



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

**Appeal Number: UI-2021-000943**  
on appeal from RP/00044/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 March 2022**

**Decision & Reasons Promulgated  
On 12 July 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON  
DEPUTY UPPER TRIBUNAL JUDGE HALL**

**Between**

**E A (IRAQ)  
[ANONYMITY ORDER MADE]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the appellant: Mr Saad Saeed, solicitor advocate, with Aman Solicitors  
Advocates Ltd

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

**DECISION AND REASONS**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 8 July 2020 to refuse to grant her international protection or leave to remain on human rights grounds, with reference to paragraph 276ADE(1)(i) and section S-LTR of Appendix FM of the Immigration Rules HC 395 (as amended). The appellant is a citizen of Iraq.

2. The decision of the panel was reserved and is the decision of us both.
3. **Anonymity order.** 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 or 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.**
4. **Vulnerable appellant.** The appellant is a 59-year old woman with some health problems. She was not formally treated as a vulnerable appellant in the First-tier Tribunal, as her representative specifically did not seek that, but some adjustments were made by the judge at the representative's request.
5. We are satisfied that the requirements of the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance were met, to the extent that they were applicable.
6. **Mode of hearing.** The hearing today took place face to face.

## **Background**

7. The appellant claims to have come to the UK on 1 December 2013 and made an asylum application on 14 January 2014. She claimed to be a stateless Kuwaiti Bidoon, using a Kuwaiti identity to which she was not entitled, and an incorrect date of birth making her 70 years old.
8. The appellant returned to Iraq on an Iraqi passport and on 29 May 2013, she applied in Baghdad for a United States non-immigration visa. Her fingerprints were taken. The respondent became aware of the 2013 application in Baghdad.
9. On 3 March 2014, the appellant was granted refugee status in the false Kuwaiti Bidoon identity for 5 years, expiring on 2 March 2019. In April 2014, she was issued with a UK travel document in that identity.
10. The appellant used her travel document to visit Iraq, in her Iraqi identity, on three occasions between 2015 and 2019, flying to Al-Najif airport in March 2016, and to Basra airport in March 2017 and March 2018. She stayed for periods between 7 weeks and 3 months. To make these journeys, the appellant needed a valid visa, unless she was an Iraqi citizen.
11. On 13 February 2019, the appellant applied for indefinite leave to remain under the protection route. On 12 November 2019, the respondent informed the appellant of her intention to revoke refugee status, and on 20 December 2019, she notified UNHCR of that intention.

12. On 30 June 2020, the respondent revoked the applicant's refugee status. On 8 July 2020, the respondent also refused the application for indefinite leave to remain.
13. The respondent considered that the appellant had used a false identity, and had spent 6 years in the UK on that basis. She could not bring herself within the requirements of paragraph 276ADE(1)(iii)-(vi) of the Rules and in particular, had not demonstrated very significant obstacles to her reintegration in Iraq if returned there.
14. There were no exceptional circumstances for which leave to remain on Article 8 ECHR grounds should be given, outside the Rules, nor were there any relevant compassionate factors. The respondent considered that the appellant could obtain treatment in Iraq for her various medical conditions.
15. The appellant appealed to the First-tier Tribunal against the revocation of her refugee protection and the refusal of leave to remain on human rights grounds.

### **First-tier Tribunal decision**

16. The First-tier Judge dealt with both the revocation and the human rights appeal, no objection being raised on behalf of the Secretary of State by the Presenting Officer.
17. Mr Saeed did not pursue Article 3 ECHR at the First-tier Tribunal hearing or in his skeleton argument. He also did not pursue any claim that the appellant could bring herself within the Article 8 provisions of the Rules: rather, he argued that she should be granted leave to remain outside the Rules on the basis of 'her dependency on her nephews, her advanced age, her medical conditions and culture'.
18. The First-tier Judge rejected the expert evidence of Mr Mohamed Albadry Alenezi as to whether the appellant was a Kuwaiti Bidoon who had lived in Iraq, rather than an Iraqi citizen. The appellant had been interviewed over a video link, and there was no certainty that she was alone in the room during the interview. The expert's report was not delivered until 5 months after the interview, with no indication of how he refreshed or maintained his memory of the discussion they had.
19. The First-tier Judge found the appellant's evidence to lack credibility. She was initially mendacious, and later vague, about her visits to Iraq. The appellant claimed in her oral evidence that she had lost her UK travel document in December 2018, six months after returning for her third visit to Iraq, but had not applied for a replacement. The appellant produced no evidence of having obtained an Iraqi visa, although entry to Iraq from the UK requires one, unless the traveller is an Iraqi citizen.
20. The First-tier Judge approached the decision analogously, applying the three-stage structure for ETS/TOEIC appeals: see *SM and Qadir (ETS - Evidence - Burden of Proof)* [2016] UKUT 229 (IAC). He found the

appellant to be a documented Iraqi citizen and dismissed the appeal. He also dismissed the human rights element of the appeal, having regard to section 117B of the Nationality, Immigration and Asylum Act 2002.

21. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

22. The grounds of appeal contend that the First-tier Judge's decision that the appellant is an Iraqi citizen was irrational, perverse and/or *Wednesbury* unreasonable. The grounds argued that the judge erred in the weight given to an unsigned witness statement from Mr Mathew Johnson on behalf of the respondent, and in treating it as the type of generic evidence relied on in the ETS/TOEIC cases. The appellant contends that this error vitiated the entire decision.
23. Secondly, the appellant disputes the weight given to the expert report of Mr Alenezi.
24. Finally, the appellant disputes the First-tier Judge's negative credibility findings, arguing that the Judge failed to have regard to the appellant's age and medical conditions and their impact on the quality of her evidence, and committed a *Mibanga* error by considering the medical evidence only after the negative credibility findings.
25. First-tier Judge Neville granted permission to appeal on the basis that the First-tier Tribunal had arguably reversed the burden of proof, applying the ETS/TOEIC precedents.
26. He observed that the error, even if established, might not be material, as the First-tier Judge had found ample reasons to disbelieve the appellant, but considered that the outcome was not inevitable, and that permission was appropriate.

### **Rule 24 Reply**

27. The respondent did not file a Rule 24 Reply.
28. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

29. We were assisted by skeleton arguments from both Mr Melvin and Mr Saeed. We also received oral argument from both representatives. We reserved our decision, which we now give.
30. The appellant was a notably poor witness. The evidence before the judge included her submitting a genuine Iraqi passport in 2013 for a United States visa, from Baghdad. She endeavoured in her oral evidence to deny

and then to minimise her travel to and residence in Iraq during the currency of her UK travel document.

31. It may be that the judge fell into error in the ETS/TOEIC analogy, which is strained, but that error could not on any view have been material to the outcome of the appeal.
32. The judge also gave appropriate weight to the evidence of the appellant's nephews, both of whom showed remarkably little knowledge of the appellant's life and circumstances.
33. The weight to be given to the expert evidence was a matter for the First-tier Tribunal as the fact-finding Tribunal. There is no perversity or *Wednesbury* unreasonableness in the judge's analysis of the weight which that evidence would bear.
34. There was no evidence before the First-tier Tribunal indicating that the appellant's medical conditions were such as to affect the reliability of her evidence, or that they could not be adequately managed in Iraq, where the appellant had spent a total of almost 8 months during the currency of her UK travel document. Nor does the record of proceedings state that Mr Saeed made any oral submissions about the effect of her age and health on the reliability of the appellant's evidence, or whether her treatment regime is available in Iraq.
35. The appellant's grounds of appeal are in reality no more than a vigorously expressed disagreement with findings of fact and credibility which were unarguably open to the First-tier Judge on the evidence before him.
36. This appeal is therefore dismissed.

## **DECISION**

37. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of no error on a point of law

We do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 17 May 2022