



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

Appeal Number: PA/09216/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 22<sup>nd</sup> February 2019**

**Decision & Reasons  
Promulgated  
On 27<sup>th</sup> February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**SHK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. Brown, Counsel instructed by WTB Solicitors LLP  
For the Respondent: Mr. Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. An anonymity direction was not made by the First-tier Tribunal (“FtT”). However, as this a protection claim, it is appropriate that a direction is made. 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 his family. This direction applies

amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is an Iraqi national who appealed to the FtT against a decision of the respondent dated 10<sup>th</sup> July 2018 refusing his claim for asylum and humanitarian protection. His appeal was dismissed for the reasons set out in the decision of FtT Judge Davies promulgated on 13<sup>th</sup> September 2018.

### The decision of the FtT Judge

3. Mr Brown was prepared to accept for today's purposes that a summary of the appellant's asylum claim is accurately set out at paragraphs [13] to [19] of the decision of the FtT Judge. I do not repeat the account of events relied upon by the appellant in this decision.
4. As the Judge notes at paragraph [29] of his decision, at the hearing of the appeal before the FtT there was no Home Office Presenting Officer. The Judge heard evidence from the appellant and at paragraph [32], the Judge records that the appellant adopted the contents of his witness statement as his evidence. The only other evidence that is referred to by the Judge, is that which is recorded at paragraphs [33] and [34], relating to the appellant's failure to claim asylum en route to the United Kingdom, an issue that had been identified by the Judge as set out at paragraph [28] of the decision.
5. The Judge notes at paragraph [35] of his decision that the issue in the appeal was the claim made by the appellant to be bisexual or homosexual. The Judge's findings are set out at paragraphs [38] to [42] of the decision. Insofar as the core of the appellant's account is concerned, the Judge states at paragraphs [38] and [39]:

"38. I have no hesitation whatsoever, after considering all the evidence, and applying the lower standard of proof to it, to conclude

that the appellant has fabricated in its entirety, the reasons why he left Iraq and what he fears if he should be returned there.

39. There is not one scrap of credible evidence to indicate the appellant is either bisexual or homosexual. The appellant's account of entering into a homosexual relationship at a young age with a man called Ismail is wholly unbelievable, as is his claim that Ismail was caught by a cleaner in the Mosque touching the appellant's private parts. I do not believe that the appellant left Iraq in the circumstances he claims. The evidence overwhelmingly indicates he is an economic migrant."

6. The appellant claims that the Judge has failed to adequately engage with the claim made on behalf of the appellant, and has failed to provide any or any adequate reasons for rejecting the appellant's claim. It is said that the FtT Judge essentially rejected the appellant's account of his sexuality, simply because he had failed to claim asylum en route to the UK.
7. Permission to appeal was granted by Upper Tribunal Judge Grubb on 11<sup>th</sup> December 2018. The matter comes before me to determine whether the decision of the FtT Judge contains a material error of law, and if so, the remake the decision.
8. At the conclusion of the hearing before me, I informed the parties that in my judgement, the decision of the FtT Judge does contain a material error of law, and that I would set aside that decision. Having heard from the parties, I also informed the parties that in the circumstances, the appropriate course is for the matter to be remitted to the FtT for hearing afresh. I said that I would give the reasons for my decision in writing. This I now do.

### Discussion

9. The assessment of credibility in an appeal such as this is always a highly fact sensitive task. The FtT Judge was not assisted by the failure of the respondent to attend the hearing, particularly in an appeal where the respondent's case was that the appellant is not a credible witness, and had provided a vague and inconsistent account of his sexuality. The opportunity to test the appellant's account of events was therefore limited.

However, the Judge was nevertheless required to consider the evidence carefully, and where the appellant's account was rejected, set out his reasons for rejecting the evidence. The Judge was required to give a brief explanation of the conclusions that he had reached on the central issues; Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 IAC

10. Although I accept that the reasons provided need not be extensive, it was for the Judge to consider the ingredients of the story, and the story as a whole, by reference to all the evidence available to the Tribunal. It was for the Tribunal to make findings on whether, and to what extent, the appellant's account is credible. To simply recite in two sentences, as the Judge did here, the appellant's account, and simply say that it is "wholly unbelievable", is in my judgement, insufficient. The Judge failed to explain or set out his reasons for reaching the conclusion or to explain why he considered the account to be wholly unbelievable.
11. I accept, as Mr Brown submits, that what is necessary is for the Judge to identify and resolve key conflicts in the evidence, and explain in clear and brief terms his reasons, so that the parties can understand why they have won or lost. He submits and I accept, that from a reading of paragraphs [38] to [42] of the decision, the appellant cannot know why the Judge rejected his account of being bisexual or homosexual, beyond the fact that he did not claim asylum en route to the UK.
12. The appellant's story may seem inherently unlikely, but that does not mean that it is untrue. It may well have been open to the Judge to find in the end, that the appellant's account of events is not credible and is untrue, but the appellant is entitled to know the reasons why the Judge reached that conclusion.
13. In my judgement the FtT Judge failed to make adequate findings of fact, as to those aspects of the claim that lay at the heart of the claim. It follows that in my judgement, the decision of the FtT Judge is infected by a material error of law, and the appeal is allowed.

14. I must then consider whether to remit the case to the FtT, or to re-make the decision myself. In my judgment, the appropriate course is to remit the matter to the FtT for hearing afresh with no findings preserved. In reaching my decision, I have taken into account paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

**Notice of Decision**

15. The appeal is allowed, and the decision of FtT Judge Davies is set aside.
16. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.

Signed  
2019

Date

22<sup>nd</sup> February

**Deputy Upper Tribunal Judge Mandalia**

**TO THE RESPONDENT**

**FEE AWARD**

No fee is payable and there can be no fee award.

Signed  
2019

Date

22<sup>nd</sup> February

**Deputy Upper Tribunal Judge Mandalia**

