



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/01790/2019**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> July 2019**

**Decision & Reasons Promulgated  
On 16<sup>th</sup> July 2019**

***Extempore decision given at  
hearing***

**Before**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**

**Between**

**SF**

**(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Ms A Radford, Counsel, instructed by Shawstone Associates

For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

The appellant, SF, is a citizen of Iraq of Kurdish ethnicity, born 7 January 1991. He appeals against a decision of First-tier Tribunal Judge Rodger promulgated on 16<sup>th</sup> April 2019 dismissing his asylum and humanitarian protection claim made to the respondent on 19<sup>th</sup> August 2018. His claim was refused by the respondent on 15<sup>th</sup> February 2019 and came before Judge Rodger on appeal on 26<sup>th</sup> March 2019.

*Background*

The basis of the appellant's claim, as set out at [11] of Judge Rodger's decision, was as follows. The appellant was born in Qala Village in Jawlala, Iraq. In June 2014 he evacuated his home area and moved to Khanaquin, having fled the ISIS occupation of the area. He returned to his village two years later, following the overthrow of ISIS by the Kurdish Peshmerga and Hashd Al-Shaabi, who assumed control of the village. In 2017, the appellant was beaten by Hashd Al-Shaabi simply for being Kurdish. In mid-2018, all families in the area were issued with a letter from Hashd Al-Shaabi warning them to evacuate or be killed. This led to the appellant fleeing Iraq two weeks later. His family left at the same time. He claims not to know where they are. There was a suggestion during the asylum interview that the appellant's family had stayed in the area, but that is not clear.

The essence of the appellant's claim is that he fears that his life would be at risk upon return and that he would be killed by either ISIS or Hashd Al-Shaabi. He contends that there would not be a sufficiency of protection available, and that internal relocation would be unduly harsh.

### *Permission to appeal*

Permission to appeal was granted by the First-tier Tribunal in response to an application which consisted of four grounds of appeal.

Ground 1 was that the First-tier Tribunal Judge erred in failing properly to apply the relevant country guidance concerning the difficulties associated with obtaining a Civil Status Identity Document ("CSID") pursuant to the cases of AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) and AAH (Iraqi Kurds - internal relocation) Iraq CG [2018] UKUT 212 (IAC). In addition, the appellant relied on before me the case of AA (Iraq) v Secretary of State for the Home Department [2017] EWCA Civ 944.

Secondly, the judge is said to have failed to consider the appellant's credibility in the context of the background materials which established that there was clear and indiscriminate danger existing in his home area at the time.

Thirdly, the grounds contend that the judge applied the wrong standard of proof in finding that the appellant would have certain opportunities for obtaining the necessary documentation, by virtue of it being reasonably likely that his family would be able to assist him. The essence of this ground is that pursuant to the case of Karanakaran [2000] 3 All E.R. 449 at 22, it was not possible to reach a finding that it is reasonably likely that the appellant would not enjoy the assistance of his family unless the tribunal had "no real doubt" about that he would not be able to obtain such assistance. The correct standard is that a decision maker must have no real doubt that the relevant matters would be able to take place.

Finally, the grounds contend that the judge erred procedurally when refusing to adjourn the proceedings in order to allow the appellant to obtain a medical report into his mental health conditions.

## *Analysis*

### *Adjournment*

First, addressing the issue of the adjournment application, the judge dealt with this at [24] of her decision. There is a hint of frustration in the judge's discussion of the late adjournment application, which was made on the morning of the hearing. The focus of her analysis is the unreasonableness of the appellant's request. The judge noted that he had been represented throughout the proceedings, and it was submitted by the Presenting Officer before me that the Case Management Review hearing provided every opportunity for the appellant to put forward his request for an adjournment to obtain the medical report at that stage.

Although the judge referred to the interests of justice and fairness being consistent with not adjourning the hearing, she did so towards the end of her operative analysis. It is not clear from the content of her operative analysis that she had in mind the approach required by Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). The key issue for consideration pursuant Nwaigwe is not the reasonableness or otherwise of the conduct of the appellant, but rather whether the appellant can have a fair hearing. While the judge's understandable concern at having to adjourn matters at such a late stage is to be expected, her analysis addressed the issue primarily from the perspective of reasonableness, rather than primarily from the perspective of the fairness to the appellant.

The appellant sought an expert report because he contended that he experienced mental health difficulties which preventing him from recalling events with clarity. In his asylum interview, in answer to the second question concerning the state of his mental or physical health, he said that he would easily forget matters, and could not focus. He had attempted to attend his general practitioner to seek referral on account of this condition but, as the decision notes at [23], he was hampered during that consultation by the absence of an interpreter who was able to speak both his language, Kurdish Sorani, and English. He did take an English-speaking friend along with him, but his friend could not speak Kurdish Sorani.

The judge concluded at [24] that she was satisfied that she would be able to accept the appellant's evidence concerning his mental health conditions, rather than needing to adjourn for an expert's report. As such, an adjournment would not be required, she concluded.

Although the judge considered the appellant to have had sufficient time to obtain an expert report, it is not clear from her reasoning whether she ascribed significance – as she should have done – to the fact that the respondent's decision was issued just over six weeks before the hearing. On any view, that is a minimal amount of time to secure an expert's report. Again, it is difficult to be confident that the judge had regard to the guiding principle of fairness when assessing the impact of not adjourning, in light of this chronology.

In my view, the judge's failure to consider fairness as being the guiding principle in deciding whether or not to grant an adjournment was an error of law. The judge should have focused on the fairness of the proceedings rather than the unreasonableness of the appellant or his representatives when deciding whether to adjourn the proceedings.

I turn now to whether that was a material error.

The judge found the appellant to lack credibility partly on account of what she perceived to be his evasiveness. His evidence lacked plausibility, and did not have "the ring of truth", she found (see [35]). The judge highlighted various inconsistencies between what the appellant said in his screening interview, on the one hand, and in his substantive interview, on the other. She also highlighted the fact that there were aspects of the appellant's account which had been introduced for the first time during his oral evidence.

Although the judge reminded herself at [32] for example that it is necessary to take into account the fact that those seeking to flee persecution often experience difficulties when recounting traumatic experiences, there was little by way of calibration of her analysis by reference to the difficulties that the appellant claimed to experience with his memory. Indeed, despite having said that the appellant himself would be able to provide evidence concerning his mental health which would obviate the need to obtain a professional medical opinion, at [40] the judge held against the appellant the fact that there was no persuasive or credible evidence that the appellant suffers from any memory problems or other problems focusing such that it would affect the consistency and credibility of his account.

That this was a material error is confirmed by the extracts of [40] to which I have just referred. It is clear that the absence of medical evidence which could have shown the appellant to experience problems in recalling the events from which he claimed to be fleeing, that was clearly a potential factor which would have gone to the assessment of the credibility of his account. It was inconsistent and materially unfair for the judge to conclude, on the one hand, that an adjournment was not necessary for she would be able to treat the appellant's evidence as a proxy for formal medical evidence, and then find that there was an absence of such formal evidence, on the other.

The Presenting Officer realistically conceded at the hearing that the judge did fall into error in this respect. I accept that that is a concession that was properly made. It follows therefore that the credibility assessment which permeates the judge's decision was tainted by the unfairness of the proceedings. At various points the judge held against the appellant the perceived inconsistencies at the core of his account, and those relating to his family and his ability to obtain documents. In my view, those findings cannot be said to have been arrived at in a procedurally safe manner, given the appellant did not have the opportunity to obtain medical evidence which could have provided an explanation for those difficulties. Of course, medical evidence does not necessarily render an incredible account credible. However, in the absence of such evidence, and informed decision cannot be taken, and it would be speculative to assume that the appellant would not be assisted by it.

It follows that the remainder of the decision was based on a flawed assessment of the appellant's credibility.

### *Redocumentation*

There is another reason why I consider the decision to feature a material error of law. It is clear from the case of AA in the Court of Appeal that those who are from a "contested area" such as this appellant is, namely the Diyala region, would be "seriously hampered" in attempting to obtain a replacement CSID document. Even if it were the case that the appellant did have family members with whom he was still in contact in Iraq, it follows that those family members would be "seriously hampered" in attempting to obtain those documents for him. The judge did not engage with that aspect of the country guidance when finding that his family members in Iraq would be able to assist him. I find the judge materially erred in law in her analysis of the CSID issue.

### *Credibility and standard of proof*

It is not necessary for me to engage in detailed analysis of the remaining aspects of the judge's credibility assessment in light of the background materials, given my conclusions on the two grounds of appeal outlined above.

Similarly, turning to Ms Radford's submissions concerning Karanakaran and the burden of proof in relation to the appellant's ability to contact his family and obtain a CSID document, it is not necessary for me to make a finding on those submissions. Even if the findings reached by the judge concerning the appellant's contact with his family were sound, her application of the country guidance was not.

### *Conclusion*

In my view, the remedy for these errors of law is for the matter to be remitted to the First-tier Tribunal for the appellant to have a fresh hearing before a different judge. I have considered carefully whether it is possible to keep the matter in this Tribunal but have concluded that it is not on account of the flawed nature of the hearing in the First-tier Tribunal.

This appeal is allowed and the decision of Judge Rodger is set aside. It is to be remitted to a different Judge of the First-tier Tribunal for a fresh hearing with no findings preserved.

Given this is a protection appeal, and given these decisions are routinely published online, I make a direction for anonymity, in the terms set out below.

## **Notice of Decision**

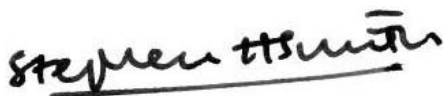
The appeal is allowed on asylum grounds. The decision of Judge Rodger is set aside and the case is to be remitted to the First-tier Tribunal to be heard by a different judge.

## **Directions**

In addition to the standard directions, the appellant is directed to obtain, and serve upon the respondent, any medical evidence upon which he seeks to rely as soon as possible and in any event at least 14 days before the date of the remitted hearing in the First-tier Tribunal (the date of which is to be advised by the First-tier Tribunal in the usual way).

## **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 his 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.

A handwritten signature in black ink that reads "Stephen Smith". The signature is written in a cursive style and is underlined.

Signed

Date 10 July 2019

Upper Tribunal Judge Stephen Smith