Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09546/2019 (V)

THE IMMIGRATION ACTS

Heard at Bradford by Skype for business	**Decision & Reasons Promulgated**
On the 28 October 2020	**On 9 November 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

RK
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahmed, Counsel instructed on behalf of the appellant
For the Respondent: Mr Diwnycz, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed his protection appeal in a decision promulgated on the 8 November 2019.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to

the circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The hearing took place on 28 October 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The appellant's claim is summarised in the decision of the FtTJ at paragraph 15. The appellant is an Iraqi citizen of Kurdish ethnicity from Kirkuk. His previous claim for asylum is set out in the decision of FtTJ Fisher promulgated on 24 June 2011.

5. The appellant arrived in United Kingdom on 17 January 2008 and claimed asylum at the time of his entry he was a minor and whilst his application for asylum was refused he was granted leave in view of his age until he was 18 years old.

6. The appellant then made an application for further leave to remain which was refused by the respondent in a decision letter dated 18 April 2011. The basis of his claim was that when selling cigarettes outside a coffee shop, some men had bought cigarettes from him and had paid twice their value. They had done this on several occasions and the appellant was then asked if he would like to earn more than 50 to hundred dollars per day. The man explained that the appellant would be delivering pots of hashish to addresses. When the appellant refused one of the men showed him a knife and a gun and threatened him. Again, the appellant refused as he was the sole provider in the house. The appellant went straight to the local police who accompanied him back to the shop but when they arrived, the man told the police not to believe him. His parents did not believe him until a man visited the house later that evening informing them that the appellant had been telling the truth because he had overheard men saying that they would kill him for what he done by alerting the authorities. He therefore left the area with the assistance of his uncle (at paragraph 5).

7. The FtTJ observed at [16] that the credibility of the appellant's account had been accepted and that he had given a consistent and coherent

account of his experiences in Iraq but it was not accepted that it was one which engaged the Refugee Convention. At [16] the judge noted that the appellant was hampered in his account because he did not know the identity of the group or indeed if the men were part of a group as opposed to a few individuals who are simply engaged in the trafficking of drugs and that he was not at risk of being targeted by an organised group. At [17] the judge noted that if he was wrong about that, he was asked on one occasion if he would transport drugs and that he would not be persecuted on return given the time that had elapsed since the incident. He therefore dismissed his claim for asylum. As to Article 8 grounds, the FtTJ considered his private life which consisted of his studies and that he had a number of friends. The judge noted at [22 "there is at least a real possibility that his family might be traced, especially further information can be provided to the Red Cross." The judge made reference to his learning disability but found that it had a limited effect on his life and carrying out the proportionality assessment concluded that he should dismiss the Article 8 claim.

8. Further applications were then made by the appellant but on 23 July 2019 he lodged further submissions in support of a grant of asylum or humanitarian protection by way of a "fresh claim".

9. In a decision letter dated 17 September 2019 the Respondent refused his claim for asylum. It was accepted that he was a national of Iraq and of Kurdish ethnicity. The further submissions were summarised at paragraph 10 which made reference to the poor security situation in his home area, that he came from a contested area and could not return there that he had no documents and that he had no contact with his family, he feared return due to his father's Baath party -related activities and that he had a medical condition in the UK. The respondent considered the previous findings of the FtTJ in 2011 and went to consider the country situation and whether returning to Kirkuk would breach Article 15 (c). Reference was made to the CPIN at paragraphs 22 – 23 and that based on that "country guidance" there had been a clear improvement in the security and humanitarian situation in Kirkuk. The decision letter went on to consider feasibility of return and it was accepted at paragraph 33 that he currently did not have any of the Iraqi documentation listed at paragraph 30 which would enable him to obtain a passport. In the alternative it was considered that he had family members within Iraq and reference was made to the lack of tracing. Further reference was made to his attendance at the Iraqi embassy. The decision went on to consider the risk of destitution, his religion, the risk of kidnapping and issues of internal relocation. At paragraphs 80 – 106 is a decision letter considered the issue of Article 8.

10. His claim was therefore refused on all grounds. The appellant lodged grounds of appeal against that decision. The appeal against that decision

came before the FtTJ on the 4 November 2019 and in the decision promulgated on 8 November 2019 his appeal was dismissed.

11. The FtTJ set out his analysis of the evidence and his findings of fact at paragraphs 10 – 22. He did not consider the appellant to be credible and contrasted his witness statement in which it said he was illiterate and did not attend school with his interview where he said attended school between the ages of 6-8. At paragraph 11, the FtTJ agreed with the decision letter that there was "substantial evidence to justify a departure" from the country guidance decision in AA (Iraq) and that the appellant could return to Kirkuk. The judge found that the appellant was in contact with his Iraqi family, he was not suffering from any medical problems and would not be destitute. The judge made reference to his previous claim and that in interview on Iraqi ID was retained on the file. At paragraphs 17 – 19 the judge considered the evidence as to his attendance at the Iraqi embassy including that of his witness that found that by walking off the street and asking for documents a request which was refused was not a surprising outcome from the embassy. The judge found that there were flights to the IK are and he could travel to Erbil directly and therefore there was no risk of him returning to Baghdad. The judge found that there was no question of internal relocation as it could be returned to his home area. At paragraph [23] the judge found for the same reasons they would not be "very significant obstacles" to the appellant's integration.

12. Permission to appeal was issued by the appellant acting in person and on 22 January 2020 permission was granted by FtTJ Bristow.

The hearing before the Upper Tribunal:

13. The hearing was originally listed on a date in April 2020. However, in the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place without a hearing. Following these directions, the Upper Tribunal received written submissions from the appellant dated 28 April 2020 and the respondent on the 6 May 2020. Upper Tribunal Judge Mandalia gave further directions observing that the Tribunal would be assisted from submissions from the parties as to the materiality of the error conceded at paragraph 13 of the Rule 2 reply and upon the matters set out at paragraphs 14 and 15 of the submissions. UTJ Mandalia therefore listed the appeal for a remote hearing via Skype.

14. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

15. Mr Ahmed on behalf of the respondent relied upon on the written grounds. There was also a skeleton argument prepared by Mr Malik in March 2020 for the purposes of the hearing then scheduled before the Upper Tribunal. When asked about the further written submissions that his instructing solicitor had provided dated 14 May 2020 and how they related to the grounds and the issues identified by the FtTJ Bristow when granting permission, Mr Ahmed set out that he did not rely upon all of those paragraphs but identified those that he did.

16. A Rule 24 response was filed on behalf of the respondent which I have read and taken into account. I also heard oral submission from the advocates, and I am grateful for their assistance.

Decision on error of law:

17. It is not necessary to set out the submissions of each of the parties in full as I will set out the relevant aspects of those submissions when dealing with the grounds advanced on behalf of the appellant and my consideration of those issues.

18. I begin my assessment by reference to the written grounds. Whilst the appellant was represented by solicitors and Counsel at the hearing before the FtT, it appears that the grounds were drafted by the appellant acting in person. As may be expected from an appellant who does not have the advantage of legal knowledge, the grounds do not, with any clarity, set out what were the asserted errors of law in the FtT decision. Many of the paragraphs begin with the words "I disagree" (as indicated in paragraph 4, 5,6,7 8) and others refer to not taking into account material evidence (such as paragraph 3) but there is no reference to the material in question. At paragraph 9, there is reference to "significant obstacles" to return which have not been considered fully and at paragraph 10, the appellant identifies an error relating to the standard of proof applied by the FtTJ when reaching his assessment.

19. When the application came before the FtT (Judge Bristow) he granted permission to appeal. In the grant of permission, he identifies 3 grounds; not fully considering material facts/evidence, and applying a higher standard of proof still required, and the grounds also state that the appellant disagrees with the judge's decision. The grant of permission is at paragraph 3. The FtTJ refers to paragraph 8 of the FtTJ's decision where he referred to the correct lower standard of proof to be applied to the Refugee Convention, humanitarian protection and Articles 2 and 3. He also refers to paragraph [15] where the judge writes "I conclude on a balance of probabilities that the appellant is in contact with his Iraqi family who are still living in Kirkuk and will be able to assist in return." The judge went on to state "this is a conclusion relevant to the protection aspects of the appeal and so the correct standard of proof is the lower

standard. It is not clear that the judge was making this finding only in relation to the Article a ground of appeal whether civil standard would be applicable. The decision and reasons do contain an arguable material error of law. Permission to appeal is granted that reason. Permission is granted on all grounds asserted in the application received 13 December 2019 except those which amount to no more than a disagreement with the judge's decision."

20. The grant of permission thus purported to be a limited grant of permission but not only is it is unclear as to the basis of this but the FtTJ has not done so in a way which complies with Safi *and others (permission to appeal decisions) [2018]* UKUT 388 (IAC). The FtTJ failed to incorporate his intention to grant permission on limited grounds within the decision section of the standard document, where it is simply stated, 'permission to appeal is granted'. Whilst the judge stated "permission is granted in all grounds asserted in the application except those which amount to no more than a disagreement with the judge's decision. There is no engagement with what paragraphs are a disagreement.

21. Furthermore, the appellant's solicitors filed a further skeleton argument relating to the hearing before the Upper Tribunal that was due to be heard pre-COVID-19. Those submissions make reference to a large number of grounds. It is not necessary to set them out in full but in summary, the grounds challenged the finding of whether there were "very significant obstacles " to the appellant's reintegration (citing the decision in Kamara) and failing to consider whether there were "exceptional circumstances" in relation to his appeal in Article 8 grounds and on the basis of his medical position. There was also a ground which relied upon the failure to follow the country guidance in *AA* (Iraq) and challenges to the findings made in relation to his family and reference made to the Red Cross evidence. Following this, a rule 24 response was filed on behalf of the respondent dated 6 May 2020 which answered the submissions that were made in the further clarification of the grounds in March 2020. The rule 24 response dealt with the issue of failing to follow the country guidance decision, the issue of tracing his family, the standard of proof, identity documents and also Article 8. In particular at paragraph 13 it was conceded on behalf of the respondent that the judge had failed to make a finding or consideration under Article 8 are set out in the appellant's "further submissions" (I read that to mean the grounds that were amplified in March 2020). However, the reply at paragraphs 13 – 15 refers to the general position in Article 8 but also that the appellant did not raise this in his original grounds. However in the alternative, even if the tribunal were minded to consider the issue, it was submitted that in relation to the facts of the Article 8 claim it would have resulted in the same outcome thus there was no material error of law. This document generated a further reply on behalf of the appellant which was lodged on the 14 May 2020.

22. The rule 24 response and submissions answer the points raised in the appellant's skeleton argument. Beyond reference to the Article 8 point, neither party sought to identify what the arguable errors were which were to be argued before the Tribunal save that Mr Ahmed clarified that he relied upon the grounds as set out in the grant of permission (which related to the standard of proof) but that in view of the respondent's response at paragraph 13 when seen in the context of UTJ Mandalia's directions, that it appeared that the issue of Article 8 was a live issue and one that could properly form part of the grounds as referred to in the written submissions.

23. Mr Diwnycz was aware of the Rule 24 response and its contents and that the submissions relating to Article 8 were a "Robinson obvious" point but relied upon paragraphs 14 – 15 of the reply which referred to its materiality.

24. There was therefore no clarity about the grounds and in light of the matters set out in March 2020 submissions which further expanded upon the matters raised in the original grounds, I observe that they were replied to in full by the respondent. In the circumstances and given that the original grounds were drafted by the appellant in person, I shall treat those as the grounds of challenge.

25. It is convenient to begin with the challenge to paragraph 11 which deals with the position of the appellant's home area. At paragraph 11 the FtTJ considered the submissions raised on behalf of the appellant's Counsel that he was bound by the country guidance case of AA (Article 15 (c) Iraq [2015] UKUT 0054. The judge stated "however as discussed at length in paragraph 20 to 27 of the refusal letter, I agree that there is now substantial evidence to justify a departure from AA and I conclude that the level of violence in Iraq does not reach the high threshold. I add that it is all evidence the appellant told that his UK-based Iraqi friends have some time and also recently been making regular holiday trips to Kirkuk which is hardly consistent with the suggestion that it is inherently very dangerous there."

26. The appellant in his original grounds did seek to challenge this assessment (albeit with little detail) as did the submissions made in the March 2020 document and paragraph 2 of the further submissions dated 14 May 2020.

27. At the date of the hearing, the country guidance decision was AA (Article 15(c) Iraq [2015] UKUT 00544 as amended by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944, which confirmed that there was a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL, which included Kirkuk.

28. The test to be applied when considering whether to depart from country guidance is set out in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940 Lord Justice Stanley Burnton said this:

> "45. There are simply not the resources for a detailed and reliable determination of conditions in foreign countries to be made on an individual basis on each decision on the application or appeal of persons seeking protection. There are far too many such cases, as is demonstrated by the Secretary of State's use of charter flights to accommodate the large numbers of returnees to countries such as Afghanistan and Iraq. Neither those representing those seeking protections nor the Secretary of State herself have the resources for the detailed, lengthy, and costly investigation of conditions on return that is appropriate, given the potential risk to the returnees, in every case. Even if the resources were available, it would be wasteful to have such an investigation, involving much the same evidence, in every case. There would also be a risk of inconsistent decisions, a consideration that is particularly important in the present context since it follows from a decision that one person requires protection, if correct, that a person in the same situation who has been returned may have risked or suffered ill treatment or worse.
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> 46. The system of Country Guidance determinations enables appropriate resources, in terms of the representations of the parties to the Country Guidance appeal, expert and factual evidence and the personnel and time of the Tribunal, to be applied to the determination of conditions in, and therefore the risks of return for persons such as the appellants in the Country Guidance appeal to, the country in question. The procedure is aimed at arriving at a reliable (in the sense of accurate) determination.
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> 47. It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying they're not doing so."

29. The Upper Tribunal elaborated upon this test in the subsequent decision in CM (EM country guidance; disclosure) Zimbabwe CG [2013] UKUT 59 (IAC) [at Â§72]: [We] recognise that where a previous assessment has resulted in the conclusion that the population generally or certain sections of it may be at risk, any assessment that the material circumstances have changed would need to demonstrate that such changes are well established evidentially and durable.

30. The FtTJ gave no reasons why he found there to be substantial evidence to justify a departure from the country guidance case. Whilst the judge purported to rely upon the paragraphs in the decision letter, which erroneously referred to the COIN as " country guidance " there was a bundle of documentary evidence submitted on behalf the appellant which

enclosed further evidence relating to Kirkuk and that assessment including the Danish immigration service report, the US State Department report and the EASO report dated 4/2/19 and in the original submissions sent to the respondent which generated the fresh claim, objective material by reference to the position of Kirkuk had been provided.

31. There was therefore evidence before the FtTJ relevant to the assessment, but which was not taking into account. In my view is not sufficient to simply state that he agreed with paragraphs 20 – 27 of the refusal letter without considering the other evidence relevant to the assessment.

32. Mr Diwnycz relies upon the rule 24 response paragraph 4 where it states that the FtTJ gave reasons for the decision by relying on the decision letter that there were strong grounds supported by cogent evidence to depart from the previous country guidance decision to find that Kirkuk was no longer a contested areas. However the grounds are silent as to the material that was before the FtTJ and goes on to state that that was affirmed in the decision of SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)and quotes headnote 6 which does not appear to have been any relevance.

33. Whilst the rule 24 response refers to the decision in SMO, that decision was not promulgated until after the hearing of the appeal and the promulgation of the decision in November 2019. The only CG decision in force was that of AA and the Court of Appeal decision.

34. Whilst the new CG decision sets out why Kirkuk is no longer a contested area, that was not the stated position before the FtTJ, and the judge was required to give reasons why he was departing from the country guidance in force. In my judgement he did not do so. I would accept that this raises the issue of materiality, given that SMO has reached a different conclusion. However, the difficulty with this is that the FtTJ made no reference to the position in Kirkuk whatsoever. There is no reference to the country materials insofar as related to Kirkuk which was an area which had suffered from upheaval violence and displacement. This was relevant and material in my judgement to the grounds in which challenges are made to the issue of the remaining family members (where permission was granted) and the issue of identity documents as set out in the further submissions and answered in the reply of the rule 24 response.

35. Dealing with the challenge to paragraph 15, the FtTJ sets out at paragraph 12 – 14 the evidence. He begins by setting out that the previous judge did not accept that he had no family or friends in Iraq (relying on paragraphs 3 and 5) and that he had his parents and two sisters in Iraq. The respondent in the rule 24 response relies upon finding on the basis of Devaseelan principles.

36. I agree that the starting point should be the decision of FtTJ Fisher promulgated in 2011. However, the earlier judge did not find that the appellant had family living in Iraq with whom he was in contact with. The FtTJ did not go beyond finding that there was a real possibility that the family members might be traced, especially if further information could be provided. The FtTJ also made reference to the appellant's learning disability in the light of the evidence given by the appellant's social worker at paragraph 8 and in his finding at paragraph 22.

37. In reaching his conclusions as to whether the appellant had family in Iraq, whilst the judge made reference to the delay in contacting the Red Cross until 2019, no further consideration was given to the length of time since he had contact with his family which is when he left Iraq when he was a minor. Nor was there any reference to the position of Kirkuk by way of the objective material and the displacement and conflict that had occurred in that area.

38. Whilst it was open to the judge to find that he made little effort to trace the family (see paragraph 6 of the rule 24 response) no reference is made to the length of time or the circumstances that had occurred during that length of time in Kirkuk.

39. I am also satisfied that the FtTJ erred in law by applying the wrong standard of proof. At paragraph 15 the FtTJ concluded "I conclude on a balance of probabilities that the appellant is in contact with his Iraqi family who are still living in Kirkuk and who will be able to assist in return." As the rule 24 response sets out, at paragraph 8 the judge did direct himself to the appropriate standard in protection appeals but also as a rule 24 response sets out and as Mr Ahmed submitted, it is wholly unclear whether the FtTJ was referring to the Article 8 ground of appeal. In the ordinary course of events given that the judge had earlier referred to the correct standard, it might be that the direction also applies to further findings. However here the judge expressly stated by reference to the factual elements relevant to the protection appeal that he "concluded on the balance of probabilities that the appellant is in contact with his family who are still living Kirkuk" and this was a higher standard of proof and was in error.

40. In the light of the lack of reference to the objective material in the country circumstances in Kirkuk in the interfering period or the length of time that the appellant had left Iraq (in the light of there being no positive finding that he been in contact with his family by the previous judge) the error is a material one.

41. This is sufficient in my judgement to render the decision unsafe as the FtTJ then went on to consider the issue of return to Kirkuk on the basis that he was in communication with his family (see paragraph 20).

42. Mr Diwnycz submitted that the FtTJ had stated that the appellant had provided his identity documents and that even in the absence of contact with his family in Iraq, he was potentially a documented male and therefore could not succeed (and see paragraph 7 of the rule 24 response). However, the difficulty with that submission is that the identity document had not been put in evidence and I have not been referred to any copy in the bundles of documents before the tribunal. The reference to an identity document was made at question 46 of the interview in 2008 but it has never been explained what document that is, nor has it been confirmed that the document is still in existence. There are a number of different documents in Iraq and it has not been confirmed not only if the document is still in existence or where it is or what the document was to enable any assessment of the redocumentation issue or in the particular context of the appellant's home area in Kirkuk. I am therefore satisfied that it was a material error which went to the core of the consideration of the claim.

43. In addition, Mr Ahmed on behalf of the appellant relies upon the Article 8 point raised in his solicitor's submissions and upon which the respondent addressed in the rule 24 response. Whilst that response makes reference to permission having not been granted on that point as it had not been raised in the grounds, Mr Diwnycz accepted that it was a "Robinson obvious" point given the failure to make any reference to Article 8 beyond that at paragraph 23. Consequently, the issue as identified by UTJ Mandalia when he gave his directions related to the materiality of the error given that the respondents reply at paragraph 13 accepted that the judge had failed to make a finding or consideration under Article 8.

44. Mr Ahmed submits that paragraph 23 purported to make an assessment of safety but there was no assessment of Article 8 by reference to the issue of proportionality and the appellant's history having entered the UK in 2008 when he was 15 years of age (a minor) and had substantial residence in the UK including all of his adult life. He also submits it was no consideration of the public interest considerations under section 117B.

45. Mr Diwnycz referred to the rule 24 response and that whilst the concession was made that there was an acceptance that the judge failed to make any findings or failed to consider Article 8, it was not material because the appellant was relying only on his private life, little weight to be placed on any private life in the circumstances of not having any leave following 2010, that the medical evidence in the bundle was not before the FtTJ and thus it would not have resulted in a different outcome.

46. Having considered the submissions of the parties I am satisfied that the error conceded by the respondent was material. I reach that conclusion of a number of reasons, firstly the appellant did raise submissions that related Article 8 based on his length of residence in the circumstances of

his arrival as a minor as set out in the further representations that gave rise to the fresh claim. Not all of his residence was unlawful, and he had a period of lawful leave. Most of his adult life has been in the United Kingdom. No assessment was made in his private life and the assessment of Article 8 only extended to whether there were very significant obstacles and that was not an assessment made in relation to his circumstances that related to the findings made by the judge on the protection appeal. There was no balancing exercise or consideration of the section 117 factors. Even if it is right as the respondent submits that the elements of private life were not sufficiently strong to succeed, given that I have found errors of law in relation to the protection /humanitarian protection aspect of the appeal, then those errors infect the Article 8 assessment.

47. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law. The decision of the FtT shall be set aside.

48. As to the remaking of the decision I have considered the submissions made by the advocates. Mr Ahmed submitted that the appeal should be remitted given the length of time that has elapsed since the last hearing and also that there has been a new CG decision SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC) and further objective material relevant to the claim.

49. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

> "[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

50. I have considered this question in the light of the practice statement recited above. As it will be necessary for the appellant to give evidence and to deal with the evidential issues, further fact-finding will be necessary alongside the analysis of risk in the light of the relevant law and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing. The Tribunal will be seized of the task of undertaking an assessment of the

evidence and any updated evidence (whether subjective or objective evidence).

51. I observe that the decision of the previous judge made reference to the appellant's learning disability having heard evidence from a social worker in 2011. There has been no further reference to this and that should be clarified for any further hearing. Furthermore, issues surrounding the identity document should be clarified and the document should be traced, and confirmation be provided that it is still in existence and what the document is. A copy should be provided to the appellant's solicitors and to the Tribunal.

Notice of Decision

The decision of the First-tier Tribunal did involve the making of an error on a point of law and appeal shall be remitted to the FtT.

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. 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 *Upper Tribunal Judge Reeds*

Dated 3/11/2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.