



IAC-TH-WYL-V1

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

Appeal Number: AA/02422/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 29th October 2015**

**Decision & Reasons Promulgated
On 4th November 2015**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**LB
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Gaisford, Counsel instructed on behalf of Good Advice UK

For the Respondent: Mr Wilding, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269 as amended) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the applicant. For the avoidance of doubts, this order also applies to both the applicant and to the Respondent. The failure to comply with this order could lead to contempt of court proceedings.

2. She arrived in the United Kingdom on 19th August 2014 and claimed asylum on 13th September. The application was refused by the Secretary of State in a decision made on 29th January 2015 with reasons given in a detailed reasons for refusal of the same date. The Appellant exercised her right to appeal against the decision of the Respondent and on 1st April 2015 the appeal was heard by the First-tier Tribunal sitting at Bradford. In a determination promulgated on 9th April 2015, the First-tier Tribunal Judge dismissed the appeal of the Appellant on human rights grounds.
3. The Appellant sought permission to appeal that decision based on two grounds relating to issues of credibility and findings of fact that were made on the evidence and also upon a mistake of fact.
4. On 5th May 2015, the First-tier Tribunal granted permission to appeal. Thus the matter was listed before the Upper Tribunal. The Appellant was represented by Mr Gaisford and the Respondent by Mr Wilding. At the hearing, after consideration of matters outlined by Mr Gaisford, Mr Wilding conceded that the decision of the First-tier Tribunal did disclose an error of law and in those circumstances the appropriate outcome was that the decision of the First-tier Tribunal be set aside. Both parties invited the Tribunal to remit the case to the First-tier Tribunal in order for the appeal to be determined by way of a fresh oral hearing bearing in mind that the issues related to credibility and consideration and analysis of documentary evidence.
5. In the light of the concession made before me, there is no basis on which I could possibly do otherwise than to accept that concession and find that the determination cannot stand as a consequence. I would have found that there was a material error of law for the reasons I shall give. It is therefore common ground between the parties that the judge made a material error of law and that the First-tier Tribunal to whom the case is to be remitted should consider the appeal on its fact afresh. In those circumstances it is necessary only briefly to explain why the Tribunal finds that to be the case.
6. At the heart of the Appellant's claim was the issue of credibility concerning the risk on return and the claim made by her that she would be at risk of harm based not only on her own prior associations with the Ba'ath Party but that her family members, each of whom it was claimed had suffered harm in Iraq as a result of their own particular associations and background. In her claim, she made reference to serious harm to her father and two of her brothers and also related to fear of harm from threats from the organisation known as "AAH."
7. In the judge's decision he referred to the lack of supporting material and in particular highlighted at a number of paragraphs that the evidence from the Appellant relied upon what she had been told (see [34] and [35]) or what she had believed to be the case. Therefore matters going to her general credibility were relevant when considering the overall

assessment of her claim as a reliable witness and as to the veracity of her account.

8. In the light of the above, and the judge's reference to the lack of evidence in support, it was a material error of law not to consider the documentary evidence that she in fact did produce when making an assessment of her credibility and in particular the account provided and threats from ISIS and in accordance with the expert report. The document was a letter sent from the AAH (A's bundle at [14]) and was referred to in the refusal letter at [27] whereby the Secretary of State considered its contents and recorded at [28] that the contents of the letter were internally consistent and as such some weight should be placed on the letter. It is right to observe that the Secretary of State went on to say that the account as to threats was lacking in detail and also gave consideration to the background material. However it is plain that the judge was aware of that letter and made reference to it at paragraph 30(vii) noting that there was documentary evidence in support and that "the documents should be given appropriate weight". However, as conceded by Mr Wilding the judge failed to consider that evidence in his determination when considering and reaching a view as to the factual account given by the Appellant and the credibility of her claim. There was no reference to the documentation as to whether it was reliable or a document upon which he could attach weight and there was no consideration of its contents or how it came into the hands of the Appellant in making an overall assessment of it in the light of the evidence as a whole, and in accordance with the principles set out in the well-known case of **Tanveer Ahmed**. As this was a case in which the judge had made reference to the lack of evidence, it was material and important to consider and assess this evidence that was provided in support, when making an overall assessment of the claim.
9. As to general credibility it was also conceded by Mr Wilding that the judge made a finding on her general credibility at [37] which is based on a mistake of fact. The judge wrongly recorded her immigration history and noted she had entered the UK on 19th August 2013 and that she had not claimed asylum until 13 September 2014 when it was common ground that she had entered on 19th August 2014. This was not a typographical error as Mr Gaisford pointed out as it was reflected in her immigration history earlier on in the determination. This was a material mistake of fact as the judge considered this issue under Section 8 of the 2004 Act and her delay in claiming asylum and therefore the length of time and the delay was relevant to the issue of credibility. The finding that he made that the Appellant's credibility is "damaged by her own actions" was based on a false premise that she had delayed her claim by a year which is factually incorrect.
10. The judge also reached a conclusion on her general credibility at [38] and [39] which related to her failure to produce a divorce document. He found in strong terms that she had not provided a satisfactory explanation for not providing the divorce document and that her failure

to do so was “something that must count against her”. At [38] he found that her credibility was damaged. The evidence now demonstrates that such evidence was available although not brought to the attention of the judge. He cannot of course be at fault for not taking into account that document which was not put before him but nonetheless it was a mistake of fact. Whilst the issue of the divorce itself was not material to the risk on return; it being accepted by the Secretary of State that she would not be returned to the UAE and risk was assessed on the basis of return to Iraq, it is plain that on this issue that the judge found her credibility to be damaged and that it counted against her. In view of the findings made and how they were made, it is difficult to maintain that the judge was not placing weight and reliance on this omission particularly in view of the earlier finding that the Appellant had not provided evidence.

11. Whilst by itself this would not undermine the findings, when viewed alongside the failure to consider material evidence and the mistake of fact relating to the Section 8 issue, I consider and Mr Wilding accepted, that the assessment of credibility and consequent risk was undoubtedly affected and therefore was not sustainable.
12. Both advocates have invited the Tribunal to determine the appeal with a fresh oral hearing by way of remittal to the First-tier Tribunal. Due to the nature of the error of law, the Tribunal will be required to hear the oral evidence of the Appellant and for findings of fact to be made on all the issues of credibility raised including the documentary evidence. In that context, I am satisfied that the appropriate course is for the appeal to be remitted as set out above and for there to be an assessment of the evidence. There have been reasons given as to why this course should be adopted, and having given particular regard to the overriding objective of the efficient disposal of appeals and taking into account that there are issues of fact that are central to this appeal that required determination, I have reached the conclusion that the appeal should be remitted to the First-tier Tribunal.
13. Therefore the decision of the First-tier Tribunal shall be set aside, none of the findings shall stand and the case is to be remitted to the First-tier Tribunal for a hearing in accordance with Section 12(2)(b) of the Tribunals, Court and Enforcement Act and paragraph 7.2 of the Practice Statement of 10th February 2010 (as amended).

Signed

Date: 29/10/2015

Upper Tribunal Judge Reeds

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 her or any member of her 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.