



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

Appeal Number: PA008542016

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons  
Birmingham Promulgated  
On 2<sup>nd</sup> August 2017 On 10<sup>th</sup> August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**KMT  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr K Gayle of Elder Rahimi Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge Perry of the First-tier Tribunal (the FtT), promulgated on 16<sup>th</sup> December 2016.
2. The Appellant is a male Iraqi citizen of Kurdish ethnicity, born [ ] 1977. His asylum and human rights claim was refused on 15<sup>th</sup> January 2016.

3. The appeal was heard by the FtT on 28<sup>th</sup> November 2016 and dismissed on all grounds.
4. The Appellant applied for permission to appeal to the Upper Tribunal and permission to appeal was granted by Upper Tribunal Judge Southern in the following terms;

“It is clear from the decision of the judge that his adverse credibility findings were driven to a significant extent by adverse inferences drawn pursuant to application of section 8 of the 2004 Act. The grounds set out an arguable basis for complaint that the judge fell into error in holding against the Appellant a failure to make a protection claim on return from Germany when his account was that he reported to the Respondent who refused to accept a further claim. It is arguable also that the finding of the judge that the arrest warrant would not have survived political changes in Iraq was not, as it should have been, informed by country evidence said not to support such a view.

The grounds identify other asserted difficulties with this decision of the judge which, while being commendably succinct, arguably did not engage adequately with all of the evidence relied upon by the Appellant.

All of the grounds may be argued”.

5. Following the grant of permission the Respondent submitted a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008, contending, in summary, that the FtT had not erred in law, and that the grounds amounted to a disagreement with the findings made.
6. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

### **The Upper Tribunal Hearing**

7. At the commencement of the hearing Mrs Aboni indicated that she did not rely upon the rule 24 response in its entirety. Mrs Aboni indicated that the Respondent conceded that the FtT had materially erred in law at paragraphs 18 and 19, in relation to feasibility of return, and not making findings as to whether the Appellant has a Civil Status Identity Document (CSID) or would be able to obtain one reasonably soon after arrival in Iraq. It was therefore accepted that the decision of the FtT needed to be set aside on that point, and needed to be re-made. Mrs Aboni indicated that it was not accepted that the FtT erred in law in relation to the other grounds submitted on behalf of the Appellant.
8. In making oral submissions Mr Gayle relied upon the grounds contained within the application for permission to appeal, and the grant of permission. The grounds are not numbered in the application, but in my view the Appellant relies upon five grounds which are summarised below. In summary the Appellant contends that the FtT decision is fatally undermined by a failure to provide sufficient, or sustainable reasons for

adverse credibility findings, and makes confused and contradictory findings.

9. The first ground relates to paragraphs 10 and 11 of the FtT decision. The FtT accepts that the Appellant reported to the Respondent on his return from Germany in January 2005, but rejects his assertion that he tried to claim asylum. It is unclear why this assertion was rejected. Mr Gayle asserted that common sense would dictate that the Appellant tried to claim asylum when he contacted the Respondent, as why else would he have contacted the Respondent.
10. The second ground relates to paragraph 13 in which it is contended that the FtT places an unreasonable evidential burden upon the Appellant by finding that there is little to link the Appellant to the Zebari tribe or the Ba'ath Party other than his own assertions. It is contended that the FtT erred by failing to make any findings on the Appellant's evidence that his father disappeared very shortly after an arrest warrant was issued.
11. The third ground relates to paragraph 14 of the FtT decision. It is contended that the FtT erred in considering background evidence, in that the background evidence relied upon does not state that arrest warrants issued by the National Information and Investigation Agency of the Iraqi Ministry of Interior are no longer enforced. It was contended that the FtT had ignored evidence submitted by the Appellant, this evidence being letters provided from the International Federation of Iraqi Refugees, and the Centre for Observance of People's Rights in Iraq and Kurdistan.
12. The fourth ground relates to paragraph 15 of the FtT decision. It was contended that the FtT erred by dismissing photographs of the Appellant involved in demonstrations in the UK as irrelevant. These photographs showed the Appellant involved in activities which would be considered anti-regime by the new government in Iraq, as well as the regime in the KRG. The FtT had found that no dates had been given, and this was not accepted by the Appellant, as it was contended that he had explicitly stated that one of the demonstrations took place on 3<sup>rd</sup> August 2016.
13. The fifth ground relates to paragraphs 18 and 19 of the FtT decision, which relates to feasibility of return and documentation, and it was contended that the FtT analysis "does not bear scrutiny".
14. Having conceded a material error of law in relation to paragraphs 18 and 19, Mrs Aboni submitted that the remaining grounds did not disclose any material error of law, but simply amounted to a disagreement with findings properly made by the FtT.
15. In response Mr Gayle had nothing to add to his earlier submissions, but submitted that the decision of the FtT should be set aside in its entirety, and the appeal remitted to the FtT to be considered afresh.
16. At the conclusion of oral submissions I reserved my decision.

## My Conclusions and Reasons

17. Dealing with the first ground, and paragraphs 10–11 of the FtT decision, the Respondent’s case in the refusal decision (paragraph 51) was that the Appellant had made no attempt to regularise his stay and make an asylum claim until July 2010, having returned to the UK in January 2005. The Appellant’s case was that he attempted to claim asylum when he returned to the UK in January 2005 but his claim was not accepted.
18. The FtT found that the Appellant did contact the Respondent upon his return in January 2005 as claimed, noting that reporting conditions were imposed at that time. The FtT found that the Appellant did not claim asylum, and subsequently made an adverse credibility finding because of the subsequent delay in claiming asylum. The FtT therefore preferred the Respondent’s account that no asylum claim had been made, but in my view fails to adequately reason this finding. I set out below the head note to Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC) which provides guidance upon adequacy of reasoning;

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”
19. The losing party on this issue is the Appellant. It is not clear why the FtT accepts that he reported to the Respondent upon his return to the UK in January 2005, but made no attempt to claim asylum. I conclude that this is an error of law.
20. The second ground relates to paragraph 13 of the FtT decision. I do not find that the FtT imposed an unreasonable evidential burden upon the Appellant. However, I accept that no finding was made by the FtT on the Appellant’s claim in the addendum to his witness statement, that his father was arrested and disappeared very shortly after an arrest warrant was issued. The failure to make a finding on evidence which a party contends is material, is an error of law.
21. The third ground relates to paragraph 14 of the FtT decision, and I cannot see that it is specifically stated in the background evidence that arrest warrants issued before the change of government, would no longer be enforced after the change of government in Iraq. I find that the error is a failure to make a finding on evidence provided by the Appellant, that being a letter dated 26<sup>th</sup> July 2016 from the Centre for Observance of People’s Rights, and a letter dated 18<sup>th</sup> July 2016 from the International Federation of Iraqi Refugees. This is evidence which the Appellant contended was material, and a failure to make a finding upon it, and a failure to explain why no weight was attached, is an error of law.

22. The fourth ground relates to paragraph 15 of the FtT decision, but I find no error of law on this point. In my view the FtT was entitled to find that evidence had not been provided relating to the purpose of the demonstrations said to be shown in the photographs, nor was evidence given as to why the Appellant would come to the attention of the government in Iraq as a result of his participation.
23. The fifth ground relates to paragraphs 18 and 19 of the FtT decision, in which the FtT correctly referred to the Upper Tribunal country guidance in force at the date of the FtT decision. That country guidance was found to be incorrect by the Court of Appeal, in relation to the issue of feasibility on return and consideration of whether an Appellant has a CSID or can be expected to obtain one after arrival in Iraq. The Court of Appeal decision is AA (Iraq) [2017] EWCA Civ 944 and was published on 11<sup>th</sup> July 2017. The FtT did not err in relying upon country guidance, but it is an error of law to rely upon country guidance subsequently found by the Court of Appeal to be incorrect in law. The correct position is that regardless of the feasibility of return, it will be necessary to decide whether an Appellant has a CSID, or will be to obtain one, reasonably soon after arrival in Iraq.
24. For the reasons given above, I conclude that the FtT materially erred in law, and therefore the decision must be set aside. No findings are preserved.
25. I have taken into account paragraph 7.2 of the Senior President's Practice Statements, and find it is appropriate to remit this appeal to the FtT to be decided afresh, as there is substantial fact-finding to be undertaken.
26. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Perry.

### **Notice of Decision**

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

### **Anonymity**

The FtT made an anonymity direction which I continue. 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 both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

8<sup>th</sup> August 2017

Deputy Upper Tribunal Judge M A Hall  
**TO THE RESPONDENT**  
**FEE AWARD**

No fee award is made by the Upper Tribunal. The issue of any fee award will need to be considered by the FtT.

Signed

Date

8<sup>th</sup> August 2017

Deputy Upper Tribunal Judge M A Hall