



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

Appeal Number: AA/06459/2014

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Tribunal
On 7th August 2017**

**Determination
Promulgated
On 21st August 2017**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR AHMED MOHAMMED ARIF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Norman, Counsel, instructed by RBM Solicitors
For the Respondent: Mr Mills, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iraq born on 1st January 1952. He lived in Kirkuk and ran a business together with his business partner. He claims to have been the victim of threats and demands from a Shia militia group seeking to obtain payment from him. As a result of such threats, damage and extortion the appellant came to the United Kingdom and sought asylum. The claim was refused on 15th August 2014.

2. The appellant sought to appeal against that decision, which appeal came before a Judge of the First-tier Tribunal on 3rd October 2014 but was dismissed. The appellant sought permission to appeal to the Upper Tribunal which was granted. Upper Tribunal Judge Hemingway found a material error of law in the decision of the First-tier Tribunal and set it aside indicating that there should be a de novo hearing.
3. Thus the matter came for hearing before First-tier Tribunal Judge Chohan on 6th January 2017. He did not find the account of the appellant as to what happened to him in Kirkuk to be credible nor did he find any reason why the appellant could not return to Iraq. For those reasons the appeal was dismissed.
4. The appellant once again sought to challenge that particular decision and leave to do so was granted to the Upper Tribunal, both in terms of the assessment of credibility and of the approach taken by the Judge to return, particularly in the light of **AA (Article 15(c)) Iraq CG [2015] UKUT 544**. Thus the matter comes before me to determine that issue.
5. As to the issue of return Mr Mills for the respondent most fairly concedes that the lead case of **AA** requires a fact-sensitive assessment of return which has not been done in this case and constitutes therefore an error of law.
6. He submits, however, that the conclusion as to the credibility of the claim itself was properly open to the Judge. The challenge that is made in essence is that documents capable of supporting the account, namely a letter/report from the police in Iraq and a death certificate were disregarded by the Judge as the Judge had already come to an adverse finding as to credibility. The merits of the matter are finely balanced, because the Judge considers each document within a wider context and finds that the documents are not reliable and gives little weight to them. What is absent, however, from the assessment of credibility, and indeed from the assessment of return is a proper consideration of the appellant's medical condition. There were two medical reports that were presented at the hearing. One is from Phillip Rees, a psychological practitioner from Birmingham Solihull NHS dated 23rd December 2016. An account of what happened is set out in that report together with an assessment of the appellant's mental health condition of depression and anxiety. The condition is said to relate very much to the events that had taken place. There is report from psychological therapist, Helena Rogers, of 13th December 2016 .It is said that those reports raised important matters ,which ought to have been considered when assessing credibility in the round and were also clearly relevant to the issue of return.
7. It was also submitted on behalf of the appellant that the Judge was applying western standards to some of the concerns in the claim. For example, the Judge finds it unlikely that the appellant's business partner

would not be targeted in the same way as the appellant. It is submitted on behalf of the appellant that such was because he was an Arab and therefore in a slightly better position.

8. Mr Mills invites me to preserve the findings as to credibility and to direct a rehearing on the issue of return. It seems to me overall that it would be unfair to a Judge to compartmentalise matters in such a way, particularly given the absence of any reference to medical evidence. That is particularly relevant now because, as I understand it the appellant had a stroke last week, and indeed appears in court with the help of his daughter, clearly very unsteady on his feet. No doubt there will be an up-to-date medical certificate or report prepared.
9. In all the circumstances and having regard to the Senior President's Practice Direction, I set aside the decision of Judge Chohan as a whole and remit to the First-tier Tribunal for a rehearing on all issues.
10. One of the difficulties in this case has been many documents not necessarily clearly identified. It is the responsibility of the appellant to prepare a definitive and paginated bundle for use at the hearing.

Notice of Decision

The appeal is allowed to the extent that the decision is set aside to be remade in the First-tier Tribunal.

No anonymity direction is made.



Signed

Date 17 August 2017

Upper Tribunal Judge King TD