



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05109/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Liverpool

**Decision & Reasons
Promulgated**

On 28 September 2017

On 16 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR KARZAN AHMAD WATMAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Wilkins (Counsel)

For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 1st January 1991. The Appellant claimed asylum based on a purported fear that if returned to Iraq he would be killed by either ISIS or by his girlfriend's father. That application was refused by Notice of Refusal dated 6th May 2016. The Appellant lodged Grounds of Appeal and the appeal came before Immigration Judge Fox sitting at Manchester on 7th February 2016. In a decision and reasons promulgated on 6th March 2017 the Appellant's appeal was dismissed on all grounds.

2. Grounds of Appeal were lodged to the Upper Tribunal. On 5th July 2017 Judge of the First-tier Tribunal Pullig granted permission to appeal. It is important to note that the only ground upon which permission was given was that the judge had dismissed all documents without consideration of the verification report by Ms Laiser. Judge Pullig noted that having read the decision he found that the judge made no mention of Ms Laiser's report, which he had read, and which at least to some extent might have made a material difference for the outcome of the appeal. He found that ground arguable.
3. On 27th July 2007 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response opposed the appeal contending that it was unclear from the grounds how the report had substantiated the remaining issues identified with the Appellant's claim in particular the inconsistency of the Appellant's account with the objective background information. It contended that the report would only be one element in the consideration and even if it were supportive it would still have to be considered in the round with the other findings. Given the significant number of adverse findings it was argued that even if an error was found it was not material.
4. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Ms Wilkins. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison.

Submission/Discussion

5. Ms Wilkins starts by trying to persuade me that because the Secretary of State raises the issue of materiality in the Rule 24 response that it is appropriate that I should look at the other grounds. I am not in favour of that approach permission not having previously been granted. However as will be seen from the outcome of this determination these are grounds that can be re-aired and reconsidered at the next hearing.
6. I am substantially assisted in this matter by the intervention of Mr Harrison. He admits having given consideration to the determination that there is no reference therein to any consideration whatsoever, nor any findings made, with regard to the report of Sheri Laiser. He acknowledges to use his words that this is "a glaring error".

The Law

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor

is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

9. I have read the decision of the First-tier Tribunal Judge and I have given consideration within the documentation that was before the Judge to the report of Ms Laiser. There is no reference whatsoever to it within the decision of the First-tier Tribunal Judge. I accept that that is an error and that it must be material and addressed and for the judge to make full and proper findings based on all the evidence that is before him.
10. I further accept that when looked at in the round there are aspects within the report of Ms Laiser that have not been addressed by the Tribunal and that there are questions in the Appellant's asylum interview particularly at questions 136 to 138 which do not appear to have been addressed by the judge. Taking all matters into consideration but in particular the basis upon which permission was granted and the concession made by Mr Harrison I find that there are material errors of law within the decision of the First-tier Tribunal Judge which fatally flaw the decision. In such circumstances the correct approach is to set aside the decision of the First-tier Tribunal Judge and to remit the matter back to the First-tier Tribunal for rehearing along with appropriate directions.

Decision and Directions

- (1) The decision of the First-tier Tribunal Judge contains a material error of law and is set aside with none of the findings of fact to stand.
- (2) That the matter is remitted to the First-tier Tribunal sitting at Manchester to be reheard on the first available date 42 days hence with an ELH of 3 hours. The remitted hearing is to be before any First-tier Tribunal Judge other than Immigration Judge Fox.
- (3) That there be leave to either party to serve and file such further objective and/or subjective evidence upon which they seek to rely within 28 days of receipt of these directions.

- (4) That the Appellant do attend the restored hearing.
- (5) That a Kurdish/Sorani interpreter do attend the remitted hearing.

No anonymity direction is made.

Signed

Date 16 October 2017

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 16 October 2017

Deputy Upper Tribunal Judge D N Harris