



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

2022-004522

Case No: UI-

First-tier Tribunal No
PA/00571/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 October 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

H F A

(anonymity order made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

H F A

(anonymity order made)

Respondent

For the Appellant: Mr Ahmad, Counsel, instructed by Hanson Law Ltd
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

Heard at Field House on 3rd August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent and any member of her family or other person the Tribunal considers should not be identified is granted anonymity.

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No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent nor other person. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant, a national of Iraq of Kurdish origins, claimed protection. He said he was from the Diyala Governate which was a contested area. His claim was rejected by the respondent and his appeal dismissed. He made further submissions, with the respondent maintaining a refusal. His appeal against that decision was heard by First-tier Tribunal Judge R Cooper and was dismissed.
2. His claim was based upon his support for Ba'athism, the New Generation Movement (the NGM) and his social media activity in the United Kingdom, expressing opposition to the government of Iraq and also the Kurdish regional government. Documentation was an issue.
3. The respondent raised the Devaseelan principle in relation to the earlier decision. First-tier Tribunal Judge R Cooper described the appellant as an unimpressive witness and found he had not shown he was a genuine Ba'athist or supporter of the NGM. The judge found his account of activities in the United Kingdom to be vague and non-specific that his Facebook activity was carried out to bolster his claim. Notwithstanding this, the judge concluded his posts were unlikely to come to the adverse attention of the authorities.
4. The judge went on to consider the question of documentation and concluded he could obtain a laissez passer enabling him to return to Baghdad and from there travel on to his home area.

The Upper Tribunal

5. Permission to appeal to the Upper Tribunal was granted on the basis it was arguable the judge erred in relation to documentation for return.
6. The respondent made a rule 24 response referring to the subsequent guidance given in SMO 2 [2022]UKUT 110 and the CPIN of July 2022 on documentation. It was accepted that without documentation the appellant would encounter treatment contrary to article 3. The evidence indicated appellant's home area had transferred to the new system of biometric documentation. The conclusions of the judge that the appellant could navigate through checkpoints was contrary to the guidance in SMO 2 (Headnote 21).

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7. At hearing Mr Avery accepted on behalf of the respondent that there was a material error of law in the decision and consequently it could no longer stand. I was referred to the respondent's rule 24 response and paragraph 11 of the headnote and paragraph 64 of SMO2.

8. In light of the concession I set the First-tier Tribunal decision aside and remake it in relation to the documentation issue. The appeal is now allowed on article 3 grounds only.

Decision

A material error of law has been established. I remake the decision allowing the appeal on article 3 grounds.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber