



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13296/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 13 July 2018

Decision & Reasons Promulgated
On 01 August 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

SEBAR [R]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent


Representation:

For the Appellant: Ms Marion Cleghorn, Latif Solicitors
For the Respondent: Mr M Diwnycz, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Iraq, has permission to challenge the decision of Judge Fox of the First-tier Tribunal (FtT) sent on 5 February 2018, dismissing his appeal against the decision made by the respondent on 30 November 2017 to refuse his protection claim.

2. It is unnecessary to set out the grounds or submissions in detail because both representatives agreed with me that the judge's decision exhibits a clear error of law in that in making adverse credibility findings the judge relies on the "absence of evidence" which was in fact put before him in the form of an appellant's bundle received by the Tribunal administration five days before the hearing and placed in the Tribunal file. Despite for example relying in paragraphs 24, 27 and 28 on the "complete absence" of Facebook evidence, this bundle contained a significant number of relevant Facebook entries. Despite stating at paragraph 29 that the appellant had failed to produce the documents relating to a claimed marriage ceremony in Iraq, the appellant had produced the same in this bundle and indeed the judge herself had earlier recorded in paragraph 17 that there was religious marriage certificate. Judging from what the judge states at paragraph 30 she seems to have entirely overlooked the existence and contents of this bundle. The judge's decision does not record the submissions of the parties so it is difficult to ascertain whether their submissions made reference to the contents of the appellant's bundle but the Presenting Officer's note which Mr Diwnycz had before him indicated that the judge was referred to this evidence; but in any event on the face of the record there is a manifest failure to take into account relevant evidence.
3. I see no alternative to this decision being set aside for material error of law and remitted to the FtT. To summarise, the decision of the FtT Judge is set aside for material error of law. The case is remitted to the FtT (not before Judge Fox) for a fresh hearing.
4. No anonymity direction is made.

Signed  :

Date: 26 July 2018

Dr H H Storey
Judge of the Upper Tribunal