



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

Appeal Number: PA/00062/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 10 May 2019**

**Decision & Reasons Promulgated
On 24 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**M K Z Q
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Fitzsimmons, Counsel.

For the Respondent: Mr S Walker, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Iraq who made an application for international protection. It was refused by the Respondent and he appealed. Following a hearing, and in a decision promulgated on 20 March 2019, Judge of the First-tier Tribunal I. Ross dismissed his appeal on all grounds.
2. The Appellant sought permission to appeal. It was granted on 18 April 2019 by Judge of the First-tier Tribunal Grant-Hutchison, and her reasons for so doing were: -

“1. The Appellant seeks permission in time to appeal against a decision of the First-tier Tribunal (Judge I. Ross) promulgated on 20 March 2019, whereby it dismissed the Appellant’s appeal against the Secretary of State’s decision to refuse his application for protection.

2. It is arguable that the Judge has misdirected himself (a) by finding that photographs in the Appellant’s telephone were produced for the purpose of the appeal when it was upon the Home Office Presenting Officer’s request during cross-examination that he was asked whether he had any pictures on his phone of him with Mr Chohan that he produced them allowing the HOPO to scroll through them and with the Judge’s permission agreed that they be admitted into evidence without asking additional questions with regard to for example when the particular photograph of him in fellatio with another man was taken to prove his sexuality; (b) by failing in terms of section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 to give any recognition to the fact that notwithstanding the Appellant did not make a claim in either France or Spain he claimed asylum two days after arrival in the United Kingdom; (c) by dismissing the evidence of the letter of Mr Chohan by stating that the evidence had not been tested and it was not credible that he was too busy to attend court without providing any further reasons as to why the contents of the document attracted little weight; (d) although the Judge has set out the burden and the standard of proof applying to human rights issues at paragraph 14 of his Decision & Reasons it is arguable that the Judge has misdirected himself in relation to not addressing the Appellant’s facts and circumstances under paragraph 276ADE of the Immigration Rules before going on to consider his facts and circumstances outside the Immigration Rules under Article 8 of ECHR and failing to apply section 117 B under Part 5 A of the Nationality, Immigration and Asylum Act 2002.”

3. Thus, the appeal came before me today.
4. At today’s hearing Counsel sought to amend the Appellant’s grounds seeking permission to appeal. There was no objection to this course. The further ground was in relation to the failure of the Judge to consider expert evidence that was within the Appellant’s bundle. That evidence is a country expert report prepared by Doctor Allen George, an academic with expertise on Middle Eastern countries. Mr Walker not only conceded that the grounds should be amended but also that in failing to take into account this expert evidence the Judge had materially erred. He likewise conceded that the Judge materially erred for the reasons set out in the balance of the grounds.
5. In addition to the amended grounds, Ms Fitzsimmons also put before me a witness statement of Michael West of Counsel dated 10 May 2019. Again there was no objection to my considering this document. Mr West was Counsel at the First-Tier Tribunal hearing. He sets out within his witness statement the circumstances in which, during cross-examination,

photographs were considered via the Appellant's mobile telephone. He records that it was the Home Office Presenting Officer who asked to scroll through the photographs which included one of the Appellant in an "explicit sexual act" with another man, as referred to in paragraph 23 of Judge Ross's decision.

6. Mr Walker produced, and handed up, a note recorded by the Home Office Presenting Officer at the First-Tier hearing which corroborates the witness statement of Mr Michael West.
7. I share the analysis of both representatives before me today. The Judge has materially erred for all the reasons set out not only in the original grounds seeking permission to appeal, as identified in the above-mentioned grant, but also for the reasons set out in the amended grounds for appeal. Both parties urged me to remit this appeal to be heard de novo on the basis that none of the findings can stand and further fact finding will accordingly be required. I find this to be the appropriate way forward.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge I Ross.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
2019

Date: 23 May

Deputy Upper Tribunal Judge Appleyard