



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

Appeal Number: PA/02498/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 25 October 2019**

**Decision & Reasons Promulgated
On 31 October 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

T S M
(ANONYMITY DIRECTION MADE)

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Boylan-Kemp, promulgated on 2 July 2019. Permission to appeal was granted by Upper Tribunal Judge Jackson on 2 September 2019.

Anonymity

2. Such a direction was made previously, and as this is a protection claim, a further direction is set out below.

Background

3. The appellant first arrived in the United Kingdom from Iraq in March 2013. His asylum claim, made on the basis of being a gay man and a Christian convert, was refused and his appeal against that decision was dismissed on 29 May 2013. The appellant left the United Kingdom on 4 February 2014, having applied for assisted voluntary return. The appellant returned to the United Kingdom with his wife during September 2017 and claimed asylum. The new claim concerned the appellant's fear of persecution in Iraq on account of his religion and membership of a social group as a man at risk of honour killing because he started his relationship with his wife when she was already married.
4. The Secretary of State refused the appellant's asylum claim on 1 March 2019. It was accepted that he was a national of Iraq and of Kurdish ethnicity. The respondent rejected the appellant's claim to be a convert to Christianity because this aspect of his case was not accepted by the judge who determined his previous asylum appeal. In addition, the appellant had described himself as a Muslim during his most recent screening interview, he had been married by an Imam in Turkey and that his responses in interview were inconsistent and lacked detail. The appellant's claim that he was at risk from his own or his wife's family members was also rejected. It was suggested that the appellant could relocate to Erbil or another part of the Iraqi Kurdish Region (IKR).

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, both the appellant and his wife gave evidence. The judge rejected the appellant's claim that he was a Christian or that he was at risk of honour killing. His Article 8 claim was also dismissed.

The grounds of appeal

6. There were four grounds of appeal. Firstly, that the judge did not make findings as to whether the appellant was in a genuine relationship with his wife or whether they were married. Secondly, the judge failed to consider the evidence in the round and applied a higher standard when assessing the evidence. Thirdly, the judge erred in his credibility assessment. Fourthly, there was a failure to adequately consider the country guidance of AAH (*Iraqi Kurds – internal relocation*) Iraq CG UKUT 212 (IAC).
7. Permission to appeal was granted on all grounds, with the second and third grounds being less meritorious.
8. The respondent did not file a Rule 24 response.

9. The appellant's previous solicitors wrote to the Upper Tribunal on 21 October 2019 in order to state they were no longer representing him. An employee of the British Red Cross also wrote on the appellant's behalf to request a postponement of the hearing of 25 October 2019 to enable the appellant to find alternative representation. That request was refused by a duty judge on 23 October 2019.

The hearing

10. The appellant attended the hearing unrepresented. He explained that the Red Cross had informed him that if he was able to obtain an adjournment of his appeal, they would be able to assist him in finding a legal aid solicitor.
11. Mr Tarlow indicated that he accepted that the First-tier Tribunal erred in failing to consider AAH.
12. Given Mr Tarlow's concession regarding the fourth ground, I decided that there was no need to adjourn the hearing. I announced that I was satisfied that the First-tier Tribunal judge made a material error of law in having no regard to the decision in AAH.

Decision on error of law

13. It is a clear material error of law for a judge to make no reference to a relevant Country Guidance case. It is accepted by the respondent that the appellant is from the IKR and the appellant's case is that he has no passport nor identity documents and that he has no contact with his family members nor those of his wife. There was no exploration of these issues by the judge. Nor did the judge make a decision as to whether the appellant's relationship/marriage with his wife, who is dependent on his claim, was accepted. These errors are material and render the judge's decision unsound. Out of an abundance of caution, I set aside the previous decision in its entirety, with no findings preserved.
14. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant is currently unrepresented and has yet to have an adequate consideration of core aspects of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration. In addition, a further relevant Country Guidance decision is awaited. I therefore remit the appeal to the First-tier Tribunal for a fresh hearing.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Birmingham IAC, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Boylan-Kemp.

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 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

Upper Tribunal Judge Kamara