Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: PA/12420/2019 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 16 March 2021	**On 24 March 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

HNO

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Ms KA Smith, instructed by Barnes Harrild & Dyer Solicitors

For the respondent: Mr A Tan, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a Iraqi national of Kurdish ethnicity who emanates from within the IKR, and with date of birth given as 14.8.86, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 3.3.20 (Judge Lewis), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 12.9.19, to refuse his further submissions dated 25.7.19 in pursuit of a claim for international protection on the basis of political opinion as a member of the Gorran Party.

2. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal on 23.6.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Perkins granted permission on 12.10.20, considering it "arguable that a witness who gave clear evidence that the appellant was identified as someone who had problems in Iraq and that no findings have been made on those claims," (ground 1). Judge Perkins also considered ground 2 arguable, stating "It may be that the First-tier Tribunal Judge has unlawfully underrated the content of significance of the Facebook posts."

3. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions and the grounds of application for permission to appeal to the Upper Tribunal. The Tribunal has also received a new appellant's bundle, submitted pursuant to Rule 15(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008. However, as the initial hearing is confined to the issue of an error of law, I have not considered the additional material which was not before the First-tier Tribunal. Included with the grounds of appeal (and copied in the new bundle) is counsel's detailed typed record of the hearing and the evidence given. As Judge Perkins noted, the judge also made a typed record of proceedings.

4. At the outset of the hearing, Mr Tan indicated that he did not oppose the appeal, given the evidence of the appellant's witness, Mr S. As recorded by counsel, in cross-examination this witness confirmed that he had returned to the IKR (Erbil) and confirmed through official channels both that the appellant was a member of the Gorran Party and that as a result he experienced the problems in Iraq that he asserted. Whilst the judge records the evidence of Mr S, this important aspect of the witness' evidence was not recorded and, more significantly, it was not addressed in the findings or taken into account in the credibility assessment. At [33] of the decision, the judge stated only that Mr S "confirmed that the appellant was a member of the Gorran movement and had been since 2016." At [46] of the decision, the judge accepted Mr S's evidence that the appellant attended Gorran events and meetings in the UK. At no point does the judge criticise or reject any part of the evidence of Mr S. In the premises, I accept the submission of Ms Smith and the concession of Mr Tan that important evidence relevant to both credibility and the claimed risk on return to the IKR has been overlooked.

5. Mr Tan further referred me to [8(d) to (g)] of the grounds, accepting that the evidence there referred to had not been addressed by the judge. This evidence includes adverse comments on the appellant's Facebook posts and that a person who had 'liked' one of those comments was himself placed in difficulties, forcing him to relocate within the IKR. The other evidence referred to was of armed persons coming

to the appellant's brother's home as a result of the appellant's activity in the UK. Also, there was evidence that on return to the IKR the appellant would reasonably likely undergo a screening process at the hands of Asayish, the Kurdish security services, creating a real risk that the appellant's sur place activities on behalf of Gorran and against the KDP would be revealed. Country background information to which the judge's attention was drawn confirmed that Asayish is known to commit arbitrary or unlawful abuse, torture and killings in detention centres. None of this evidence was addressed by the First-tier Tribunal Judge.

6. In the premises, I am satisfied that important evidence was overlooked and/or not addressed adequately by the First-tier Tribunal and that in consequence, this decision cannot stand but must be set aside to be remade. Both parties urged me to remit the matter to the First-tier Tribunal, as significant oral evidence will need to be taken, including from the appellant's witness. Ms Smith also pointed out that the appellant now claims to be a Christian convert and the respondent will be asked to consent to this new matter being raised.

7. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiate all findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal. In all the circumstances, I remit this appeal for a fresh hearing in the First-tier Tribunal, on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2.

8. In the premises, and for the reasons set out above, I find material error of law in the decision of the First-tier Tribunal so that it must be set aside to be remade de novo with no findings preserved.

Decision

The appeal of the appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal at Manchester to be remade de novo with no findings preserved.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 16 March 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*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 to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings*."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 16 March 2021