



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-002766

First-tier Tribunal No: PA/53723/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 17 August 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**MAA**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Decided on the papers**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Lester promulgated on 4 May 2022.
2. Permission to appeal was granted by First-tier Tribunal Judge Galloway on 14 June 2022.

### Anonymity

3. An anonymity direction was made previously and is reiterated because this appeal concerns a protection claim.

### Factual Background

4. The appellant is a national of Iraq, from Sulaymaniyah, of Kurdish ethnicity and aged thirty-eight. He entered the United Kingdom during April 2019 and applied for asylum, based on his imputed political opinion and being a party to a blood feud. His claim was refused on 17 October 2019 and his appeals against that decision were dismissed, his rights being exhausted as of 23 July 2020. The appellant made further submissions on the same basis but with new supporting evidence on 18 August 2020, which were refused by way of a decision letter dated 14 July 2021. It suffices to say that the respondent noted that the appellant had been found not to be a witness of truth by the previous judge and that the new evidence was insufficient to overturn these findings. It was further concluded that there were avenues open to the appellant to obtain documentation which he could use to return to Iraq.

### The decision of the First-tier Tribunal

5. The appellant attended the hearing and gave evidence before the First-tier Tribunal. The judge considered a video which was said to show the appellant being tortured, but nonetheless concluded that it was staged. The appeal was dismissed.

### The grounds of appeal

6. The grounds of appeal were as follows.

i) At para 39, The Judge is critical of the Appellant failing to mention the threats of sexual violence, as per the audio. The Judge correctly notes the language as being Arabic. The Judge fails to take into consideration the Appellant is a Kurdish Sorani speaker and would not be aware of what has been said.

ii) It is respectfully submitted that irrespective of the overall findings as to the credibility of the video, it is a fact that this video is within the public domain. The Judge erred in that he has failed to consider the implications for the Appellant in a homophobic society, should this video be viewed.

iii) It is respectfully submitted that the Judge's finding para 51, that there was no new evidence in respect of the original asylum claim, is factually incorrect. The Judge had before him the expert report of Dr. Allan George which set out in detail the links between Qaiwan (the company the Appellant worked for - not disputed), the PUK (the membership of the Appellants father-in-law was in dispute) and Etela'at. The significance of the same being set out in detail in the ASA. The Judge errs in failing to give any consideration to the same.

7. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

Having considered the grounds of appeal and the judgment in full, I am satisfied that there is an arguable material error of law in this instance. The Appellant refers to the lengthy expert report from Dr George within the skeleton argument. This was new evidence before the Tribunal. Whilst it is referred to by the judge, when setting out the position of the parties, the content of the report is not considered by the judge in his findings or conclusions.

8. Sian Rushforth of the Specialist Appeals Team filed a Rule 24 response dated 9 August 2023, in which the following comments were made.

The respondent to this appeal is the Secretary of State for the Home Department. Documents relating to this appeal should be sent to the Secretary of State for the Home Department, at the above address.

The respondent does not oppose the appellant's ground of appeal that the judge has failed to make any findings in relation to the country expert report. It is accepted that this constitutes a material error of law. It is the Respondents position that the appeal should be remitted to the first tier tribunal for a de novo hearing.

#### Decision on error of law

9. Upon receiving the Rule 24 response, I directed that an email message be sent to the parties to indicate that I was proposing to set the decision aside and remit to the First-tier Tribunal. I took this course as the grounds were unclear as to whether a remittal was sought. I received no response from the parties to indicate that an alternative disposal was sought, and I accordingly proceeded to determine this matter.
10. I am satisfied that the respondent's concession was rightfully made and that the errors identified in the grounds are made out and are material to the outcome of the appeal. I consider it appropriate to set aside the decision in its entirety as suggested by the respondent because the errors in relation to the expert evidence infect the entirety of the judge's findings. In addition, the ground relating to the risk to the appellant from a homophobic society was made before the judge but went unaddressed.
11. Given that there are no preserved findings of fact. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I have carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of an adequate consideration of his appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

#### Decision

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

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

**The appeal is remitted, de novo, to the First-tier Tribunal at Newport to be reheard by any judge except First-tier Tribunal Judge Lester.**

T Kamara

Judge of the Upper Tribunal

Appeal Number: UI 2022 002766

Immigration and Asylum Chamber

**9 August 2023**