



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-001882**  
**FtT No: PA/00652/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 30 April 2023**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**Barzan Tofiq Hassan**  
**(anonymity order made)**

**Appellant**

**and**

**SSHD**

**Respondent**

For the Appellant: Ms Winter, Advocate, instructed by Maguire, Solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

**Heard at Edinburgh on 19 April 2023**

**DECISION AND REASONS**

1. FtT Judge Ross dismissed the appellant's appeal by a decision promulgated on 7 February 2022.
2. The FtT refused permission to appeal to the UT. The appellant applied to the UT on revised grounds, the substance of which is at [3]:

The FTT erred in law at paragraphs 25 and 27. The FTT states that it cannot go behind the findings of the UT. However this is a misapplication of the law or where the informed reader is left in real and substantial doubt as to why the FTT says that. The appellant is prejudiced as his appeal has been refused. The FTT can go behind the findings of the UT (and previous FTT) if there is sufficient evidence to depart from those previous findings (*BK (Afghanistan) v Secretary of State for the Home Department* [2019] 4 WLR 111 at paragraph 44). As a result the FTT further erred for the following reasons:

- (i) the FTT has not considered the email from the country expert (see appellant's third inventory; not before the previous FTT/ UT) stating that it is not incredible/ implausible that the appellant would not know the name of the roads in his claimed home area or where the informed reader is left in real and substantial doubt as to how this information is assessed and if rejected, why that is so;
- (ii) the FTT has not considered whether the psychological report, which was not before the previous FTT/ UT, may provide a reasonable explanation for his previous incorrect answers as regards his home area or where the informed reader is left in real and substantial doubt as to how this information is assessed and if rejected, why that is so (see para 4.2 of the report in the appellant's first bundle);
- (iii) the FTT has not considered whether it is plausible/ credible that if the appellant was from Kokes in Tuz Khumato that he could have lost contact with his family standing the conflict occurring at the time the appellant says he lost contact with them in 2015 (see paras 27-28 and 30 of the expert report in the appellant's first bundle and not before the previous FTT/ UT) or where the informed reader is left in real and substantial doubt as to how this information is assessed and if rejected, why that is so;
- (iv) *separatim* the informed reader is left in real and substantial doubt as to whether the FTT accepts, notwithstanding the FTT's observations at paragraph 29, that the British Red Cross have not been able to trace the appellant's father. If that is accepted then that is indicative that the remainder of the family cannot be traced. The evidence of the tracing was not before the previous FTT/ UT;
- (v) although the FTT criticises the appellant's narration of going to the Iraqi Embassy/ Consulate that is in effect irrelevant where the Home Office position is that it is highly unlikely that the Iraqi Embassy/ Consulate would issue a CSID in any event (see page 22 of the Home Office bundle; such information not being before the previous FTT/ UT). Such errors are material where if the appellant is from Tuz Khumato his appeal ought to be allowed where he would be removed to Baghdad without a CSID and would not be able to travel safely to his home area to obtain an INID (*SMO, supra*).

3. On 8 August 2022 Ut Judge Jackson granted permission:

The grounds of appeal are that the First-tier Tribunal erred in law in refusing to go behind previous findings of the Upper Tribunal, specifically in doing so, in failing to consider the country expert evidence (which was not before the previous Tribunal); the psychological report (also not before the previous Tribunal); in failing to consider whether it was plausible that the Appellant lost contact with

his family during the conflict in Iraq; failing to make a finding on the Red Cross tracing evidence; and failing to consider the likelihood of the Iraqi embassy issuing a CSID. The grounds are all arguable. In particular, the First-tier Tribunal has arguably found that a previous adverse credibility finding against the Appellant was binding upon it, without any consideration of later evidence not before the previous Tribunal which may cast doubt upon it, nor was there arguably any application of the principles in *Devaseelan*.

4. The SSHD responded on 12 October 2022 to the grant of permission, indicating that the appeal was not opposed, for the reasons given in the grant, and inviting a determination “with a fresh oral hearing”.
5. Parties agreed that the outcome should be that the decision of the FtT is set aside, other than as a record of what was before the tribunal, and the case is remitted to the FtT for a fresh hearing, not before Judge Ross.
6. It is not clear that an anonymity order is appropriate, but as one was made in the FtT, and the matter was not mentioned in the UT, anonymity is preserved at this stage.
7. 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 his name or address, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

Hugh Macleman  
Judge of the Upper Tribunal, Immigration and Asylum Chamber  
19 April 2023