Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04667/2020
(UI-2022-000828)

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 4 July 2022	**On 23 August 2022**

Before

UPPER TRIBUNAL JUDGE LANE

Between

AHMT
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmad
For the Respondent: Mr Tan, Senior Presenting Officer

DECISION AND REASONS

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1. The appellant is a citizen of Iraq who was born in 1985. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 22 September 2020 refusing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 11 November 2021, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The grant of permission by Upper Tribunal Judge Smith is particularly helpful and detailed and I set it out below *in extenso:*

> The Appellant appealed against the decision of the Respondent dated 7 September 2020 refusing his protection and human rights claims. This was the Appellant's second appeal, the first having been dismissed on 26 October 2016.
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> 2. The appeal was dismissed by First-Tier Tribunal Judge Mack sitting in Manchester in a decision promulgated on 11 November 2021 ("the Decision"). Permission to appeal was refused by First-tier Tribunal Judge Dixon in a decision sent on 23 February 2022. The Appellant renews his application for permission to appeal to this Tribunal on time (received 3 March 2022).
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> 3. I am just persuaded to grant permission on the first of the grounds advanced. It is arguable that, the Judge having been alerted to the telephone call from the Appellant's representative when the hearing concluded but before he had given his decision, the Judge erred by failing to engage with whatever was the explanation for the absence of the Appellant and his representative and whether it remained in the interests of justice to proceed (see [20] of the Decision as to what is said to have occurred). I do note however the complete absence of any explanation even now for the failure to attend.
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> 4. Ground two is unarguable. The references are made in the context of the adverse credibility findings in the previous appeal. The Judge was unarguably entitled to have regard to what was there said; indeed those findings provided the starting point for the Judge's assessment of the appeal. Neither is there for the same reason any arguable merit in grounds three or four. The Judge properly took into account the findings of Judge Devlin regarding the Appellant's credibility. Given the absence of the Appellant, it is difficult to see how the Judge could have done otherwise when it came to credibility.
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> 5. The Judge explained at [31] of the Decision why she did not attribute any weight to the document ([32] of the Decision). I would not have granted permission on this ground.
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> 6. Similarly, the Judge explains at [33] of the Decision why she has some credibility concerns in relation to the latest claim but in any event concludes at [34] of the Decision that, having regard to other material, even if true, this would not place the Appellant at risk. If the Appellant had material supporting his case as to risk, he should have submitted it for this appeal hearing. In any event, the Appellant even now does not make any application to adduce further evidence in this regard. Ground six is not arguable.

> 7. Although the Judge does not make reference to it (since the Decision predates it), there is now guidance from this Tribunal in relation to Facebook evidence (XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023 (IAC)) which would now amply support the Judge's views. If and insofar as the Judge relied on his own knowledge and even if that were arguably impermissible, this ground would not arguably impact on the outcome of the appeal. Ground seven is not arguable.
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> 8. The Judge's primary finding is that the Appellant would not be at risk and could be forcibly returned because he would be able to locate his CSID ([43] of the Decision). The finding at [45] in relation to voluntary departure is a fallback and for that reason could not arguably impact on the outcome of the appeal.
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> 9. The Judge's finding as to continued contact with family is based in part on the findings of Judge Devlin in the previous appeal ([26] of the Decision) and in part on Judge Devlin's and this Judge's findings on credibility more generally. That is not arguably impermissible.
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> 10. Although I have for those reasons indicated that all grounds except ground one are not arguable, I have not refused permission on those grounds. If ground one is found to amount to an error of law, the impact of that on the appeal more generally will need to be considered. I do not therefore limit the grounds that may be argued.

3. Mr Ahmad appeared at the Upper Tribunal initial hearing for the appellant. He told me that the notice of hearing had been sent by email to a female colleague who was away from the office and that he was 'unable to access her emails'. He said that he understood that the notice of hearing had been sent direct to that colleague and not to the firm (which contradicts what the First-tier Tribunal judge says at [20]). I say that Mr Ahmad related these matters to me at the initial hearing; there was no written evidence explaining how the representative had failed to attend. One might, at least, have expected Mr Ahmad's colleague to have filed a statement exhibiting the email and notice of hearing and explaining the circumstances in which her firm failed to attend.

4. Mr Tan, who appeared for the Secretary of State, submitted that there had been email correspondence between the respondent and the appellant's representative immediately prior to the hearing which had referred to the date of the hearing. Mr Ahmad did seek to deny counter that submission.

5. Rule 28 of the First-tier Tribunal (Immigration and Asylum Chamber) Rules 2014 provides:

> If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—
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> (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
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> (b) considers that it is in the interests of justice to proceed with the hearing

6. I find that the judge was fully justified in finding that 'reasonable steps' had been taken to notify the appellant of the hearing. It is clear from what I have been told that the representatives, who at all material times have been on the record as acting for the appellant, had been made aware of the date of hearing. I have no evidence to show that the notice of hearing was served on the representative at any other email account or address than those which they had provided to the Tribunal and I find that Mr Ahmad's colleague knew or ought to have known of the date if only because it was written on emails which she had received and dealt with only the day before the hearing. Indeed, Mr Ahmad did not seek to argue that service on his colleague had not been valid service on his firm. The fact that the representative's internal procedures appear to have prevented other colleagues accessing the notice of hearing says more about the need for the firm to improve those procedures than it does any error in the judge's decision to proceed in the absence of the appellant and his representative which was patently in accordance with the procedure rules. Further, I note that both an email and a telephone call were made on the morning of the hearing by the Tribunal staff. Assuming that he could not access the email, Mr Ahmad has not explained why he had not responded to the telephone call until more than 90 minutes after the hearing had been scheduled to start.

7. Mr Ahmad submitted that, even if his firm had been at fault, its failings should not be visited on the appellant himself. He did not, however, produce any evidence to show that the appellant had not been served with the notice of hearing at his home address. Even if the problems which arose at Mr Ahmad's office can explain why he did not attend, it remains unclear why the appellant did not attend. Given that he had been served and therefore should have known the date of hearing, it is not clear why the appellant did not, at the very least, contact his representative to discuss attendance at the hearing.

8. Having regard to these matters, I find that the judge did not err in law for the reasons asserted in Ground 1. The respondent's Rule 24 letter quotes n *KM (Algeria) v The Secretary of State for the Home Department* [2017] EWCA Civ 2662 at [42] per Moylan LJ:

> In my view, it is apparent why he decided that it was in the interests of justice to proceed with the hearing. The appeal had been listed for determination. KM's solicitors and KM, through his solicitors, had been notified of the hearing. KM was neither present nor represented but the respondent was represented. The judge and the court were ready to determine the appeal. The telephone call to KM solicitors had elicited no response. Putting it bluntly, in my view the administration of justice would not work if those circumstances were not sufficient to entitle a judge to decide to continue with a hearing. Further, this was an exercise of discretion with which this court is always slow to interfere.

9. I refer to Upper Tribunal Judge Smith's comments regarding the remaining grounds with which I wholly agree. I find that the judge reached findings which were reasonably available to her on the evidence and by the correct

application of the principles of *Devasseelan* [2002] UKIAT 00702*. Mr Tan accepted that the judge had been wrong to state that Jalawla is in the IKR [45] but submitted that this error was not material as the judge had found that the appellant could access his CSID and would have family support as the judge found at [48]. I agree with Mr Tan. The matter of internal flight does not arise given that the appellant would be safe in Iraq without having to relocate beyond his home area.

Notice of Decision

This appeal is dismissed.

Signed Date 4 July 2022

Upper Tribunal Judge Lane

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity

No-one shall publish or reveal any information, including the name and address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.