



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/02447/2018

**THE IMMIGRATION ACTS**

**Heard at Priory Courts, Birmingham**

**Decision & Reasons  
Promulgated  
On 13th May 2019**

**On 30<sup>th</sup> April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**DJ  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Azmi of Counsel, instructed by French & Company Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge S Aziz (the judge) of the First-tier Tribunal (the FtT) promulgated on 3<sup>rd</sup> April 2018.
2. The Appellant is a female citizen of Iraq born 13<sup>th</sup> January 1986. She made an asylum and human rights claim in the UK which was refused on 5<sup>th</sup>

February 2018. The appeal was heard by the FtT on 20<sup>th</sup> March 2018 and dismissed on all grounds.

3. The Appellant applied for permission to appeal to the Upper Tribunal. It was contended, in summary, that the judge had erred by making contradictory findings of fact in relation to AKD, who it was claimed was the General Director of the Central Bank of Kurdistan. At paragraph 50(iv) the judge accepted this, but at paragraph 59 did not accept this.
4. The Respondent's refusal decision had not raised an issue regarding evidence of the arrest of AKD which was an issue raised for the first time in cross-examination at the hearing. The Appellant had explained to the judge that she had given evidence of the arrest to an interpreter who worked for her solicitors and could not explain why this evidence had not been provided at the hearing. The judge did not accept this. Two days after the hearing the Appellant's solicitors faxed evidence of the arrest to the FtT, requesting that the judge reconvene the hearing to consider this evidence as it was of significance, and the issue had been raised for the first time at the hearing.
5. It was submitted that the judge had erred by making no reference to this evidence or the request to reconvene the hearing.
6. It was further contended that the judge had erred in considering the medical condition of the Appellant's daughter, and had failed to adequately consider her best interests. It was submitted that the judge had "carried out a peripheral assessment focusing on Article 3, and not directing himself appropriately" to the welfare of the child.
7. Permission to appeal was granted by Upper Tribunal Judge Grubb in the following terms;
  1. The First-tier Tribunal (Judge S Aziz) dismissed the Appellant's appeal against a decision to refuse her international protection, humanitarian protection and human rights claims. The judge rejected her account to be at risk on return to the IKR (Iraq).
  2. It is arguable that the judge made inconsistent factual findings at paras 50(iv) and 59 as to the role of 'AKD' in the Kurdistan Central Bank. That, together with the judge's reliance upon the absence of documentation which was only raised in cross-examination, lead me to conclude that it is arguable that the decision may be legally flawed.
  3. I see less merit in the other grounds, but I would not exclude consideration of them. Permission is granted generally on the grounds.
8. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

## **My Consideration and Conclusions**

9. At the oral hearing Mr Mills conceded that the judge had materially erred in law by making an inconsistent factual finding which was relevant to credibility, and failing to consider evidence which had been submitted after the hearing, but which related to an issue raised for the first time at the hearing. Mr Mills helpfully submitted SD (treatment of post-hearing evidence) Russia [2008] UKAIT 00037.
10. In view of the concession made on behalf of the Respondent Mr Azmi did not seek to address me as to error of law, but submitted that the appropriate course of action would be to set aside the decision of the FtT, and remit the appeal back to the FtT to be heard afresh with no findings preserved.
11. I found the concession made by Mr Mills to be rightly made. There are inconsistent findings made as to the role of AKD when paragraph 50(iv) is compared with paragraph 59. This is material as the role of AKD is central to the Appellant's claim to be at risk if returned to Iraq.
12. It is common ground between the parties that the issue of the arrest of AKD was raised in cross-examination, and therefore the Appellant should have been given an opportunity to adduce evidence on that issue which had not been previously raised.
13. The Tribunal file confirms that the Appellant's solicitors submitted documentary evidence on 22<sup>nd</sup> March 2018, with a request that the hearing be reconvened. It is not clear that this request was brought to the attention of the judge. The decision was not promulgated until 3<sup>rd</sup> April 2018, and therefore the further evidence and the request to reconvene should have been brought to the judge's attention, and addressed in the FtT decision. This was not done, and amounts to a material error of law.
14. Therefore the decision of the FtT is unsafe and must be set aside. I accept the submission that the appropriate course of action is to remit this appeal back to the FtT to be heard afresh. In reaching that conclusion I have considered the Senior President's Practice Statements, in particular paragraph 7.2, and find that it is appropriate to remit the appeal back to the FtT because there will be extensive judicial fact-finding required.
15. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Aziz.

## **Notice of Decision**

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

**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 them or any member of their 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.

Signed

Date 30<sup>th</sup> April 2019

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

I make no fee award. The issue of any fee award will need to be considered by the FtT.

Signed

Date 30<sup>th</sup> April 2019

Deputy Upper Tribunal Judge M A Hall