



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

Appeal Number: PA/00019/2017

THE IMMIGRATION ACTS

Heard at Field House

On 8 November 2017

**Decision & Reasons
Promulgated**

On 6 December 2017

Before

**RIGHT HONOURABLE LORD BOYD OF DUNCANSBY
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE JORDAN**

Between

**ZA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Radford, counsel instructed by Duncan Lewis & Co,
solicitors

For the Respondent: Mr Tarlow, Home Office Presenting Officer

ERROR OF LAW DECISION AND REASONS

1. The appellant appeals with leave against a decision of FtT Judge Khan promulgated on 13 September 2017 refusing the appellant's appeal against a decision by the respondent dated 15 December 2016 in which she refused the appellant's application for asylum and humanitarian protection on human rights grounds. The appellant is a citizen of Iraq who came to this country in 2009. He claimed asylum. That was refused on 9 June 2009. An appeal against the decision was refused as were subsequent submissions.
2. On 1 September 2015 the appellant was convicted at Canterbury Crown Court of possession or use of a false instrument and was sentenced to one year ten months imprisonment. Following thereon the respondent made a deportation order which was served on the appellant on 8 April 2016. The appellant made the present application on 27 April 2016.
3. Judge Kahn made adverse findings about the appellant's credibility. He also found that the appellant had failed to establish that he will be persecuted on his return to Iraq or that there is a real risk of persecution. He then went on to consider the risk on return to Mosul which is where he originates from. Thereafter Judge Khan made findings in respect of article 3 and article 8 ECHR.
4. There are five discreet grounds of appeal. However we need only deal with one of them as disposing of this appeal. It is clear that two of the more critical paragraphs, 42 and 51 contain statements which have nothing to do with this appellant. Paragraph 42 contains Judge Khan's conclusion on the risk of return. He says the appellant will be of no interest to the authorities, the Makmur family or ISIS and will not be at risk of persecution. These details have nothing to do with this appellant.
5. At paragraph 51 Judge Khan says that the appellant's parents and brother are currently in Romania, that his brother had made many trips to Kurdistan and the family, if they were so minded could all return to Kurdistan. The appellant has no connection to Kurdistan. His family have never been to Romania and he does not have a brother.
6. Mr Tarlow said that he was uncomfortable with the Judge's decision. Apart from these errors it was clear that he had not dealt adequately with the article 3 claim.
7. Standing the clear and obvious errors to critical parts of the decision we cannot be confident that Judge Khan has properly engaged with the issues before the FtT. Accordingly we find that there is an error of law. We will allow the appeal and set aside Judge Khan's decision.
8. We consider the errors are such that we cannot be confident that the appellant was afforded a proper hearing before the FtT. We are also conscious that the situation in Mosul, and indeed the region, is far from settled at the present time. It may be that the parties and particularly the respondent will wish to consider with care the security issues in the area

at the time. For these reasons we shall remit the case to the FtT for a re-hearing.

Notice of Decision

The appeal is allowed. The case is remitted to the FtT for a rehearing on all grounds.

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 him or any member of their 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.

Signed

Date

Right Honourable Lord Boyd of Duncansby