



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/00859/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 17th July 2018

**Decision &
Promulgated
On 19th July 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**RH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S. Khan, Counsel instructed on behalf of the Appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, with permission, appeals against the decision of the First-tier Tribunal, who, in a determination promulgated on the 22nd March 2018, dismissed his claim for protection.
2. The Appellant's immigration history is set out within the determination at paragraphs 1-2, and in the papers before the Tribunal. The Appellant is an Iraqi national who originates from the IKR. He entered the United Kingdom clandestinely on the 17th February 2017 and travelled to Hungary where he was fingerprinted. He travelled from there to other European countries

and claimed asylum on the 19th July 2017. The screening interview was undertaken on the 19th July (see Annex A) and corrections to that interview were noted and reproduced as Annex B. A substantive interview took place on 12 October 2017 and set out at Annex C in the Respondent's bundle. There is no dispute that he was a minor when he entered the United Kingdom.

3. The factual basis of the Appellant's claim is briefly summarised in the determination at paragraph 13. The Appellant's family lived in a village within the Sulaymaniyah Governorate in the IKR. He claims that his brother was killed in a family blood feud and that his father and mother as a consequence had to leave Iraq for their safety to go live in Iran. The Appellant stated that he was left to live with an uncle in Iraq. His uncle arranging him to leave Iraq with the assistance of an agent.
4. The Respondent refused his claim for protection in a decision letter dated 5th January 2018. There was no dispute that the Appellant was an Iraqi national and that he was of Kurdish ethnicity and had moved to the IKR after the age of five. However the decision letter did not accept as credible that he had been involved in a blood feud given his lack of knowledge nor did the respondent accept that the Appellant had given a reasonable account as to why his family would leave him behind when they were fleeing for their safety. Furthermore it was considered unreasonable that he would leave his home to seek safety without either his Iraqi nationality certificate or his Iraqi civil status ID (CSID). The rest of the decision letter made reference to the feasibility of return to Iraq applying the country guidance and the decision of the Court of Appeal in AA (Iraq) v SSHD [2017] EWCA Civ 944. At paragraphs 139 – 147 his claim was considered under Article 8.
5. He appeal came before the First-tier Tribunal on the 19th February 2018 and in a decision promulgated on the 22nd March 2018 his appeal was dismissed.
6. The judge set out his findings and conclusions at paragraphs 23 – 38. They can be summarised as follows. The judge found that there were two significant areas that led him not to accept the Appellant's account. Firstly, the Appellant was 15 years old when the claimed blood feud had started and that if his account was accurate and his family had been caused significant inconvenience and danger as a result of the feud including the death of his brother and given the Appellant's age, the judge stated that he would have expected the Appellant to have some idea with regard to what his family thought the blood feud was about. He found that the Appellant's lack of knowledge about the violence which had led to the death of his brother was implausible (see [27]). Secondly, the judge rejected his account as being "even less plausible" that his mother and father would leave that Iran and not taking with them. The judge found that by leaving him with his uncle who was at this point the "centre of the blood feud" was implausible. He found it even more so relying on the fact that the Appellant stated that his father and mother would not explain to him why they were leaving him with his uncle while they left for a place of safety (see [28]). The judge found the Appellant to be "vaguely

inconsistent” in his account as to how many times have been targeted in the blood feud. He made reference to his witness statement that the tribe had come to his house five or six times (paragraph 10) but found that that was inconsistent as that detail had not been mentioned in the asylum interview. He found further inconsistency from paragraph 11 in the witness statement and found that also to be inconsistent with the previous paragraph namely either the tribe attended at the house five or six times or they simply passed by. The judge at (30) did accept as a general proposition that the background information was consistent with family blood feuds in the IKR. He also made reference to parts of the account given by the Appellant which he found not to be inconsistent contrary to the decision letter. However at [31] he was not satisfied that the Appellant’s account as to the family being involved in a blood feud was credible. At [32] the judge stated that he had given “due weight in the Appellant’s favour when assessing his credibility to the fact that the Appellant would have been a child of approximately 15 or 16 years old at the time of some of these incidents.” At [33] he found that the Appellant’s failure to claim asylum adversely affected his credibility but this was only one feature in the case.

7. At paragraphs 36 – 38 the judge considered feasibility of return. The judge purported to apply the relevant country guidance and the Court of Appeal decision (as cited) and at [38] applied the factual circumstances. He found that the Appellant had lived in the IKR and that he had not accepted his account as to why he had left Iraq. He also did not accept that his parents had left Iraq nor that he did not know where his uncle had lived. He also found that the Appellant had a CSID document until taken off him in Hungary and this was a case where the Appellant would be able to reacquire the necessary CSID documents to allow him to live in the IKR.
8. At paragraph 39 – 42 of the decision the judge considered Article 8 but reached the conclusion that he could not succeed on these grounds and that return to Iraq was proportionate. Thus the judge dismissed his appeal.
9. The Appellant sought permission to appeal that decision and permission was granted by the First-tier Tribunal Judge E M Simpson on the 24th April 2018.
10. Thus the appeal came before the Upper Tribunal. Miss Khan appeared before the Upper Tribunal and relied upon the grounds as drafted. I was also able to hear submissions from Mr Diwycnz, Senior Presenting Officer on behalf of the Respondent. I also had sight of some additional medical evidence that post-dated the hearing.
11. After having had the opportunity of hearing the oral submissions and being directed to the medical evidence before the Tribunal, I indicated to the parties that I was satisfied that the decision of the First-tier Tribunal demonstrated the making of a material error of law and that the decision should be set aside.

12. I shall therefore set out the reasons why I have reached that conclusion from the material that is before me.
13. The first ground of appeal relates to a procedural irregularity, namely the judge's failure to adjourn the hearing. It is submitted that the judge erred in law by refusing the adjournment given that neither party had objected to that course of action. Furthermore, it was submitted that the judge misapplied the current procedure rules when dealing with the application to adjourn and did not consider dealing with the case "fairly and justly" as set out in the current rules.
14. The judge considered the issue of whether the proceedings should be adjourned at paragraphs 14 - 16 of the decision. The judge records that an application was made to adjourn the appeal on the basis that the Appellant was displaying signs of mental illness and it was submitted that a psychiatric report might assist the proceedings. At paragraphs 15 - 16 the judge set out his reasoning to refuse the adjournment. The judge stated that the information provided to the legal advisers was information that had been provided by the staff at the care home where the Appellant was currently living and that "little further information was forthcoming" from his Counsel other than the matters already raised. The judge made reference to the submissions made by counsel that the Appellant had been "difficult to engage with" but had not submitted that she could not take instructions. The judge observed that those concerns already been drawn to the attention of the GP is set out in a letter and that the GP's view is that the behaviour is consistent with a diagnosis of depression for which he prescribed appropriate medication. Therefore at [16] in the light of the diagnosis of the GP the judge found that there was "no evidential basis to adjourn the case". He found that the GP had considered the symptoms and that he was in the best position to give an opinion as to the likely cause. The judge found that the details given all appeared to him to be consistent with those of an 18-year-old facing the stress of ongoing asylum hearings. He went on to state that he had considered the direction given in the Tribunal procedure rules as to adjournments and that "the overriding principle are the interests of justice."
15. I have therefore considered the relevant Procedure Rules. The 2014 Procedure Rules Rule 4(3) (h) empowers the Tribunal to adjourn a hearing. The Tribunal has wide case management powers as set out below.
Case management powers
4.—(1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.
(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.
(a) 1971 c.80

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may—

(a) extend or shorten the time for complying with any rule, practice direction or direction;

(b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;

(c) permit or require a party to amend a document;

(d) permit or require a party or another person to provide documents, information, evidence

or submissions to the Tribunal or a party;

(e) provide for a particular matter to be dealt with as a preliminary issue;

(f) hold a hearing to consider any matter, including a case management issue;

(g) decide the form of any hearing;

(h) adjourn or postpone a hearing;

(i) require a party to produce a bundle for a hearing;

(j) stay (or, in Scotland, sist) proceedings;

(k) transfer proceedings to another court or Tribunal if that other court or Tribunal has

jurisdiction in relation to the proceedings and—

(i) because of a change of circumstances since the proceedings were started, the

Tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) the Tribunal considers that the other court or Tribunal is a more appropriate forum for

the determination of the case; or

(l) suspend the effect of its own decision pending the determination by the Tribunal or the

Upper Tribunal of an application for permission to appeal against, and any appeal or

review of, that decision.

16. Rule 2 sets out the overriding objectives under the Rules which the Tribunal "must seek to give effect to" when exercising any power under the Rules.

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the

complexity of the issues, the anticipated costs and the resources of the parties and of the

Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the

proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

17. It follows that they are the issues to be considered on an adjournment application as well. The overriding objective is deal with cases fairly and justly. This is defined as including "(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as is practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the Tribunal effectively; (e) avoiding delay so far as compatible with proper consideration of the issues".
18. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing?
19. I also have in mind, of course, what was said by the Court of Appeal in the judgment of Moses LJ in the well-known case of SH (Afghanistan) [2011] EWCA Civ 1284 :
"The principle applicable to the request for an adjournment to adduce evidence on behalf of the Appellant was not in dispute. It is fundamental that the parties should be allowed to answer adverse material by evidence as well as argument (see, e.g., In Re. D [1996] AC 593 at 603) and all the more so where the subject matter, such as a claim for asylum, demands the highest standards of fairness."(See paragraph 8).
20. When applied to the particular facts in this case, I have considered the documentation that was before the Tribunal. It is plain that on 9 February 2018 (received by the Tribunal on 12 February) the solicitor concerned raised issues concerning his client's mental health and that they required

the medical evidence in support. Attached to that letter was a letter from the place where the Appellant was currently residing as a young person in care. It was a letter that set out a number of significant matters including the “dramatic decline” in his behaviour which was then set out within the letter. There was also reference to the Appellant having seen his GP and having made disclosures there and that a diagnosis of depression was given but that he was to be reviewed in a couple of weeks. The GP stated that it did not rule out psychosis. The application for an adjournment was refused on the basis that the medical evidence did not state that he was unfit to attend. It does not appear that any consideration was given to the effect or otherwise of the matters set out in the attached correspondence which may give rise to issues of vulnerability and the effect upon any evidence being given.

21. It is plain also from the determination that Counsel who was instructed on behalf the Appellant raised issues as to the Appellant’s well-being and his ability to engage with the proceedings. Thus the basis of the application to adjourn the hearing was for the provision of a psychiatric report to assist the parties and the Tribunal to reach a conclusion regarding his current mental health and the concerns that had been expressly raised by those who were in charge of caring or looking after him.
22. I have set out earlier the decision to refuse the adjournment. It appears that the judge placed weight in reliance upon the diagnosis of the GP however there was no report from the GP and the information had come “second-hand” in the letter from those who had the care of the Appellant. That letter made it plain that the diagnosis had not been formally made and that a review was to be undertaken. Furthermore, it was incumbent upon the judge to consider the annexed letter from the home manager setting out the description of the Appellant’s behaviour and the “dramatic decline” that they had viewed in relation to the Appellant’s mental health. Whilst the judge considered that the behavioural issues outlined in that letter were consistent with an 18-year-old facing the stress of an asylum hearing that ignored in my judgement the history and factual background set out by the home manager in the letter. The information raised real concerns as to the Appellant’s mental state and there was a lack of information before the First-tier Tribunal as to his current functioning but importantly, the impact of that mental state on his ability to give evidence in his appeal and the effect this would have on any evidence that could be given.
23. In my judgement the procedural irregularity led to the position that the Appellant had not been given the opportunity to provide expert medical evidence and that this was relevant in making an assessment of the credibility or otherwise of his evidence. Where, as in this case, the Appellant was the main source of the evidence, given the potential vulnerability of the Appellant, his relatively young age and recent deteriorating mental health, the adverse credibility findings were arguably unsafe. As Miss Khan submits the judge when making reference to his vulnerability at [17] only identified his vulnerability in the light of his age and not in the light of his mental health.

24. I am therefore satisfied that the decision discloses a material error of law and must be set aside. As to the remaking the decision in the majority of cases, the Upper Tribunal when setting aside the decision will be able to re-make the relevant decision itself. However, the Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal at para 7.2 recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

“(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.”

25. Given the nature of the error of law identified in the preceding paragraphs and that as a result of the procedural irregularity this has led to the findings of fact being unsafe, it is appropriate to remit the case the First-tier Tribunal for a full fact-finding determination to be carried out. It is not be necessary to consider further the findings of the judge which related to feasibility of return as that issue was also dependent upon the findings of fact made by the judge which have now been set aside. That issue will also be considered in the light of the most recent country guidance in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 002129IAC).

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law and the appeal is allowed; the decision of the First-tier Tribunal shall be set aside and remitted to the First-tier Tribunal.

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. 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 *SM Reeds*

Date: 17th July 2018

Upper Tribunal Judge Reeds