Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-003157
(PA/55147/2021)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 May 2022	**On 30 May 2023**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

M A H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. F. Allen, Counsel, instructed by Anglia Immigration Law
For the Respondent: Mr. A. Basra, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of Judge of the First-tier Tribunal Gareth Wilson ('the Judge'), signed on 31 March 2022, by which the Appellant's appeal against the decision of the Respondent, dated 8 October 2021, to refuse his protection, humanitarian protection and human rights claims, was dismissed on all grounds.

2. The Appellant appeals with the permission of Judge of the First-tier Tribunal Brannan granted on 28 June 2022. The grant of permissions states,

> "…
> 2. The grounds assert that the Judge erred in placing little weight on the documents that the Appellant produced because his approach was irrational for three reasons.
> 3. Only the second has merit. It is that the Judge holding against the Appellant a delay in producing the documents to the Respondent. If this was never a point that the appellant had an opportunity to reply to, it is potentially procedurally unfair. It would therefore taint the entire consideration of the documents and consequently the assessment of credibility. This raises an arguable error of law.
> 4. The reasons the other two points have no merit is below.
> 5. The first is that the Judge held against the Appellant his not appealing a decision dated 13 March 2019. The Judge simply does not say he holds this against the Appellant. He simply notes, correctly, that the Appellant did not appeal.
> 6. The third is alleged circular reasoning. This fails to distinguish between plausibility and credibility. Judge Hollis found the account implausible, which fed into his overall assessment of credibility. The documents would not affect the finding on plausibility. Judge Wilson properly takes into account both factors when assessing credibility."

3. Although we are satisfied that it was the clear intention of Judge Brannan to grant permission to appeal only in respect of the second ground, he did not limit the grant of permission in the section of the standard form document that contains the decision and so the grant of permission to appeal is considered by this Tribunal to be on all grounds: *Safi and others (permission to appeal decisions)* [2018] UKUT 00388 (IAC), [2019] Imm AR 437. The representatives confirmed to us that they were in agreement with this approach.

The Hearing

4. The hearing before us took place at Field House with both representatives present in person. We heard oral submissions from the representatives as to whether the Judge's decision contains material errors of law. At the end of the hearing we reserved our decision.

Anonymity

5. The Judge made an anonymity order. Our starting-point is that the requirement that justice should be administered openly and in public is a fundamental tenet of the domestic justice system. It is inextricably linked to freedom of the press and so any order as to anonymity must

be necessary and reasoned: *Smith (appealable decisions; PTA requirements; anonymity)* [2019] UKUT 216 (IAC).

6. Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules') contains a power to make an order prohibiting the publication of information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. In view of the fact this is a protection appeal and naming the Appellant might potentially create a risk of harm to him, we consider it appropriate to continue the anonymity direction made by the Judge (see *Smith*, at [68]).

Background

7. The Appellant is an adult male citizen of Iraq. He is of Kurdish ethnicity and his religion is Shia Islam. His home area is Diyala. The events leading up to this appeal were as follows.

8. The Appellant left Iraq in October 2014 and he arrived in the United Kingdom hidden in a lorry on 25 November 2014. He claimed asylum the same day. In brief summary, his claim was that, from 2009 he worked as a security guard in Erbil guarding foreign workers. In September 2014 a letter from an Islamist group was delivered to the Appellant's home in Diyala warning him that he should leave his job. After two weeks the Appellant moved to Baghdad. However, he was detained there on several occasions by a Shia militia group called Asa'ib Ahl al-Haq. He was tortured and beaten because the group believed he was Sunni and that he was in Baghdad to carry out a mission. They believed he was responsible for two bombings which took place during local elections. An agent assisted him to leave Iraq and travel to Turkey.

9. The Respondent refused the Appellant's asylum claim on 20 May 2015 and the Appellant exercised his right of appeal. His appeal was heard by Judge of the First-tier Tribunal Hillis, sitting in Bradford, on 26 November 2015. Judge Hillis's decision dismissing the appeal on all grounds was promulgated on 16 December 2015. The Appellant did not appeal against the decision of Judge Hillis and he became appeal rights exhausted on 11 January 2016.

10. On 3 January 2019 and/or 20 February 2019 the Appellant's former solicitors submitted further representations enclosing a personal statement, a police report, dated 6 March 2018, and a threatening letter from The Islamic Resistance. In his statement the Appellant maintained he was still at risk from militia groups due to his previous employment with a British/German company. He said his family had been forced to

relocate from Diyala to Baghdad for their safety following receipt of the threatening letter, which was reported to the police.

11. On 13 March 2019 the Respondent issued a non-appealable decision to the effect that the Appellant's representations did not amount to a fresh claim for the purposes of paragraph 353 of the Immigration Rules. The new submissions taken together with the previously considered material did not create a realistic prospect of success. With reference to the police report which the Appellant had produced, the decision letter stated,

> "The document is dated 06/03/2018, yet there has been no explanation why it took almost a year before it was lodged as part of your further submissions given your precarious immigration status."

12. On 19 March 2020 the Appellant submitted further representations enclosing a psychiatric report stating that he was suffering from depression and PTSD. The Appellant asserted that he had lost contact with his family in Iraq.

13. The Respondent's decision which led to the current appeal is dated 8 October 2021. In brief summary, the Respondent considered that, whilst the Appellant suffered from depression and PTSD, the psychiatric report was based on the Appellant's account without recognising that it had been disbelieved by Judge Hillis. It was not accepted he was at risk from militias in Iraq. Whilst he claimed to have lost touch with his family, he had not demonstrated that he had attempted to trace them. He had not demonstrated that he had made a genuine attempt to obtain identity documents.

Hearing before the First-tier Tribunal

14. The appeal was heard by the Judge sitting in Newport on 16 February 2022. The Appellant and the Respondent were represented. The Appellant attended and gave oral evidence. The Appellant pursued his appeal on the grounds he was at a real risk of persecution on account of his imputed political opinion and religion. Removing him would also breach Articles 2, 3 and 8 of the Human Rights Convention. The Respondent opposed the appeal on all grounds.

15. The Judge's decision runs to 20 pages. He reminded himself of the current country guidance on Iraq contained in *SMO, KSP & IM (Article 15(c); identity documents) Iraq CG* [2019] UKUT 00400 (IAC). The decision is well structured, dealing with the findings of Judge Hillis at [25] to [26] and recognising the effect of the guidance in *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka Starred*

[2002] UKIAT 00702, [2003] Imm AR 1, before setting out the evidence and the Judge's findings. At [27] to [35] the Judge considered the medical evidence and reasoned that he could place little weight on the appellant's mental health conditions as corroboration of his account. At [36] to [38] the Judge considered and rejected an argument that Judge Hillis ought to have placed greater weight on an expert report.

16. The key passages for the purposes of the challenge to the Judge's decision are at [40] to [48] in which the Judge considered the Appellant's fresh evidence and he explained he could place little weight on the documents which the Appellant had produced. It followed that there was no basis to depart from the adverse findings made by Judge Hillis. The Judge went on, applying *SMO*, to make findings that the Appellant had not lost contact with his family in Iraq and he had failed to demonstrate that he would not have access to a valid CSID card. As said, the Judge dismissed the appeal on all grounds.

Grounds of Appeal

17. By means of his notice of appeal, the Appellant relies on three grounds of challenge settled by Mr Raza Halim of Counsel. The respective grounds are identified as:

    1) The Judge adopted an irrational approach in finding that the fact the Appellant had not appealed against the decision of 13 March 2019 weighed against his credibility because the Respondent had accepted that the new evidence adduced by the Appellant created a realistic prospect of success under the test in paragraph 353 of the Immigration Rules.
    2) The Judge was not entitled to draw an adverse inference against the Appellant in respect of the delay in submitting the documents to the Respondent because the Appellant was not asked about the delay and, in any event, that did not taint the threat letter from Asa'ib Ahl al-Haq.
    3) The Judge adopted circular reasoning when, in attaching little weight to the letter from Asa'ib Ahl al-Haq, he took note of the finding by Judge Hillis in relation to the implausibility of the Appellant's account of being of interest to that group.

18. The grant of permission to appeal is set out at [2] above.

19. The Respondent filed a rule 24 response, dated 25 July 2022, opposing the appeal. It states,

> "3. The alleged error in law arises from the judge's treatment of the letters from Asa'ib Ahl al-Haq and the police in Iraq which bore dates from 2018.

4. The Judge correctly identified that the Respondent challenged the letters in her decision to refuse a fresh asylum claim in 2019. That decision questioned the length of time the appellant took to produce the letters. The appellant did not appeal against the 2019 decision to refuse a fresh asylum claim.

5. In his most recent statement relating to his appeal, the appellant did not explain how he obtained the documents referred to above, nor did he explain the delay in submitting them to the Respondent.

6. On the face of it, the documents were issued 3 years and 3 months after the appellant left Iraq."

Decision on error of law

20. We have had regard to the classic guidance on the examples of the errors of law most commonly encountered provided by Brooke LJ in *R (Iran) v. Secretary of State for the Home Department* [2005] EWCA Civ 982, particularly at [9].

21. Having carefully considered the submissions made to us at the hearing and the documents provided to us, we have decided that the Judge's decision does not contain a material error of law and should be upheld. Our reasons are as follows.

22. Ms Allen adopted the grounds of appeal and developed some of them. With respect to Ground 1 she added that the Appellant was not asked about his reasons for not appealing the previous decision so this was another example of a matter not being put to the Appellant, such that the Judge adopted a procedurally unfair approach. It adds to Ground 2 in that sense. The new documents adduced by the Appellant were key to establishing he was at risk on return. The Respondent accepted there was a fresh claim. In that context, a single line in the decision letter, dated 13 March 2019, did not entitle the Judge to draw an adverse inference against the Appellant regarding the delay in submitting his documents without giving him the opportunity to explain. The point had not been taken in the most recent decision, dated 8 October 2021, which had given rise to this appeal. It had not been raised in the Respondent's Review and was not raised in cross-examination. The Judge had placed this factor at the centre of his reasoning for finding the documents unreliable. In relation to Ground 3, Ms Allen said the Judge should have looked at the documents afresh and in the round but he had not done so.

23. Mr Basra adopted the rule 24 response. He argued the Judge had directly himself correctly regarding the documents in line with *Ahmed*

(Documents unreliable and forged) Pakistan [2002] UKIAT 00439 Starred, [2002] INLR 345. There were no material errors in the decision.

24. Taking the grounds in order, we find no merit in Ground 1. We start by noting that the duty on a judge to ensure procedural fairness might require a point which has not otherwise been canvassed at the hearing to be put to the witness so that they can respond. However, it is not a hard and fast rule that every such point must be put and much will depend on the circumstances: Secretary for the Home Department v Maheshwaran [2002] EWCA Civ 173, at [3] to [6], AM (fair hearing) Sudan [2015] UKUT 00656 (IAC), at [7(v)].

25. However, leaving aside the premise of the challenge, we find there is no basis for arguing that the Judge placed reliance on the fact the Appellant did not appeal the decision of 13 March 2019 in arriving at his conclusion on the Appellant's credibility. At [42] he states,

> "42. The documents were considered in the Respondent's further submissions decision dated 13 March 2019. There is no evidence before me to suggest that the Appellant appealed this decision. …"

26. This is the beginning of a paragraph in which the Judge discusses the new documents. As we have noted above at [11], the decision of 13 March 2019 was a response to further submissions and, given the conclusion that the representations did not amount to a fresh claim notwithstanding the submission of the new documents, was presumably not appealable in any case. At this point in the paragraph the Judge is simply setting out the background and stating the fact that there was no appeal. Nowhere does he say he has drawn an adverse inference from the failure of the Appellant to appeal. The Judge was simply highlighting the fact that his analysis of the letter from Asa'ib Ahl al-Haq would be the first judicial analysis of that document; there was no earlier 'starting point' in relation to it. When that is understood, the challenge mounted in Ground 1 falls away. There is no question of irrationality or of the Judge taking a more restrictive approach than the Respondent to the presentation of the new documents.

27. Ground 2 challenges the Judge's approach to the issue of delay in submitting the documents, which is also set out in [42] as follows:

> "… I note the Appellant's evidence that he was in contact with his family in 2018. The document is dated 6 March 2018 and yet it took the Appellant almost a year to lodge that document with the Home Office. I find that if the risks were as the Appellant claims there can have been few greater priorities than for the Appellant to have submitted that documents to the Respondent at the earliest opportunity. I find that the delay production of the document, notwithstanding was in contact with his family in 2018 and has failed to

> demonstrate his and lost contact with his family in Iraq (see below) undermines the reliability of the documents. …"

28. We remind ourselves that the Appellant had been appeal rights exhausted since 11 January 2016 and the further representations were submitted on 3 January 2019 at the earliest. The police report is dated 6 March 2018. We accept the Judge's estimation of the period of delay between the appellant receiving the documents and submitting them to the Respondent. No challenge has been made to it in these proceedings.

29. As seen Ms Allen argued this should also have been put to the Appellant before the Judge could safely and fairly rely on the issue but we find no merit in that argument for the following reason. We agree with the Respondent's argument in the rule 24 response that the Appellant had been given notice of the importance of providing an explanation for the perceived delay by the decision letter of 13 March 2019 and specifically the passage we have set out at [11] above. It is a relatively obvious point and the Appellant was legally represented. The Appellant had plenty of notice of the issue and it makes no difference that it was not specifically addressed in the later refusal letter. We find the judge was perfectly entitled to give the Appellant's failure to explain the delay significant weight.

30. Furthermore, it is incorrect to characterise this as the Judge's sole reason for finding the documents unreliable, as Ms Allen appeared to do at one point in her submissions. At [42] the Judge continued:

> "… In addition, the Appellant had been absent from Iraq for a period of almost 4 years as at the date of the police report and there appears no reasonable explanation why the militia would continue to make threats against the Appellant/his family notwithstanding that the Appellant has been absent from Iraq for a significant period as at the date of the police document. I also take note of the findings of Judge Hollis (sic) in relation to the implausibility of the Appellant's account of being of the interest of Asa'ib Ahl al-Haq. For all these reasons, I find that the documents are not reliable and I place little weight upon them."

31. On any view, the Judge was entitled to place on weight on the lack of explanation as to why Asa'ib Ahl al-Haq might have renewed their interest in the Appellant, who had left Iraq in 2014.

32. There is no merit in Ground 3 either. The Judge refers to the finding by Judge Hillis that the appellant's account was implausible. We read this as the Judge expressing agreement with the view that the account was implausible. He was not therefore, as Judge Brannan points out in his decision, adopting Judge Hillis's conclusions on credibility. Had he done so then there would have been a circularity in relying on this as a reason

not to depart from Judge Hillis's findings. However, that is not what he did.

33. In any event, we regard the Judge's first two reasons put forward in [42] as justifying the conclusion that the documents were unreliable. It is plain from [26] and [44] that the Judge understood his task was to take Judge Hillis's findings as a starting-point and to assess whether the later evidence justified a departure being made from those findings. The structure of the decision as a whole shows that the Judge approached this task properly. Furthermore, his reasons are legally sound and sufficient. They are based on the evidence, including background evidence on the potential risk to former collaborators, which was considered with care.

Notice of Decision

34. The decision of the First-tier Tribunal, dated 31 March 2022, did not involve the making of a material error on a point of law and is upheld. The Appellant's appeal is dismissed.

Direction Regarding Anonymity

Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: *N Froom*
Deputy Upper Tribunal Judge Froom

Date: 12 May 2023