



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01603/2017

**THE IMMIGRATION ACTS**

Heard at Glasgow  
on 19 July 2018

Decision & Reasons Promulgated  
on 26 July 2018

Before

**UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**RANJI [M]**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr K McGuire, Advocate, instructed by Latta & Co, Solicitors  
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The respondent refused the appellant's claims by two decisions, dated 3 February 2017 and 8 May 2017. FtT Judge Clough dismissed his appeal by a decision promulgated on 6 November 2017.
2. On 27 February 2018 UT Judge Plimmer granted permission to appeal to the UT.
3. Mr Maguire submitted that the grounds raised 3 main points. Firstly, the judge made no finding on the first claim, of being captured by and escaping from Isis (paragraph

- 15). The appellant did not accept that this issue was settled by the roll-back of Isis, as the judge held, but in any event a finding on the credibility of the account was required as overall credibility went to the evaluation of the rest of the claim. Secondly, the judge failed to determine the appellant's second claim, based on his bisexuality. Even if that was implicit in paragraph 18, where she endorsed the respondent's reasons, that was inadequate. She had the benefit of evidence which was not before the respondent, including the appellant's oral evidence, and was bound to say what she made of it. Thirdly, the judge speculated for no good reason that the appellant might be from the IKR when there was no evidence to that effect and failed to consider the evidence that he is not from the IKR but from Kirkuk.
4. I observed that at paragraph 23 the judge did plainly find the second claim not to be credible (whether that was for adequate reasons is another issue). The respondent had also rejected that claim on credibility only, without taking any position on any risk to homosexuals or bisexuals in general, or to the appellant in particular, as an alternative. Mr Maguire said that the appellant had relied on background evidence of risk based on sexuality. This is another matter which may require attention at the next hearing.
  5. Mr Govan did not concede points 1 and 2 in full. He maintained that the judge was right to reject the first claim on the grounds that the alleged risk no longer existed. He accepted, however, that an overall resolution of credibility would be relevant to other aspects of the case, that the judge misapprehended the evidence about where the appellant is from, and that she laid no good foundation for her findings about his circumstances on return.
  6. Parties agreed on the outcome. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing. The case is remitted to the FtT for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge Clough.
  7. It is likely that at the next hearing findings will have to be made on the extent to which the appellant has established all aspects of his claim, including his experiences in Iraq, his sexuality, and the nature of his contacts there. Conclusions will then have to be reached applying country guidance, which has been updated since the proceedings in the FtT, and now stands as annexed to the Court of Appeal's decision in *AA (Iraq) v Secretary of State for the Home Department* [2017] Imm AR 1440; [2017] EWCA Civ 944, supplemented in *AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC)*.
  8. No anonymity direction has been requested or made.



17 July 2018  
Upper Tribunal Judge Macleman