



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

Appeal Number: PA/08277/2019 (P)

**THE IMMIGRATION ACTS**

**Decided under Rule 34 of the  
Tribunal Procedure (Upper Tribunal)  
Rules 2008  
On 23 June 2020**

**Decision & Reasons  
Promulgated  
On 02 July 2020**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**F.M.A.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Decision made under rule 34 of The Tribunal Procedure (Upper  
Tribunal) Rules 2008**

**DECISION AND REASONS**

**Introduction**

This is an appeal against the decision of Judge of the First-tier Tribunal Devlin ('the Judge') sent to the parties on 20 November 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant him international protection was dismissed.

Upper Tribunal Judge Coker granted permission to appeal on all grounds.

### **'Rule 34'**

This decision is made without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ('the 2008 Rules').

In light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed at rule 2(1) of the 2008 Rules, and also at rule 2(2)-(4), I indicated by a Note and Directions sent to the parties on 21 April 2020 my provisional view that it would be appropriate to determine the following questions without a hearing:

- (i) Whether the making of the First-tier Tribunal's decision involved the making of an error of law, and if so
- (ii) Whether the decision should be set aside.

In reaching my provisional view I was mindful as to the circumstances when an oral hearing is to be held in order to comply with the common law duty of fairness and also as to when a decision may appropriately be made consequent to a paper consideration: *Osborn v. The Parole Board* [2013] UKSC 61; [2014] AC 1115.

Both parties consented to the proposed approach as to the consideration of this hearing.

I am grateful to Mr. K Iqbal, Solicitor at Primus Solicitors, on behalf of the appellant and Mr. S Walker, Senior Presenting Officer, on behalf of the respondent, for filing their written submissions, dated 6 May 2020 and 4 June 2020 respectively.

### **Anonymity**

The Judge did not issue an anonymity direction despite this being a matter in which the appellant has sought international protection. I am mindful of Guidance Note 2013 No 1 concerning anonymity directions and I note that the starting point for consideration of anonymity directions in this chamber of the Upper Tribunal, as in all courts and tribunals, is open justice. However, I observe paragraph 13 of the Guidance Note where it is confirmed that it is the present practice of both the First-tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. Pursuant to rule 14 of the 2008 Rules I make an anonymity direction in order to avoid the likelihood of serious harm arising to the appellant from the contents of his protection claim becoming known to the wider public.

The direction is detailed at the conclusion of this decision.

### **Background**

The appellant is accepted by the respondent to be a citizen of Iraq and is presently aged 41. He asserts that he is ethnically Kurdish and the Tribunal

notes that he was interviewed by the respondent in the Kurdish Sorani language. Though the respondent does not expressly accept the appellant's ethnicity by means of her decision letter, she proceeded to consider the appellant's return to Iraq on the basis that he speaks Kurdish Sorani.

The appellant asserts that Iraqi troops, supported by Shi'a militia, attacked his village in October 2017. There was fighting with members of the Peshmerga and the Iraqi troops retreated. A few days later, members of the Shi'a militia confronted the appellant in his field and asked him why he had not left the area. He was threatened with weapons, but the militia left when his wife started to scream. The appellant asserts that he was targeted on another five or six occasions, with livestock stolen and crops burnt. Bullets were fired at the side of his house.

In 2019, the situation deteriorated as the militia started to burn houses and farms in the locality. They also threatened to kill people if they did not leave the area by a certain date. The appellant and his family left their home in May 2019. The appellant subsequently secured the services of an agent and he left Iraq, travelling to the United Kingdom via Turkey. He claimed asylum in this country in June 2019.

### **Hearing before the FtT**

The appeal came before the Judge sitting in Manchester on 30 October 2019. By means of a decision and reasons, running to 237 paragraphs over 27 pages, the Judge did not find the appellant to be a credible witness and dismissed the appeal.

### **Grounds of Appeal**

The appellant relies upon four grounds of challenge, which can be briefly detailed as:

1. When considering internal relocation, the Judge materially erred in law by failing to consider that the applicant does not possess relevant ID documents, nor does he enjoy family ties or an income.
2. As to credibility, the Judge materially erred in law by failing to assess the appellant's evidence in a holistic manner. There was a failure to consider the appellant's evidence from Q40 onwards of his interview.
3. The Judge materially erred in law by reaching conclusions based upon implausibility.
4. At para. 227 of the decision and reasons, the Judge's decision was based upon an assumption as to whether the appellant would be accommodated by locals upon his return to Iraq.

In refusing permission to appeal to this Tribunal, Designated Judge of the First-tier Tribunal Woodcraft observed that the long determination 'could perhaps have been more clearly laid out'.

UTJ Coker granted permission to appeal by a decision dated 20 February 2020, reasoning:

1. It is arguable the First-tier Tribunal judge failed to adequately consider the factual practicality of the appellant's return to Iraq, irrespective of the findings he made as to the credibility of the appellant's claim.
2. As commented upon by Judge Woodcraft, the First-tier Tribunal judge's decision could have been more clearly laid out. I grant permission on all grounds.
3. It will assist the Upper Tribunal in hearing this appeal if the parties can refine and set out the actual findings of the judge that are and are not in context.

### **Decision on Error of Law**

A difficulty arises in this matter. By means of his written submissions, Mr. Iqbal on behalf of the appellant unfortunately addresses issues by means of the order of paragraphs in the Judge's decision and reasons, rather than in accordance with the grounds of appeal upon which permission was granted. Having adopted such approach, which is unhelpful, he submits, *inter alia*:

- "5. The appellant does not agree with the Judge's finding at para 180 that he has a brother in Iraq. The appellant clearly stated in his witness statement at para 12 that his brother married an Arab woman and moved to Chiman village, close to Kirkuk. He stated that his brother became disabled in 1989 and he lost contact with him since 1991."

The relevant paragraph of the Judge's decision is para. 180 which details:

- "180. I have noted that, apart from his wife, the appellant has a brother in Iraq. In addition, his uncle's friend, whom he claims arranged and paid the smuggler, also lives there. All of these people should be able to speak to one or more of the above matters."

To what fact(s) or issue(s) the Judge is referring in his reference to 'above matters' is not clearly identified. The preceding paragraphs running from para. 142 to para. 179 address several elements of the appellant's purported history under the titles 'sufficiency of detail', 'internal consistency' and 'external consistency', though the latter two sections primarily detail a lack of consistency as to historical events and, at para. 178, the Judge expressly identified nine specific instances of personal history in relation to which the appellant 'failed to produce any independent evidence'. Upon careful consideration, the Tribunal is satisfied that the only reasonable reading of para. 180 is that it constitutes a criticism by the Judge as to the failure by the appellant to produce corroborative evidence from persons in Iraq to support his claim. I observe that a judge is not required to leave out of their assessment the absence of documentary evidence which could reasonably be expected and is relatively easy to secure: ST (Corroboration - Kasolo) Ethiopia [2004] UKIAT 00119. The Court of Appeal held in TK (Burundi) v Secretary of State for the Home Department [2009]

EWCA Civ 40; [2009] Imm AR 488 that where there are circumstances in which evidence corroborating the appellant's evidence was easily obtainable the lack of such evidence must affect the assessment of the appellant's credibility. However, the Judge failed to provide any reasoning as to why evidence from the appellant's wife, brother and the friend of his uncle was reasonably capable of being secured from Iraq, and if he did not undertake the step of considering the reasonableness of the appellant securing such evidence he should not have adversely relied upon a failure to provide corroboration from such sources.

No doubt mindful of relevant precedent as to the appropriateness, or otherwise, of a judge relying upon the failure of an appellant to secure corroborative evidence in the assessment of credibility Mr. Walker, by means of his written submissions dated 4 June 2020, confirmed that after consideration of the further submissions submitted on the appellant's behalf, the respondent conceded that at para. 180 of his determination the Judge had made a material error of law. On behalf of the respondent, Mr. Walker conceded that as a material error of law was established there was no requirement for an error of law hearing.

Unfortunately, by means of the approach adopted by Mr. Iqbal, the submission at para. 5 of his written submissions does not relate to any of the four grounds of appeal upon which permission to appeal has been granted. It is further noted by the Tribunal that paras. 6 and 9 of the written submissions also identify issues not addressed by the grounds of appeal.

I have considered the respondent's position, fairly and appropriately confirmed by Mr. Walker. I observe that it is reasonable to expect professional representatives to set out appeal grounds on behalf of an appellant with an appropriate degree of particularity and legibility and the Tribunal should be hesitant in forensically examining the decision to identify grounds beyond those advanced by a professional representative. However, there remains a duty to consider the points that are 'obvious': see *R v Secretary of State for the Home Department, ex parte Robinson* [1997] 3 WLR 1162. The Tribunal enjoys a power to consider any other point arising from a decision if the interests of justice so require.

In this matter, the respondent accepts that the reliance in the credibility assessment upon a failure to provide corroborative evidence originating from witnesses present in Iraq establishes a material error of law and therefore I consider that it would be in the interests of justice for the Tribunal to consider this obvious issue. Consequently, for the reasons detailed at para. 19 of this decision, above, the erroneous approach to corroboration in the credibility assessment constitutes an error of law. Because it is not possible to identify the significance the Judge gave to the failure to provide corroborative evidence, in circumstances where he provided little, if any, reasoning at para. 180 of the decision, I am satisfied that the error infected the credibility reasoning as a whole and so establishes a material error of law. In such circumstances, as agreed by the respondent, the decision of the Judge must be set aside.

**Remaking of the decision**

I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal and I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the case to the First-tier Tribunal.

**Notice of decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 20 November 2019 pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

This matter is remitted to the First-tier Tribunal for a fresh hearing before any Judge other than the Judge of the First-tier Tribunal Devlin.

No findings of fact are preserved.

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

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. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D O'Callaghan  
**Upper Tribunal Judge O'Callaghan**

Dated: 23 June 2020