



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/01891/2017**

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On April 16, 2018**

**Decision      &      Reasons  
Promulgated  
On April 24, 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MR SMA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss Warren, Counsel, instructed by Fadiga & Co

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

Interpreter                      Mr Ali

**DECISION AND REASONS**

1. I extend the anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and direct that unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

2. The appellant is an Iraqi national. On January 9, 2017 he applied for asylum but his application was refused on May 11, 2017.
3. The appellant lodged grounds of appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on February 22, 2017. His appeal came before Judge of the First-tier Tribunal Hodkinson (hereinafter called "the Judge") on September 14, 2017 and in a decision promulgated on September 22, 2017 the Judge refused his appeal on all grounds.
4. The appellant appealed the decision on September 24, 2017. Permission to appeal was granted by Judge of the First-tier Tribunal Hollingsworth on November 8, 2017 as he found it arguable the Judge may have erred in his approach to credibility and the standard of proof applied.
5. The matter came before me on the above date and the parties were represented as set out above.

### **SUBMISSIONS**

6. Miss Warren relied on the grounds of appeal and the grant of permission which identified possible errors in law in relation to the Judge's credibility findings and his application of the standard of proof.
7. In relation to credibility she submitted that the Judge had placed too much weight on section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 and had failed to properly take account of the appellant's evidence when considering the credibility of his claim.
8. The Judge had made positive credibility findings at paragraphs 30 and 31. The negative credibility findings made by the Judge between paragraphs 33 and 39 of his decision failed to take into account answers he had provided in his substantive interview. The Judge viewed his evidence as a material inconsistency whereas his answers in interview suggested this was not the case.
9. The Judge considered section 8 of the 2004 Act in some detail but Miss Warren submitted that the Judge applied to high a standard of proof and allowed that issue to over shadow the issue of risk.
10. Mr Bates relied on the Rule 24 letter dated December 8, 2017. He submitted the Judge had applied the correct standard of proof as evidenced in paragraph 28 of his decision.
11. The Judge concluded at paragraph 34 of his decision that the appellant had been inconsistent with his answers. He pointed to a number of answers given by the appellant in his interview and pointed out that it was only later in his interview that he stated he had told anyone whereas previously he had insisted that he could not talk to anybody because the risk was too great.

12. During the appeal hearing Mr Bates submitted the appellant changed his answers regarding the beatings he received and it was this inconsistency the Judge concluded went to the core of his claim and the Judge was entitled to find the appellant had been inconsistent and this undermined his claim. In his asylum interview the appellant had claimed that his father began beating him when he was 19 years of age whereas in his oral evidence he claimed these beatings began when he was 15/16 years of age this was a material difference in his account.
13. With regard to section 8 of the 2004 Act the Judge made findings open to him.

### **FINDINGS**

14. Permission to appeal had been granted because Judge Hollingsworth concluded there was some merit in the grounds of appeal being advanced. Two grounds were advanced by Miss Warren.
15. In essence, they were (a) the Judge incorrectly considered the evidence relating to beatings and (b) the Judge attached too much weight and applied to high test when considering section 8 of the 2004 Act.
16. With regard to the appellant's evidence over when he was beaten the Judge considered this in paragraphs 38 and 39 of his decision. The Judge noted that in his witness statement the appellant stated that the beatings began when he stopped practising Islam at the age of 15/16 years of age whereas in his interview he stated he was 19 years of age when the beatings began. The Judge concluded that this discrepancy was material and damaged his credibility.
17. At Q48 of his substantive interview the appellant described when he first disagreed with Islam and stated that it was when he was around 15/16 years of age. At Q53 he was asked what would happen if he refused to go to the mosque and he replied "my family they would start beating me up and force me to do it". He further stated at Q56 that at this time he could not talk to anyone about how he felt about Islam because he was scared although there were occasions when he had refused to attend mosque and it was on those occasions that he claimed he was beaten and forced to go.
18. Mr Bates argues that the Judge's findings at paragraph 39 of his decision was open to him but I agree with Miss Warren that the appellant was not inconsistent in his evidence about when the beatings began but was merely stating, for example at Q73, that he was beaten for drinking alcohol from the age of 19. He had stated the beatings began when he was 15/16 years of age and it seems the Judge latched onto his alter answers as evidence that he had been inconsistent. I do not find that to be the case.
19. As the Judge viewed this as a material discrepancy in his evidence then there must be an error.

20. As to the submission the Judge erred in his approach to Section 8 of the 2004 Act I disagree with Miss Warren's submissions. The Judge considered this in some detail and his findings appear open to him.
21. In considering whether the above error is material I have concluded that it must be material because:
  - (a) The Judge used this finding in assessing whether the appellant was an atheist and having concluded he was not he found there was no risk to the appellant.
  - (b) The Judge did not consider Dr Fatah's report because he had already rejected his claim to be an atheist.
  - (c) The Judge concluded he could return back to Sulaymaniyah which was where his family lived and there has been no consideration of whether he could safely reside elsewhere in the IKR. There has been no detailed assessment of the factors in AA (Iraq) v SSHD [2017] EWCA Civ 944 and AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC).
22. I have further considered whether this is a matter that could be re-made in the Upper Tribunal. I am satisfied that further oral evidence is likely to be required as the Judge will have to consider overall credibility in light of my above findings.
23. Both representatives indicated that if there was an error in law the matter should be remitted back to the First-tier Tribunal for a fresh hearing.
24. I have considered whether this is an appropriate case to preserve any findings but take the view that the Judge, hearing the appeal, should be unfettered and should be entitled to make his or her own findings on the evidence presented and in the event that his account is accepted then findings on internal relocation will be required having regard to AA (Iraq) v SSHD [2017] EWCA Civ 944 and AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC).

### **DECISION**

25. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision. I remit the decision to the First-tier Tribunal to be heard by a Judge other than Judge of the First-tier Tribunal Hodgkinson.

Signed

Date 23/04/2018



Deputy Upper Tribunal Judge Alis