



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/02295/2016

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

**Decisions & Reasons
Promulgated**

On 10 October 2017

On 21 December 2017

Prepared on 2 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**F. A.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, instructed by Duncan
Lewis & Co Solicitors

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants is a citizen of Iraq who entered the UK lawfully, and then claimed asylum in March 2014. That claim was refused, and a fresh claim was then made on

12 January 2016, which was refused in turn on 19 February 2016. The appeal against the decision to refuse him protection status was dismissed on all grounds by decision of First tier Tribunal Judge Manchester, promulgated on 16 February 2017.

2. The Appellant was granted permission to appeal to the Upper Tribunal by decision of First tier Tribunal Judge Osbrone of 6 June 2017 on the basis the Judge had failed to mention within his decision, or demonstrate that he had applied, the country guidance decision of BA (returns to Baghdad) Iran CG [2017] UKUT 18 a decision that had been promulgated after the hearing, but before his own decision was promulgated.
3. Thus the matter comes before me.

Error of law?

4. When the matter was called on for hearing the parties were agreed that neither had sought to draw the Judge's attention to the decision in BA once it was promulgated, and that neither had sought to advance further argument based upon its content, or, request the Judge to reconvene the hearing. The failure by the Appellant to do so, was needless to say, unfortunate. Indeed given the careful analysis of the evidence that was undertaken by the Judge, as recognised by both parties before me, I would venture to suggest that the error into which the Judge fell would have been avoided had either of the parties alerted the Judge to BA.
5. The parties are however agreed that the decision does disclose an error of law in the failure to demonstrate that the guidance to be found within BA was applied to the evidence, and that the error was a material one. With the agreement of both parties I am invited to set aside only the decision to dismiss the appeal on humanitarian protection grounds, and to remake the decision so as to allow the appeal on that ground alone. Thus the decision to dismiss the appeal on asylum and human rights grounds is confirmed.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 16 February 2017 did involve the making of an error of law

that requires the decision upon the humanitarian protection appeal to be set aside and remade.

The appeal is allowed on humanitarian protection grounds.

The decision to dismiss the appeal on asylum and human rights grounds is confirmed.

Deputy Upper Tribunal Judge JM Holmes
Dated 2 November 2017