



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11982/2016

THE IMMIGRATION ACTS

Heard at Manchester CJC
On 28 August 2018

Decision & Reasons Promulgated
On 5 September 2018

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

DM
ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Smith, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

Introduction

1. The appellant is a citizen of Iraq. He is a Kurd and originates from the Iraqi Kurdish Region ('IKR'). His claim for asylum was refused by the respondent ('the SSHD') and he appealed against this decision to the First-tier Tribunal ('FTT').

Background

2. In a decision dated 7 June 2017 the FTT dismissed the appeal on protection and human rights grounds. Permission to appeal to the Upper Tribunal ('UT') was initially refused by FTT Judge Robertson, before being granted by me on two grounds: (i) the FTT arguably failed to consider the country expert evidence of Professor Joffe when making its findings on the credibility of the appellant's account, and; (ii) it was arguable that the appellant did not know who made the decision on his appeal to the FTT.
3. The SSHD did not submit a rule 24 notice.

Hearing

4. At the beginning of the hearing Mr McVeety conceded that the FTT committed a clear and obvious error of law in its failure to consider the country background evidence, when making its credibility findings, such that the appeal should be remitted to the FTT on a de novo basis. Ms Smith agreed with this approach.
5. I indicated that Mr McVeety was entirely correct to concede that the FTT decision contains an error of law such that it must be set aside and remade by the FTT, and that I would give a brief decision in writing to this effect.

Error of law discussion

Credibility findings and the country expert evidence

6. The FTT clearly concluded at [60] that the appellant "*is not credible*" for reasons set out at [59]. The FTT then said this at [61]: "*the appellant has failed to prove to the required standard of reasonable likelihood that any of the facts he alleges are true, apart from his claim of Iraqi nationality*". Under the heading "*Fear of Persecution / real risk of suffering serious harm*" the FTT begins at [62] by stating this: "*we have already set out the reasons why we did not find the appellant's account credible*". The FTT then curiously at this stage at [66] refers to "*evidence, independent of the appellant's incredible testimony, which may shed sufficient light to make good his claim for protection*". The FTT then considers the country background report dated 13 April 2007 prepared by Mr Joffe from [67] but is not satisfied that "*taken independently, the evidence of Professor Joffe is sufficient as his conclusions rely on the veracity of the appellant's evidence*" – see [82].

7. The FTT's approach to the evidence of Professor Joffe discloses a clear error of law. First, there has been a complete failure to consider the report or any other country background evidence in the round when making credibility findings. It is wholly inappropriate to make a firm credibility finding in an asylum claim, devoid of and independent of any consideration of the country background evidence. As Mr McVeety conceded, that error is not cured by purporting to consider such evidence after a firm assessment on credibility has already been reached.
8. Secondly, although the FTT noted at [81] that Professor Joffe found parts of the "*appellant's account plausible and this is a further factor we must weigh heavily in the balance*" there is no indication whatsoever that the FTT considered the apparent plausibility of aspects of the account when making its credibility findings. An appellant's account of his fears must be judged in the context of the known objective circumstances and practices of the state in question and a failure to do so constitutes an error of law – see *AM (Afghanistan) v SSHD* [2017] EWCA Civ 1123 at [19b] and [21(e)].
9. Thirdly, the conclusion that Professor Joffe's conclusions turn upon the veracity of the appellant's evidence fails to appreciate that plausibility can inform credibility and veracity. In addition, at [95] of his report Professor Joffe outlines discrete reasons why specific aspects of the account are plausible. Indeed at [95(iv)] he expressly distinguishes between the credibility of the account and its plausibility.

Decision-maker

10. The grounds of appeal note that the FTT appeared to comprise a panel of two. This is consistent with the hearing notice that appears on the file. This states that the two judges are FTT Judge Shimmin and FTT Judge Smith. The decision itself only refers to FTT Judge Smith and is not signed by either judge. There is no need for me to address this ground save to observe that as a matter of good practice the FTT should ensure that the decision clearly indicates on the face of it, the constituent members of the FTT as well as the author of the decision.

Disposal

11. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal. This is because completely fresh findings of fact in relation to detailed evidence are necessary.

Decision

12. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside.

13. The appeal shall be remade by the FTT de novo.

Signed: *UTJ Plimmer*

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
28 August 2018