



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/04589/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 23 June 2020**

**Decision & Reason Promulgated
On 14th July 2020**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**S S (IRAQ)
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shahnawaz Khan of Counsel, instructed by Leonard Cannings Solicitors LLP

For the Respondent: Mr Tony Melvin, a Senior Home Office Presenting Officer

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of S S who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND DIRECTIONS [A]

1. The appellant is a citizen of Iraq who appealed successfully against the decision of the First-tier Judge Raymond, dismissing his appeal against the decision on 21 March 2019 by the respondent to refuse him refugee protection, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.
2. The hearing of this appeal took place by telephone over BTMeetMe. Mr Khan, Mr Melvin, and the appellant himself, were all present. All parties confirmed that they were in a private and quiet space and that no unauthorised persons were present.
3. I explained to the parties, including to the appellant, that it is an offence under sections 85B and 85C of the Courts Act 2003, as amended by the Coronavirus Act 2020, for any party to make an unauthorised recording of the hearing and all confirmed that they understood this requirement. The Upper Tribunal recorded the hearing for the record.
4. There were no technical difficulties during the hearing and I am satisfied that this was a fair hearing.
5. The appellant is a Sunni Muslim and of Kurdish ethnicity. He comes from Mosul. He does not speak Arabic and has never been to school, spending his time at home. He has serious facial deformities, following a road accident, despite a number of surgical interventions to repair extensive deformities in his face and nose caused by a road traffic accident. He has produced psychological evidence of suffering a significant degree of cognitive impairment, which affected his ability to recall information and express himself in detail.
6. The applicant's account is that his family were all killed before he left Iraq and that, after staying with an uncle, he came to the United Kingdom for safety. He says he has no contact with family in Iraq now and that he no longer has a CSID.
7. The appellant is being supported by Michael Woolley from Friends without Borders (<http://www.friendswithoutborders.org.uk/>), a charity which supports immigration detainees and destitute asylum seekers in the Portsmouth area. The appellant has no settled address and is 'sofa surfing': it does not appear that he has benefited from the efforts made to get homeless people into accommodation during the pandemic.

First-tier Tribunal decision (2011)

8. The appellant made an asylum claim in 2007 which was unsuccessful: at a hearing in 2011, Judge Raymond found the appellant's account to lack credibility and dismissed the appeal. The First-tier Tribunal Judge in 2011 was the same Judge who heard the present appeal (First-tier Tribunal

Judge Raymond) although he says in his decision that he had no recollection of the earlier hearing or decision.

9. Appeal rights on that claim were exhausted in February 2015 when the Upper Tribunal refused permission to appeal. The 2011 decision, which was not successfully challenged, remains the *Devaseelan* starting point for remaking the 2019 decision, including the negative credibility findings there made.

First-tier Tribunal decision (2019)

10. The present appeal is a fresh claim based on the factual matrix today. The First-tier Tribunal Judge took his own earlier decision as the *Devaseelan* starting point. He had offered to recuse himself during the hearing, once it became apparent that he had also been the Judge in the 2011 hearing. The parties did not object to his continuing to hear the appeal.
11. The First-tier Tribunal Judge did not believe the appellant's account and found that there was no new evidence for which he should depart from his 2011 decision which was the *Devaseelan* starting point. He considered the appellant to be a dishonest witness and did not believe that he would be unable to obtain a *laissez passer* or passport on which to return to Iraq. He continued to disbelieve the appellant's account of his inability to trace the uncle who took him in after his family's deaths.
12. The First-tier Tribunal Judge dismissed the appeal and the appellant appealed to the Upper Tribunal.

Anonymity

13. The First-tier Tribunal Judge refused to grant anonymity 'in a context where a previous determination found that the appellant relied upon an asylum narrative that was not credible'. That is not a proper reason for refusing anonymity, which is not a prize for good evidence but a protection against creating a *sur place* risk or a risk to the appellant's family members based on his having made an asylum claim here. The Upper Tribunal has made an anonymity direction of its own motion.

Upper Tribunal proceedings

14. By a decision dated 4 October 2019, I set aside the First-tier Tribunal's 2019 decision. I did not do so on the issue of Judge Raymond having heard both appeals, since that had been put to the parties at the hearing and no objection raised. That was not a procedural error by the Judge, still less one which amounted to a material error of law.
15. I set aside Judge Raymond's 2019 decision by reason of a misdirection of fact at the level of an error of law in relation to the location and significance of Mosul. Contrary to Judge Raymond's findings in 2019, Mosul is in Ninewah Governorate, not the IKR, and is not the capital of the IKR.

16. The remaking decision in this appeal was adjourned to await the forthcoming country guidance decision on conditions in Iraq, which has now been published as *SMO, KSP & IM (Article 15(c); identity documents) CG Iraq* [2019] UKUT 400 (IAC).
17. On 27 February 2020, the appeal came back before me for a case management review and directions were agreed, including a 14-day time limit for amended grounds of appeal and/or further evidence from the applicant, with which he did not comply. That was before the pandemic lockdown.
18. On 21 April 2020, Leonard Cannings solicitors, who represent the appellant, served on the Upper Tribunal two Red Cross letters, draft amended grounds of appeal and a document described as 'submissions in lieu of witness statement'. They were without instructions and had been in that unfortunate position since 21 April 2020.
19. In an email dated 12 June 2020, Leonard Cannings explained what had happened. The appellant was difficult to reach because he had no fixed address and slept at different friends' houses each night. In addition, due to COVID-19 restrictions during the lockdown, he was unable to travel from Portsmouth where he lives to Southampton where his solicitors are based, to give them face-to-face instructions, which Leonard Canning considered desirable.
20. Leonard Cannings have now been able to take instructions on the appeal and by an email dated 12 June 2020, they applied for leave to adduce additional evidence, a witness statement and some photographs, and asked for a Kurdish interpreter to enable the appellant to give oral evidence. The witness statement and photographs did not reach Mr Melvin for the respondent before today's hearing.
21. That was the basis on which this appeal came before me today. Having heard submissions from both parties as to the proper way forward, having regard to the overriding objective and the need for oral evidence, I have come reluctantly to the conclusion that given the amount of time which has passed, and the new guidance in *SMO and others*, there is no alternative but to remit this application to the First-tier Tribunal for remaking afresh, with no findings of fact or credibility from the 2019 decision preserved. The 2011 decision remains the *Devaseelan* starting point for the next judge considering this appeal.

Decision

22. The First-tier Tribunal's determination in this appeal dated 10 July 2019 is set aside.
23. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed. A Kurdish interpreter will be required.

Signed **Judith AJC Gleeson**
Upper Tribunal Judge Gleeson

Date: 23 June 2020