



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

Appeal Number: PA/07660/2019 (P)

THE IMMIGRATION ACTS

**Decided under Rule 34 of the
Tribunal Procedure (Upper Tribunal)
Rules 2008
On 8 June 2020**

**Decision & Reasons
Promulgated
On 23 June 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**HA
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. The appellant is a citizen of Iraq. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008. I do so because this is a protection claim (see Guidance note 2013 No 1: Anonymity Orders). Unless and until a court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

The Background

2. The appellant with permission, appeals against the decision of the First-tier Tribunal (Judge Mack) (hereinafter referred to as the "FtTJ") who, in a

determination promulgated on 7 October 2019, dismissed his protection claim.

The factual background:

3. The background to the appellant's protection claim is set out in the determination of the FtTJ at paragraph 13 and in the decision letter of the Secretary of State issued on 31 July 2019.
4. In a decision letter dated 31 July 2019 the respondent refused his claim for asylum. It was accepted that he was a national of Iraq and of Kurdish ethnicity. The decision letter began by assessing his factual claim to be at risk of an honour crime and his asserted relationship with a woman, D, whilst in Iraq, and his associated claim to have received threats from family and the position of influence of those involved which led to him leaving Iraq. For the reasons set out in the decision letter, the respondent did not accept that the appellant had been targeted as a result of any relationship that he had with D when in Iraq. Nor did it accept that the appellant had given a credible account that he also feared Hashdi Shaabi (see paragraphs 55 - 58). Consideration was given to the humanitarian situation in Iraq but that in his home area there was no evidence to suggest that the humanitarian situation was worse than in other areas of Iraq. As to the feasibility of return the decision letter made reference to the decision in AA (Iraq) v SSHD [2017] EWCA Civ 944 and that in relation to the IKR the appellant would be able to relocate there where he would not be at risk of harm. The decision letter also made reference to the importance of the CSID document but that based on his own evidence he would be able to access the necessary documentation both to return and to internally relocate if necessary.
5. His claim was therefore refused on all grounds.
6. The appellant lodged grounds of appeal against that decision. The appeal against that decision came before the FtTJ on the 19 September 2019 and in the decision promulgated on 7 October 2019 his appeal was dismissed.
7. The FtTJ had the opportunity of hearing oral evidence of the appellant alongside the documentary evidence that had been advanced on his behalf. The judge is set out her findings of fact at paragraphs 51 - 68. Whilst the judge accepted that documentary evidence within the appellant's bundle demonstrated that honour killings occur in Iraq, for the reasons set out within that judgement, the FtTJ rejected his account of being at risk of harm in this regard. The judge gave adequate and sustainable reasons for reaching the conclusion that the appellant had not given a credible or plausible account or which was consistent as to the factual circumstances relating to his relationship with the woman D, or that she was connected to the KDP or that he had been threatened by D's family or A's family and that he would be at risk of honour killing and thus be unsafe for him to be returned to Iraq. The judge therefore rejected his factual claim.

8. In relation to return to Iraq the FtTJ made reference to the issue of relocation to the IKR, and having considered the decisions in AAH and AA(Iraq) reached the conclusion that the appellant could contact a family member to obtain a replacement CSID. The FtTJ's analysis as set out at paragraphs 74 - 85 was to the effect that it would not be unduly harsh or unreasonable for the appellant to relocate to the IKR.
9. The appellant applied for permission to appeal the decision advancing two grounds. Those grounds were drafted by Counsel who had represented the appellant before the FtT.
10. Ground 1 asserted that the FtTJ had erred in law in her evaluation of credibility by mis applying the standard of proof, unfairly reaching conclusions without offering the appellant the opportunity to address them, by engaging in unwarranted speculation and failing to follow the approach to credibility set out KB and AH (credibility-structured approach) Pakistan [2017] UKUT 00491. The grounds then proceeded to challenge the credibility assessment made by the FtTJ by reference to specific paragraphs as identified at paragraphs 4-15 of the grounds.
11. Ground 2 submitted that the FtTJ had erred in law (even if his claim of threat of honour violence was not accepted) in her analysis of the issue of return and relocation to Iraq by failing to properly apply the then Country Guidance case of AAH (Iraq) and by reference to his home area, which was a contested area, and any difficulties there would be in obtaining documentation and that the FtTJ had failed to consider properly his circumstances in the IKR.
12. Permission to appeal was initially refused by the First-tier Tribunal however Upper Tribunal Judge Blundell granted permission to the Appellant on Ground 2 only. UTJ Blundell stated as follows:

"The appellant is an Iraqi national who originates from a formerly contested area. He sought asylum on the basis that he was at risk because he had a relationship with a woman called D, whose family did not approve of their relationship. That claim was roundly disbelieved by Judge Mack. The judge accepted that the appellant could not return to N or to Baghdad. She concluded that it would be safe and reasonable for him to return to the IKR.

By ground one it is asserted that the judge's assessment of credibility is vitiated by various legal errors. I do not consider this ground to be arguable. On a fair reading of the decision as a whole, it cannot properly be said that the judge prejudged the appellant's credibility or that she applied the wrong standard of proof. The judge was entitled to attach weight to the matters she identified as militating against the appellant's credibility and there is no indication that she approached her task with a closed mind or that she applied a standard of proof other than the lower standard. Nor can it properly be said that the judge fell into the error considered by the Court of Appeal in Mibanga [2005] INLR 377 and subsequent authorities. As is clear from [23] in particular, the judge was alive to the appellant's vulnerability and the consequences of that vulnerability from the outset.

Ground two is more meritorious, however, by this ground, it is contended that the judge erred in her approach the question of whether the appellant could obtain a replacement CSI D document and could relocate to the IKR. At first blush, the judge's analysis at paragraphs 77 - 85 as detailed and thorough. It is arguable however that she failed to take at least one material matter into account which is at the appellant's home area (and therefore the location of the family book) is in N, a formerly contested area. On the basis of the country guidance as is stood at the time that was arguably a material matter in deciding whether either the appellant (or proxy) could obtain a new CS ID. In the circumstances, I grant permission on the second ground only."

13. The matter was then listed for an oral hearing. The matter was adjourned in the light of the COVID-19 pandemic and the Upper Tribunal issued directions (dated 1 April sent out on the 17th April) in the light of the Covid-19 pandemic, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a hearing and inviting submissions on that issue and also the error of law of issue.

The submissions of the parties:

14. In response to those directions, the first submissions received were those from the respondent (rather than the appellant).

The respondent's submissions:

15. On 30 April (received on 4 May 2020), the Secretary of State responded. It was submitted that Judge Blundell considered it arguable that the Judge failed to take into account material matters, namely the appellant's home area is a formerly contested area. On the caselaw as it stood at the time, it is arguably a material matter on whether the appellant or a proxy could obtain a new CSID.
16. Thus the respondent accepted that the First-tier Tribunal's decision failed to consider the issue of documentation in the light of the country guidance case and inviting the Upper Tribunal to set aside the decision for the reasons set out by UTJ Blundell in relation to Ground 2.
17. It was further noted that permission had not been granted on Ground 1 and that the findings made on credibility remained including paragraph 68 in which the FtTJ did not accept his account that he had not been in contact with his family.
18. In terms, however, of set aside the Respondent noted that the new Country Guidance decision in SMO and others may materially affect the position on obtaining CSID and on the significance of the presence or absence of family support. The respondent expressed no strong view at this stage as to the nature of such a hearing and suggested that the views of the appellant would be required.

The appellant's submissions:

19. The appellant's solicitors sent submissions in reply drafted by Counsel who had represented the appellant before the FtTJ on 1st May 2020 (received 4 May 2020). In light of the concession made by the respondent it was agreed that the correct course was to set aside the decision of the FtTJ but that the finding at [68] should not be preserved.
20. In support of that submission it was stated as follows: -
- (1) Ground 1, for which permission has not been granted, challenged the treatment of credibility in respect of the risk of honour violence. Ground 2, which has been granted permission, and is accepted as unsafe, challenged the treatment of the question of return if the threat of risk of honour violence was not accepted; that challenge runs wider than the narrow view taken by the SSHD.
 - (2) Adverse credibility findings in respect one aspect of the claim do not necessarily mean that that extends to other aspects, see Green LJ in *SB (Sri Lanka) v SSHD* [2019] EWCA Civ 160 at [43] for a recent observation in this area. The enquiry into the prospect of obtaining a CSID card, and what does or does not flow from that was deficient and needs to be conducted properly. Preserving findings at [68], which in themselves are unclear, complicates what otherwise would be a discrete area of remaking, it further risks an unfairness to the Appellant.
21. It was therefore submitted that the appropriate course was to set aside the FTT decision, preserving the findings in respect of the risk of honour violence and to remit this matter back to the FTT for an oral hearing, in which further and up-to-date evidence relevant to the question of obtaining a CSID / INID card can be examined in light of SMO.
22. Mr Karnik submitted that if the Tribunal accepted the Appellant's approach there would be no reason for a further oral hearing in the UT. However if the UT rejected the Appellant's approach to remaking the decision it was submitted that it would be appropriate for that narrow but important issue to be ventilated at an oral hearing (see the observations of Laws LJ in *Sengupta v Holmes* [2002] EWCA Civ 1104 at [38]:
- "As I have indicated (paragraph 9) Miss O'Rourke accepts that the bystander be taken to possess "some knowledge of legal culture". He would know of the central place accorded to oral argument in our common law adversarial system. This I think is important, because oral argument is perhaps the most powerful force there is, in our legal process, to promote a change of mind by a judge. That judges in fact change their minds under the influence of oral argument is not an arcane feature of the system; it is at the centre of it. Knowledge of it should, in my judgment, be attributed to the fair-minded and informed observer; otherwise the test for apparent bias is too far distant from reality. It is a commonplace for a hearing to start with a clear expression of view by the judge or judges, which may strongly favour one side; it would not cross the mind of counsel on the other side then to suggest that the judge should recuse himself; rather, he knows where he is, and the position he has to meet. He often meets it."

- (1) It was submitted that those observations applied directly to error of law hearings in the Tribunal, and in circumstances where, as here, fundamental rights are at stake they ought to be given particular force.

23. On the 12th May 2020, the Upper Tribunal sent out further directions seeking further written submission dealing with the two remaining issues; that of preserved findings and the venue.

The respondent 's reply:

24. The Secretary of State responded in submissions sent by email on the 18 May 2020 (received on 20 May). It was submitted that the following findings should be preserved:

- (a) The appellant is not credible and that his account is a fabrication [63]
- (b) The appellant was not in a relationship has claimed and the events did not occur [64]
- (c) He is not at risk of honour killing [60], [64-65] and [72]
- (d) The Red Cross documents do not add to the claim [67]
- (e) He is not at risk of the KDP and Ali's family do not hold an influential position [59]
- (f) The appellant is not at risk from Ali's family [59-60]
- (g) The appellant has not received threats from Ali's family [61]
- (h) It is not credible that the appellant has not been or is contact with his family and still is [68]
- (i) The appellant has not made genuine attempts to redocument himself while being in the UK [81]
- (j) The appellant is a healthy young man who was previously self-employed [85]

25. As to the issue of re-making the appeal, it was submitted that in light of the limited findings that would be required that it would be more appropriate for the appeal to remain in the Upper Tribunal.

The appellant's second reply:

26. There is a reply to the Secretary of State's response from Mr Karnik of Counsel representing the Appellant, which was sent to the Upper Tribunal dated 20 May 2020.

27. The Appellant continues to rely upon his submissions dated 1st May 2020 (but sent out on 3 June) which in summary contend that:

(a) The proper approach is for this matter to be remitted to the FTT to address the live issues of identity documentation and relocation.

(b) Those live issues should be addressed by means of an oral hearing in which up-to-date evidence is adduced.

(c) [68] of the FTT decision should not be preserved.

28. It is submitted that in the event that the Appellant's position in respect of [68] is not accepted, an oral hearing should be held in the UT in order to determine the parameters for the redetermination hearing.
29. It was stated that the SSHD had not submitted that this matter could be resolved without an oral hearing, and that the Appellant's oral evidence would be required in order to remake the decision.
30. The Appellant accepted that it is not open to him, in these proceedings, to challenge the FtTJ's treatment of him in respect of being at risk of honour violence.
31. It was further noted that in her first response to the appellant's grounds the only paragraph that the SSHD identified as relevant was [68]. The appellant had already made submissions in respect of that paragraph. The SSHD had provided no justification for now wishing to preserve further findings.
32. Mr Karnik submitted that when granting permission UTJ Blundell recognised a distinction between the issues of risk from honour violence and those identified in the Appellant's second ground. Being found not credible in respect of one aspect of a claim does not necessarily mean that a person is not to be taken as being credible in respect of another part of their claim. For example, it was submitted that at [63] the FtTJ finds that "this part" of his claim is nothing more than a fabrication to *bolster* an extremely weak claim; that clearly leaves other parts of his claim open.
33. It was submitted that the SSHD sought to retain paragraphs [81] and [85], yet in granting permission UTJ Blundell identified these among the paragraphs he finds problematic. As with [68] these paragraphs are unclear and fail for want of sufficient enquiry (or anxious scrutiny), and by retaining them undermined the enquiry that would be necessary in redetermining the appeal in a fair and comprehensive manner.
34. Lastly it was submitted that since the FtTJ considered the appeal, the question of documentation has become further complicated by COVID 19. Any tribunal remaking the decision will have to have regard of the current situation, that includes taking into account the approach currently applied by the Iraqi authorities to documentation and movement. That amounts to extensive and new fact finding, which in fairness to all parties is better undertaken in the FTT.
35. I have carefully considered all of the submissions that have been provided by the parties in reaching a decision on the relevant issues and I have

done so in the light of the documentation before me including the decision under challenge.

Decision under Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

36. Having had full regard to the Pilot Practice Direction: Contingency arrangements in the First -Tier Tribunal and Upper Tribunal, the Presidential Guidance Note No 1 2020 and all documents submitted by the parties, I have reached the decision that the decision on this appeal should be made without a hearing.
37. In the preceding paragraphs I have set out the submissions advanced on behalf of the appellant. It is submitted that an oral hearing is necessary, in light of issues in the case and that a hearing is necessary in order so that the appellant's representatives are able to raise further issues in terms of fairness and to allow either party to properly respond to such issues or concerns. However, no issues have been raised other than those addressed in the written submissions. A general submission has been made concerning the value of oral advocacy (see (see the observations of Laws LJ in *Sengupta v Holmes* [2002] EWCA Civ 1104 at [38]) which I have taken into account.
38. In my judgment there is no complexity which necessitates an oral hearing to ensure fairness. The parties have been given full opportunity to advance their respective submissions and to fully participate in the decision-making process. Each party has submitted two sets of written submissions and have been asked to directly address two issues identified by the Upper Tribunal. There are no issues or concerns to which fairness demands the parties be given a further opportunity to respond or a hearing. The appellant has been given a full opportunity to engage in the proceedings and to advance his case. I do not accept that there is any lack of clarity in the evidence set out in the FtTJ's decision nor is this a reason to list the matter for an oral hearing when seen in the context of this appeal.
39. It has been conceded by the respondent that the decision of the FtTJ involved the making of an error of law and should be set aside and the only issues to resolve flow from that concession as to venue of re-making and on what basis. In any event, I am satisfied that the appellant's submissions deal with the issues that were necessary to address, and specifically as to what findings should be preserved or not and the venue for any future hearing. I have therefore concluded that the matter can be fairly and justly determined without a hearing and that I should go on to consider those issues which the parties have provided their respective submissions on.

Decision on the error of law:

40. As set out in the submission advanced by the respondent, it is conceded that the First-tier Tribunal's decision to dismiss the appeal involved the making of a material error of law. I agree with that concession for the reasons set out in the Ground 2 and the respondent's short submissions.

41. The issue that remains between the parties is what findings of fact should be properly preserved and whether the appeal should be remitted to the FtT on the outstanding issues or whether it should be re-made by the Upper Tribunal.
42. It is accepted on behalf of the appellant that permission has been granted on ground 2 only. It is further accepted in the written submissions that it is not open to the appellant to challenge the FtT's findings of fact in relation to the issue of him being at risk of honour violence. In my judgement it must follow from that concession that the findings of fact which are not infected by error of law should be preserved. Those factual findings are set out at paragraphs 51 - 68 with a summary at paragraph 72. Those paragraphs concern the FtT's findings which were largely the subject of Ground 1, that relate to the appellant's account of being at risk in his home area in Iraq (his asserted relationship with D, the risk of honour violence, the assertion that A's father works for the KDP (paragraph 58), threats to his person in Iraq, material from the British Red Cross to help find his girlfriend, and contact with his family). As such those findings of fact do not impinge on the issues identified in ground 2 which relate to issues of identity documentation and relocation whereby the country materials relevant to the appellant's home area and/or other areas of relocation in the context of the most recent country guidance decision of SMO and others will be relevant.
43. I do not accept the submission made on behalf of the appellant that to preserve the findings set out at paragraphs 51 - 68 complicates what is referred to in the written submissions as a "discrete area of remaking" or that to do so would risk any unfairness to the appellant. In particular, it is submitted that paragraph 68 is unclear and therefore should not be preserved.
44. At paragraph 68, the FtT considered the evidence given by the appellant and his attempts to contact his family members. The FtT did not make findings of fact based on the position that the judge had found him to lack credibility in general terms but gave reasons based on the appellant's own factual account and the evidence given by him. There is no lack of clarity at paragraph 68 but sets out in straightforward terms and reasoning why the FtT did not accept that the appellant has not been in contact with his family or that he was unable to contact his family.
45. That said, on any remaking it would be open to the appellant to provide further evidence concerning contact with his family when considering the issues relevant to ground 2 such as documentation, relocation, and issues of return. The preservation of paragraph 68 does not preclude further evidence on this issue and therefore cannot be said to be unfair to the appellant.
46. Whilst the respondent has set out a summary of the findings sought to be preserved in the written submissions (set out at paragraph 21 above), in my judgement it is sufficient to record that the preserved findings are those made by the FtT at paragraphs 51 - 68.

47. It is further submitted on behalf of the respondent that paragraphs 81 and 85 should also be preserved. Paragraph 81 does not stand in isolation but should be seen alongside paragraph 80 in which the judge set out an assessment of redocumentation in the UK. In light of the error of law in my judgement those findings should not stand as preserved findings which relate to the issue of documentation as this is one area in which the FtJ did not consider the country information set out in the former CG decision and will require further consideration in the light of the recent CG decision of SMO and others or any further country materials which postdate that decision.
48. The respondent also seeks to preserve paragraph 85 and in particular that the judge found the appellant to be a “healthy young man who was previously self-employed.” The respondent does not appear to seek to preserve any other factual findings or the analysis in that paragraph.
49. Mr Karnik on behalf of the appellant submits that UTJ Blundell found paragraph 85 to be “problematic” and therefore should not be preserved. That submission does not address the difference between factual issues and issues of analysis. UTJ Blundell considered that there was an arguable error in relation to the issue of documentation and the issues of return in the context of relocation. I would agree that paragraph 85 forms part of the analysis of those issues which are agreed to be unsafe as the FtJ’s assessment failed to consider material aspects relating to documentation which is also relevant also to the issue of return and relocation. However, paragraph 85 also refers to factual matters which were not in dispute which were based on the appellant’s own evidence such as the appellant was a single man with no dependents who previously worked as a taxi driver. What that means is that the issue of relocation has to be factored in alongside the other relevant issues such as the position of the place of relocation, what has happened in respect of the appellant’s home area all of which will be the subject of further argument and analysis. However, that does not change the factual detail which comes from the appellant’s own evidence.
50. In summary, none of the analysis of the issues of feasibility of return and relocation and the associated issues of documentation can be preserved in view of the error of law but that does not mean that any further tribunal will or should ignore factual evidence concerning the appellant’s own characteristics particularly when that was the evidence which was not in dispute. It is the analysis of those factual issues which require further consideration alongside the country materials and the most recent CG decision of SMO and others. As paragraph 85 concerns analysis of the issues which are found to be in error, I do not preserve paragraph 85. For the reason that I have set out earlier, I do not preserve paragraph 81.
51. As to the venue of the remaking of the decision, having considered the respective submissions of the parties I am satisfied that the extent of the oral evidence necessary to remake the decision that further findings of fact on the issues of return, relocation and documentation which will be necessary are such that they should be considered by the First-tier Tribunal.

52. Mr Karnik has also highlighted other issues which arise from Covid 19 and that when remaking the decision it will be necessary to consider the current situation, that includes taking into account the approach currently applied by the Iraqi authorities to documentation and movement which is likely to amount to extensive and new fact finding, which in fairness to all parties is better undertaken in the First-tier Tribunal. I agree with that approach and therefore I have reached the decision that the appeal should be remitted to the First-tier Tribunal for this to be the subject of a further hearing in that Tribunal.
53. For the avoidance of doubt and for the reason that I have set out earlier, I preserve the findings of fact made at paragraphs 51 – 68.

Notice of Decision

The appeal is allowed. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. I set it aside.

The appeal is remitted to the First-tier Tribunal (Manchester Hearing Centre) to be heard by a Judge other than Judge Mack.

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 Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

Dated: 8 June 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the

Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email