



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

Appeal Number: AA/06166/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 22 October 2013**

**Promulgation sent
On 25 October 2013**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

**MR MOHANAD TAHER FADHIL AL BAYATI
(No Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Harding of counsel instructed by Gulbenkian Andonian solicitors
For the Respondent: Mr G Saunders a Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant is a citizen of Iraq who was born on 10 May 1990. He has been given permission to appeal the determination of First-Tier Tribunal Judge Ian Howard (the FTTJ) who dismissed his appeal against the respondent's decision of 14 June 2013 to refuse to vary his leave to remain in the United Kingdom and to give directions for his removal.

2. The appellant came to this country with a visit visa arriving on 5 March 2013. He claimed asylum on 3 April 2013. The basis of his claim was that he would be at risk on return to Iraq at the hands of the Badr Organisation which was a powerful force in the political and security structure of the dominant Shiite government in Iraq. They were hostile to the appellant's father and his family because his father had been a Sunni academic in Iraq under the previous regime. The family left Iraq in 2005 after the appellant's father received threats. They went to live in Jordan where the appellant's father remains.
3. The appellant's Jordanian visa was cancelled and he went back to Iraq in February 2013 before leaving the country four days later. At the end of March 2013 he received a call from his neighbour in Iraq telling him that the family home had been attacked by gunmen who were looking for the appellant's father and members of his family. The appellant believed that his return to Iraq had become known to the Badr Organisation who had arranged the attack on the house by members of a criminal militia. He feared that if he returned to Iraq he would be killed or seriously ill treated and because the Badr Organisation was so closely connected with the authorities and the police the authorities would not provide him with protection.
4. The respondent did not believe most of the appellant's account of events, concluding that he would not be at risk on return to Iraq. There would be a sufficiency of protection available to him in his home area but even if it was not he could relocate to another part of the country.
5. The appellant appealed and the FTTJ heard the appeal on 5 August 2013. Both parties were represented and the appellant gave evidence. The judge dismissed the appeal on asylum, humanitarian protection and human rights grounds.
6. The appellant applied for and was granted permission to appeal arguing that the FTTJ erred in law by failing to make any credibility finding in relation to his evidence and no clear findings in relation to a number of important aspects of his claim.
7. Mr Saunders conceded that the determination contained the material errors of law alleged in the grounds. He accepted that the determination should be set aside so that the appeal could be redetermined. This was what Mr Harding seeks on behalf of the appellant.
8. I find that the FTTJ erred in law. Whilst it appears that the FTTJ doubted the appellant's evidence and gave little weight to the documents he had submitted, there is no clear finding as to whether the appellant was or was not a credible witness. Such a finding was essential. The closest the FTTJ gets to a finding in relation to the evidence is in paragraph 28 in which he says; "In absence of such material, given the fact it exists in some form I am unable to find, even to the deliberately low standard applicable in asylum

cases, the factual matrix advanced by the appellant." This passage makes little sense. There are no findings in relation to a number of important aspects of the claim, for example the appellant's father's position in Iraq before the family left for Jordan, whether he and the family were at risk then, if so why, whether the appellant returned to Iraq and if so for what period and whether the Badr Organisation would be likely to take an adverse interest in somebody in the appellant's father's position. It might have been possible for the FTTJ to make a blanket adverse credibility finding if sufficient good reasons were given but this was not done. The determination is fatally flawed.

9. I find that by reason of the matters which I have set out the determination contains material errors of law. I set aside the FTTJ's decision. None of any findings he made are preserved. In deciding whether to remake the decision rather than remitting it to the First-Tier Tribunal I find that the effect of the error has been to deprive the appellant of a fair hearing before the First-Tier Tribunal. In the circumstances I remit the appeal to be re-determined by the First-Tier Tribunal.

Signed:.....
2013
Upper Tribunal Judge Moulden

Date: 22 October