Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: LP/00281/2020**
(CCD: PA/500066/2019)

THE IMMIGRATION ACTS

Heard at Manchester (Via Microsoft Teams)	**Decision & Reasons Promulgated**
On 12 July 2021	**On 04 August 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SH
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs Johnrose instructed by Broudie Jackson Canter (Manchester)
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge N Malik ('the Judge'), promulgated on 19 March 2020, in which the Judge dismissed the appellant's appeal on all grounds.

2. Permission to appeal was granted by a Resident Judge of the First-tier Tribunal on the basis it is said to be arguable that the Judge erred as to the evidence before him.

3. Directions given by the Upper Tribunal include the following paragraph:

> The appellant was granted permission to appeal against the decision of Judge Malik by Resident Judge Zucker. There is a single point in this case. It is asserted that the judge erred in relying on something said in a screening interview, because that was not a screening interview in this case. The allegation is simply that the judge confused the evidence in this case with the evidence in another. Whilst it is obviously for the appellant to make good that assertion, the respondent will wish to consider carefully whether the allegation is made out. If she accepts that it is, there should be a timely indication of any such acceptance so as to prevent any unnecessary cost to the public purse. For the time being, however, the proper course is to move towards a hearing, as a result, which I issued the following directions….

Error of law

4. The appellant is a citizen of Iraq whose wife is dependent on his appeal. The Judge noted the evidence in the appeal including that the appellant had claimed to have worked as a civil government staff member in Iraq, that his passport was still in Germany where he and his wife had previously claimed asylum, and that he had family in Sulaimaniyah where his parents, mother, brother and sisters all live, although the appellant and his wife claimed to have no contact with them.

5. The Judge sets out his findings from [28] of the decision and the challenge concluding at [30] that it was not found reasonably likely that the appellant or his wife will face a real risk from any of the claimed agents of harm relied upon by the appellant; for the reasons set out at paragraphs [30 (I) – (VII)] of the decision under challenge.

6. The Judge also finds there is no reason why the appellant and his wife cannot return to Iraq, especially as there are family members living in the IKR who could provide the required documents.

7. The reference to Germany arises as the appellant's immigration history shows he and his wife left Iraq on 25 December 2015 and travelled to Turkey where they stayed for 15 days, then travelling by boat to Greece where they remained for five days, and then to Germany, arriving on 16 January 2016, where they stayed for 10 months before travelling to the United Kingdom, arriving on 28 November 2016, claiming asylum on the same day. A EURODAC search showed the first appellant was fingerprinted in Greece on 10 January 2016 and in Germany leading to a request being made to the German authorities that he be returned on third country grounds; which the German authorities accepted on 23 January 2017, after which the claim made in the UK was refused and certified.

8. The first appellant claimed asylum, but his application was refused in Germany, and he left there in April 2017, passing through Belgium and France before arriving back in the UK on 24 August 2017 and claiming asylum again. On 3 November 2017, Germany accepted responsibility as a result of which the asylum application was refused and certified on 7 March 2018 although the deadline for the date of return had passed and the case dropped out of the Dublin Convention deadline on 12 August 2018, leaving responsibility for the claim in the hands of the UK authorities.

9. In an initial address to the court Mr Tan highlighted an issue that explained the Judges reference to a screening interview, the existence of which was the only challenge in the grounds seeking permission to appeal on the basis that there was no such document as that referred to by the Judge, as there were in fact two screening interviews, one before the appellant was returned to Germany and the second one when he returned. This is factually correct. Those documents were disclosed in the Secretary of States bundle of papers filed before the Judge.

10. Mrs Johnrose accepted before the Upper Tribunal that there were copies of the two interviews undertaken by the appellant in the bundle and that they were before the Judge, but then sought to argue that the Judge conflated evidence when hearing the appeal. It was also argued the screening interview only set out general issues not referring to the main issues in the appeal and that the Judge's findings in relation to documents the second appellant had a phone was evidence not relied upon by the Secretary of State. It was argued that there was no relevant screening interview in 2017, and that if the Judge wished to rely on the 2016 screening interview, she should have told the appellant, which she did not, making the decision unsafe and unfair.

11. Mr Tan submitted that the point relied upon the appellant following the issue of the two screening interviews having been noted, undermining the sole ground on which permission to appeal was sought, fell outside the scope of the application for permission to appeal on which permission to appeal was granted.

12. Mr Tan argued, in any event, that the Judge was entitled to note the information in the screening interviews and all the evidence that had been made available and that it was important to note the Judge's findings rejecting the credibility of the appellant's claim, and the finding that the appellant's can have contact with family members and obtain relevant documents from them in Iraq, as well as the ability to obtain the passport from the authorities in Germany.

13. I find there was no evidence before the Judge to show that the passport held by the authorities in Germany could not be obtained or to show that it is still not a live valid passport which will enable travel to and re-entry to Iraq and the holder's identity to be ascertained from officially issued documents.

14. It is not made out that any fairness point arises in the manner in which the Judge assessed the evidence. The burden was upon the appellant to establish if they could not be the documented and they failed to

establish that this was the case. It is not made out the Judges reliance upon the evidence is a material error of law.

15. At [36] Judge writes:

> "36. Effectively it is the appellant (and his wife's) claim that the contact numbers for family members have been lost. I found this evidence to be contradictory, lacking in credibility and not reasonably likely to be true. The appellant says he lost all the data on his phone as it needed to be reformatted. Yet his wife said she left her paternal uncle's number in his mobile and from there they were able to contact her uncle in the UK. If the appellant lost all the data, I find it incredible that her uncle's number would be the only number that would remain - even if it was in the notebook of the mobile. Further, the appellant makes no mention of the number being in his mobile, but stated it was his wife who got the number; he did not know how. Maybe she had it before. Yet his wife also stated she lost her contact numbers as she got a new phone and did not know how to transfer the numbers over. Given she says she cannot remember numbers, there is no reasonable explanation then as to how they had the contact number for the Appellant's Wife's uncle in the UK. This causes me to find the appellant and his wife to have fabricated their claim to have lost contact numbers and also contact with their family members. Whilst his wife says her uncle cannot assist as he has not been to Iraq in a long time, this does not, even to the lower standard, suggest he does not main contact with his own family there - or why, if as the appellant and his wife claim, there is a family disagreement because of their marriage, they would contact her paternal uncle in the first place. I also note the appellant and his wife gave inconsistent evidence regarding contact with this uncle. His wife spoke of her uncle coming to visit them. The appellant only alluded to having spoken on the phone twice. This again causes me to find the parties are not credible witnesses as to their account of contact with family members - and that they have downplayed their contact with this uncle in the UK to fabricated acclaim that they are unable to contact family in the IKR."

16. The above findings were not challenged in the grounds seeking permission to appeal. The Judge was entitled having examined the evidence to conclude that this was not a genuine claim. Adequate reasons have been given as to why there is no merit in either the protection claim or the claim by those before the Judge that they had no contact with family in Iraq and accordingly could not obtain required documentation.

17. I find the appellant has failed to establish any arguable legal error material to the decision to dismiss the appeal on the basis of the original grounds of appeal on which permission was granted. The Judge did not rely on a screening interview that was not a screening interview in this case, or evidence that had not been disclosed to the parties. It was in the Secretary of State's bundle, meaning the

appellant was informed of it and had notice of it. In particular, it is not made out that the Judge relied on a screening interview from another case which was the concern relating to the fairness of the proceedings which led to the grant permission to appeal.

18. I do not find it made out the Judge conflated evidence, a claim which went beyond the grounds on which permission to appeal had been sought and granted. The Judge's findings are clearly within the range those available to the Judge on the evidence and, indeed, having considered the evidence together with the decision for the purposes of considering this judgement, it is hard to see what conclusion the Judge could have reasonably arrived at, other than the one he did.

19. Whilst the appellant and his wife disagree with the Judge's findings and clearly wish to remain in the United Kingdom, as demonstrated by their immigration history, the grounds fail to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

20. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

21. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

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

Signed……
Upper Tribunal Judge Hanson

Dated 26 July 2021