID by proxy, the Judge overlooked that the appellant has a CSID and just needs someone to fetch it.
7. In a rule 24 response, the appellant says that at no point of the appeal hearing did the respondent argue for exclusion, and that in any event the type of crime which engages exclusion is of a higher order than the appellant’s.
8. Mr Diwnycz, fairly and correctly, conceded that the response effectively rebuts the grounds based on paragraph 339D. The decision appealed against does not take the point. It was not argued in the FtT. It is far too late to raise it at the stage of grounds of appeal to the UT.
9. The seriousness of the crime might be another issue, but it is unnecessary to resolve that any further.
10. Mr Diwnycz said there was an obvious error on documentation.
11. With equal realism, Mr Farrell did not concede that point, but he had nothing to add.
12. The Judge erred at [33] by allowing the appeal on the basis that the appellant “has no documents”, when she had noted at [30] his confirmation that he had a CSID in Iraq.
13. However, the Judge at [44] also allowed the appeal on the separate issue of the appellant being in the “category of a person who is vulnerable, in need of mental health support and thus disabled yet unlikely to be able to access such support”.
14. As Mr Farrell confirmed, and as reflected in the decision, this was the nub of the “secondary basis of claim” argued in the FtT under reference to

country guidance and to the medical and other evidence, dealt with by the Judge in detail from [34] onwards.

15. All the grounds say on the point is that PTSD is not determinative of disability. That may well be so, but the question is one of fact and degree.
16. The appellant's case may have been on the margin of the extent of disability required to benefit from country guidance, as I think Mr Farrell was prepared to accept; but the grounds in this respect fail to make any proposition of error on a point of law.
17. The grounds disclose no more than bare disagreement with the finding of disability on which the decision turned. They do not show that [34 - 44] of the decision discloses an outcome which was beyond the Judge's rational scope, or for which she provided a less than legally adequate explanation.
18. The decision of the FtT shall stand.
19. The FtT made an anonymity direction. There appears to be no reason to depart from open justice, but as the matter was not addressed in the UT, anonymity is maintained at this stage.

H Macleman

22 April 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email.

