Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02142/2011

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 18 June 2014	**On 13 February 2015**

Before

LORD MATTHEWS, SITTING AS AN UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE PERKINS

Between

SHIWAN SALIH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss C M Fielden, Counsel
For the Respondent: Mr G Saunders, Home Office Presenting Officer

DETERMINATION AND REASONS

1. We see no need for, and do not make, any order restricting reporting of this appeal.

2. This is an appeal by a citizen of Iraq against a decision of the Secretary of State refusing him leave to remain in the United Kingdom. It is his case that he is a refugee or otherwise entitled to international protection.

3. The case came before the First-tier Tribunal as long ago as May 2011 and his appeal was dismissed on grounds raising both entitlement to

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protection of the Refugee Convention and human rights grounds with reference to Article 8 and humanitarian protection grounds.

4. Permission to appeal was sought and refused by Senior Immigration Judge M[C]Kee sitting as a Judge of the First-tier Tribunal. Judge M[C]Kee described the determination as the result of a thorough assessment of the evidence including evidence from a psychologist that the appellant's judgement was impaired.

5. Nevertheless, on 13 August 2011 Senior Immigration Judge Storey gave permission to appeal. We give his reasons below. He said:

> "Whilst I find the Immigration Judge's assessment of credibility cogent and careful it is not apparent that when he came to consider Article 15(c) he took sufficiently into account the fact that the appellant's home area was accepted as Mosul and that the appellant's particular characteristics included cognitive difficulties and facial disfigurement. Bearing in mind as well that **HM (Iraq)** is to be considered by the Court of Appeal in late November, I am persuaded that grounds disclose an arguable error of law."

6. It is now a matter of record that the decision referred to as **HM (Iraq)**, and more fully as **HM and Others (Article 15(c)) Iraq CG** [2010] UKUT 331 (IAC), was a country guidance decision of this Tribunal dealing particularly with the DSE risk in Iraq and in very broad terms deciding that generally it was not a problem.

7. Following the decision of the Court of Appeal in **HM (Iraq) & Anor v SSHD** [2011] EWCA Civ 1536 the issue was looked at again and the guidance on article 15(c) was affirmed in **HM and others (Article 15(c)) Iraq CG** [2012] UKUT 00409(IAC).

8. It follows therefore that Judge Storey's main reason for giving permission to appeal was anticipation of guidance from the Court of Appeal which may have upset the decision complained of but that is not what happened.

9. Today we were considerably assisted by the appellant's representative, Miss Fielden of Counsel, who began with disarming frankness by saying that she was inadequately instructed because there had been a recent change of representation and the solicitors who had previously represented the appellant appeared to have tried to transfer the papers electronically but they had done it badly and nothing intelligible had arrived.

10. Miss Fielden is very experienced in working with this Tribunal. We were able to give her the file and copy papers and time to consider the position and we are satisfied that she had all the time she needed to assist us on our primary function today which was to determine whether or not the First-tier Tribunal had erred in law.

11. Essentially the grounds took two points. They complained that the decision that the appellant did not need "15(c) protection" was wrong in

the light of the background material and for that reason should not stand and they particularly and separately complained that the decision was wrong because it did not have proper regard to the significant impairment to the appellant's understanding as a result of his head injury causing the deficiencies that had been indicated.

12. The first point is clearly unrunnable now in the light of the decision of the Court of Appeal in **HM**.

13. The second point, concerning this appellant's specific circumstances, does need a little more consideration. It was an essential part of the First-tier Tribunal Judge's reasoning that the appellant could only be expected to cope in Iraq in Mosul because he can continue to have the help of his uncle.

14. The First-tier Tribunal Judge accepted that the appellant does have difficulties but found, rationally on the evidence before him in findings that have not been criticised, that he was able to cope in the United Kingdom with a degree of support from the local authority and the judge concluded that this sort of support would be available to him from his uncle as it had been in the past.

15. The judge was aware of the fact that it was the appellant's case that he no longer had contact with his uncle but the judge did not believe that claim. He had given several reasons for finding the appellant's evidence unreliable and was perfectly entitled to disbelieve the appellant's evidence that he had lost contact with his uncle. It was, in the judge's mind, a further example of the appellant, not necessarily through reasons that were his own fault, being unable to tell the truth.

16. The grounds complain that the point was never actually put to the appellant that he was not truthful in that regard but we think that nothing turns on that because it was perfectly plain from the refusal letter that the Home Office did not accept that the appellant had lost contact with his uncle. It was perfectly plain from the whole conduct of the litigation that the Home Office did not accept the appellant's version of events, and whilst it is never wrong to put the case specifically we cannot see it as an error of law for Tribunal to take a point not specifically put by the Presenting Officer when it was so obviously in issue.

17. Rather we find the judge's finding wholly consistent with the evidence before him. The judge offered a reason for his findings. It was not just a case of disbelieving the appellant. The judge commented on the closeness of the support that had come from the uncle and he just could not accept that the uncle would have allowed himself to have lost contact with the appellant. We find that decision was open to him, is rational and is impossible to criticise in law.

18. It follows therefore that the only surviving point of contention is something we have to resolve in favour of the Secretary of State. The First-tier

Tribunal Judge was faced with evidence that he did not believe and made a decision that was rational in accordance with those findings.

19. There have been developments since which have muddied the waters. Certainly there is evidence from Hampshire County Council in a letter dated 1 June 2011 indicating that there were difficulties getting the cooperation of the Red Cross to trace the uncle and certainly no evidence had emerged that the uncle was contactable. This is something which might very well be investigated with profit by the appellant's present representatives and might form the basis of a further, fresh, application.

20. It is also a matter of public record that there is a great deal of evidence, presently in rather vague and undeveloped form, of enormous changes in Iraq in the week before the hearing because of insurgencies or activities by a political military group known as Isis. This may or may not have bearing on the returnability of the appellant but it has no bearing whatsoever on the quality of the decision that was made in 2011 which decision, we find, is free of error of law and we therefore dismiss the appeal of the appellant against that decision.

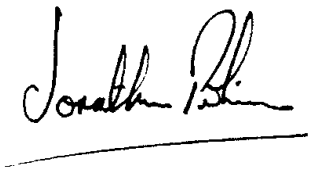
21. Since the hearing we have received a letter from the appellant's representatives asserting that he is no entitled to indefinite leave to remain because of the length of his stay in the United Kingdom.

22. That is not a matter for us and is not something on which we intend to a make a decision but we draw it to the attention of the respondent.

23. We do record our gratitude to Miss Fielden who we appreciate has taken on the case at short notice and has conducted herself very diligently on the part of the appellant. It is no criticism of her that the outstanding issue has to be resolved in favour of the Secretary of State.

24. We therefore dismiss the appeal. We of course make it plain that it may well be that a further application will be made and this is something the Secretary of State needs to bear in mind before making any further decision in the case.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 10 February 2015