



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

Appeal Number: PA/04635/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 27 November 2019**

**Decision & Reasons Promulgated
On 10 December 2019**

Before

**HIS HONOUR JUDGE BIRD
UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

Between

**S S H
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Representation:

For the Appellant: Ms M Gherman, Counsel, instructed by Virgo Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Moore (“the judge”), promulgated on 4 September 2019, in which he dismissed the Appellant’s appeal against the Respondent’s refusal of his protection and human rights claims.
2. In brief terms, the Appellant, an Iraqi national of Kurdish ethnicity, claimed that he was at risk from members of a particular tribe called the Zebaris, whom, it is said, wished him harm on account of his father’s previous activities under the regime of Saddam Hussein. The Appellant asserted that the Zebaris were very closely connected to the President of the IKR and had sufficient interest and resources to find him wherever he might go. Indeed, the Appellant claimed that members of the tribe had in fact tracked him down in the past and threatened him. In refusing the claims, the Respondent accepted the Appellant’s nationality, but rejected all other material aspects of his account. It was concluded that the Appellant was not at risk of persecution or serious harm in his home area or elsewhere and that in any event he could internally relocate. Furthermore, the Appellant could not succeed on Article 8 grounds.

The judge’s decision

3. In summary, the judge rejected the credibility of the Appellant’s account in all material respects (see [22]-[28]). As a result, he concluded that the Appellant was not at risk of persecution or serious harm anywhere within Iraq or indeed the IKR, and that internal relocation was an option. The Article 8 claim was disposed of in short terms.
4. Of particular relevance in this appeal is what the judge says in [22] and [23]. In respect of the former, the judge stated what he considered to be a material change in the Appellant’s account over time, noting that initially the claimed fear was of the father’s enemies, whilst subsequently this apparently shifted to a fear only of members of the Zebari tribe. In [23] the judge stated that the appellant apparently no longer claiming to be afraid of his father’s enemies because of a feud, and that the focus is only on the Zebari tribe.
5. In subsequent paragraphs, the judge finds against the Appellant in respect of the location of his home area, the claimed involvement of the father with the Ba’ath Party, and the account of being tracked down by members of the Zebari tribe and threatened.

The grounds of appeal and grant of permission

6. In essence, the grounds challenge the judge’s credibility findings, asserting, amongst other matters, that he erred in regarding the Appellant’s account as inconsistent.
7. Permission to appeal was granted by Designated First-tier Tribunal Judge McClure on 16 October 2019.

8. The Respondent has not provided a rule 24 response.

The hearing

9. At the outset of the hearing, Mr Walker accepted that there were material errors of law in the judge's decision, with particular reference to [22] and [23]. He acknowledged that the Appellant's evidence as to whom he feared had in fact been essentially consistent throughout: the father's enemies had always been members of the Zebari tribe. Mr Walker categorised the judge's approach to this core element of the Appellant's account as a "misunderstanding" of the evidence. In addition, he accepted that the Appellant had never expressed a fear of the Ba'ath Party, contrary to what the judge appears to have believed, with reference to [25]. It was conceded that there was a real danger that the erroneous credibility findings may have infected the overall assessment of the Appellant's evidence. In light of this, Mr Walker agreed that a remittal to the First-tier Tribunal would be appropriate.

Decision on error of law

10. In light of Mr Walker's stated position in this appeal, we can deal with the error of law decision briefly. In our view, he was entirely right to have accepted the existence of material errors.
11. Having looked at relevant aspects of the Appellant's evidence for ourselves, it is clear that the core element of his account had not changed over the course of time. It had always been put on the basis of a fear of his father's enemies, who were members of the Zebari tribe. The judge did misunderstand the evidence, at least to a material extent, and reached an important adverse finding on credibility that is unsustainable.
12. The judge was also wrong to have believed that the Appellant had ever stated a claimed fear of the Ba'ath Party.
13. Flowing from these errors is the distinct danger that other aspects of the Appellant's account were rejected, at least in part, on account of a cumulative assessment which included flawed elements. Indeed, in [24] the judge makes reference to "numerous inconsistencies" in the Appellant's case. Although these are not specifically identified, at least two of them, one being the central plank of the Appellant's account, were not in fact inconsistencies at all.
14. Whilst we have of course read the judge's decision sensibly and in the round, the errors identified lead us to conclude that the judge's decision must be set aside.

Disposal

15. A remittal to the First-tier Tribunal is the exception to the general presumption that matters should be retained in the Upper Tribunal. Whilst both representatives are agreed that the matter should be permitted, we

have considered the question for ourselves. In light of para 7.2 of the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, we conclude that this appeal must indeed be remitted, given the nature and extent of the fact-finding now required and in light of the overriding objective.

16. Therefore, this appeal shall be remitted with no preserved findings of fact.
17. One additional matter arises. A new Country Guidance case on Iraq is imminent (SMO and Others PA/08722/2017, PA/09241/2017, and PA/00142/2015). In light of the nature of the Appellant's claim, it is highly desirable that the remitted hearing does not occur until after promulgation of that decision.

Anonymity

18. The First-tier Tribunal made an anonymity order. In all the circumstances, we continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Notice of Decision

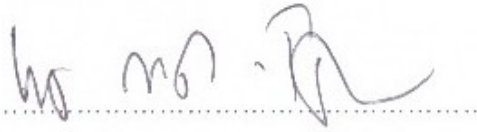
The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision of the First-tier Tribunal.

We remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

- 1. This appeal is remitted to the First-tier Tribunal (the Taylor House hearing centre);**
- 2. The remitted appeal shall be conducted by way of a complete re-hearing, with no preserved findings of fact;**
- 3. The remitted appeal shall not be heard by First-tier Tribunal Judge Moore;**
- 4. The remitted appeal shall not be heard before the promulgation of the Upper Tribunal's Country Guidance decision in SMO and Others PA/08722/2017, PA/09241/2017, and PA/00142/2015.**

A handwritten signature in black ink, appearing to read 'Norton-Taylor', is written over a horizontal dotted line.

Signed
Upper Tribunal Judge Norton-Taylor

Date: 5 December 2019