



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

Appeal Number: PA/12612/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
Without a hearing
4th June 2020**

**Decision & Reason Promulgated
On 10 June 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

**SA
(anonymity order made)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant in this determination identified as SA. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. In a decision promulgated on 22nd November 2018, FtT judge Hillis dismissed the appellant's appeal against the respondent's decision refusing his protection claim. That decision was upheld in so far as his appeal against the refusal on asylum and human rights grounds was concerned but was set aside in so far as the decision dismissed his humanitarian protection grounds of appeal. The humanitarian protection appeal was remitted to the FtT and came before FtT judge Fisher who dismissed the appeal for reasons set out in a decision promulgated on 31st January 2020.
2. Permission to appeal that decision was granted by FtT judge Bird on 11th March 2020. Directions for the further conduct of the appeal were sent and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.
3. Both parties complied with the directions save that the respondent filed her submissions late for which I grant an extension of time. Neither party objected to the decision on error of law being taken on the papers.
4. I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

FtT Decision

5. The appellant relied in evidence upon a CSID which he said was genuine, although the FtT judge noted this contradicted the witness statement which he adopted. The FtT judge identified that the issue before him was whether the CSID the appellant had provided was reliable and whether the appellant had any family in Iraq. The respondent maintained the position that she had previously asserted, namely that the CSID was a forgery. The FtT judge found that none of the personal characteristics referred to in *SMO (Article 15(c); identity documents) Iraq CG* [2019] UKUT 00400 (IAC) applied to him. The judge accepted that an individual with no relevant documents or information about the civil register would have no realistic prospect of obtaining a CSID and that physical presence at the Civil Affairs Department in Kirkuk would be necessary for the appellant to obtain an INID. The judge records the appellant "insisted" his CSID was genuine despite the contradiction with his written statement. The Judge found:

"15. ... the vague document verification evidence before me is insufficient to establish that the CSID was a forgery. On the basis that the document is reliable, as the Appellant claimed, there is no reason he could not use it or, at the very least, a copy of the information thereon, to obtain a replacement at the Consulate. If, on the other hand, I were to be wrong and it is not a genuine document, his credibility is further reduced. I do not believe he would not know the information required to obtain a replacement CSID. ... I conclude that he is in fact in contact with his family and that his visit to the Red cross was nothing more than a rather unsophisticated attempt to prove to the contrary. If necessary his family would be able to provide him with

the information which he would need to obtain a replacement CSID from the Consulate in the UK.

...

17. I do not accept that the Appellant lacks the information that would enable him to obtain a replacement CSID in the UK if a replacement is necessary. He would then be able to safely return to his home area of Kirkuk.”

Error of law

6. The appellant was granted permission to appeal on five grounds:

(i) Ground 1:

The FtT judge materially erred in law in placing reliance upon a document which was not relied upon by the respondent that was not in evidence in the appeal, did not form part of the respondent’s cross examination or submissions and there was no evidence the document was still available.

(ii) Ground 2:

The appellant’s correct evidence was that he believed the ID card to be genuine at the time he produced it to the respondent; he was not given the opportunity to confirm the document on the respondent’s file was his CSID card; he has been denied the opportunity to engage with evidence.

(iii) Ground 3:

There was no basis upon which the judge could make alternate findings that the appellant could recall his personal details, if he were incorrect in his finding that the document was reliable.

(iv) Ground 4:

There was no evidence to support the FtT finding that the appellant was in contact with his family or that they could provide him with necessary information to obtain relevant documentation.

(v) Ground 5:

The FtT judge erred in relying upon previous adverse credibility findings which, although a starting point, could not be used for general credibility findings on a different factual issue.

Grounds 1 and 2

7. The appellant’s own evidence relied upon at the hearing before the FtT judge was that he had a genuine identity document; his evidence was not that at the time he submitted the documents to the respondent he thought they were genuine but now accepted they were not. He did not assert in his oral evidence to the judge that it was not genuine, rather he asserted it was. He did not, through his legal representatives, seek an adjournment for the document in question to be produced. He did not either in his evidence or through counsel submit that he had been disadvantaged by the non- production of the document in question or that he sought production of the document in question or that he did not accept the document was not available or give evidence why he

erroneously thought the document to be genuine. He was legally represented throughout. It is incorrect to assert that the appellant was in some way 'ambushed' by the questions regarding the document, given his evidence and the lack of any objection by his legal representatives or him. There was no assertion that he did not understand the interpreter or that there had been interpreting misunderstandings. It was clear that the issue at large in the hearing was the reliability or otherwise of the document.

8. There was no error of law by the FtT judge either in the conduct of the appeal or the findings regarding the evidence that was clearly and plainly relied upon by the appellant.

Ground 3

9. The judge did not err in law in finding, as an alternate, that the appellant could, if the document were not genuine, recollect his personal details. The judge made clear findings with regard to the reliability of the document. It was open to the judge to make findings on evidence that was before him as to the credibility of the appellant, drawing on previous findings of adverse credibility and Tribunal decisions. The findings that the appellant would be able to recollect his personal details were findings that were open to him on the evidence before him.

Ground 4

10. The judge considered the evidence before him of the appellant's contact and claimed contact with his family. The finding that he remained in contact with family members was a finding that was plainly open to him on the evidence. It was open to the judge to make findings on the credibility of the appellant's claims regarding his family taking full account, as the judge did, of the appellant's claim overall. There is no error of law by the judge finding the appellant remained in contact with family members.

Ground 5

11. There is no error of law by the judge in relying on previous adverse credibility findings in accordance with *Devaseelan*. The appellant maintained a previously discredited claim with no further evidence. It is not a case of a different factual scenario; the appellant's claim has to be viewed holistically and the judge considered the evidence before him holistically and reached the decision in that context. There is no error of law by the judge taking into account and using previous adverse credibility findings as a starting point.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The decision of the FtT dismissing the appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Jane Coker
Upper Tribunal Judge Coker
4 June 2020