



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000051

First-tier Tribunal No: PA/00074/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 August 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

SQ
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Decision on the papers

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge CH O'Rourke promulgated on 28 May 2021.
2. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 16 November 2021.

Anonymity

3. An anonymity direction was made previously and is reiterated because this appeal concerns the appellant's confidential medical condition.

Factual Background

4. The appellant is a national of Iraq, of Kurdish ethnicity, born in 2001. He entered the United Kingdom clandestinely during December 2016, when aged around fifteen. The appellant was granted Discretionary Leave to Remain as an unaccompanied asylum-seeking child, valid until 17 January 2019. His asylum claim was refused on 9 August 2017 and his appeal against that decision failed, with his appeal rights being exhausted on 15 August 2018. On 10 January 2019, the appellant applied for further leave to remain, relying on risks to his safety owing to his poor mental health. That application was refused on 10 December 2019 and is the decision under challenge in these proceedings.

The decision of the First-tier Tribunal

5. Following a hearing before the First-tier Tribunal, the appeal was dismissed.

The grounds of appeal

6. The grounds of appeal can be summarised as follows.
 - i) the First-tier Tribunal erred in failing to consider expert evidence from Professor Bluth and country of origin materials, including the respondent's CPIN, with respect to the lack of expert mental health provision in Iraqi Kurdistan when the appellant requires expert services for his condition.
 - ii) there was a failure to consider the evidence from the doctor and local authority regarding suicide risk on return to Iraq as the appellant continued to have suicidal thoughts and there is no reasoning as to why his mental health would improve if removed to Iraq when he would be without the protective factors available in the UK.
 - iii) There was a failure to consider paragraph 276ADE(1)(vi).
 - iv) A failure to take into account expert and other evidence about discrimination against those with mental health disabilities in Iraq, relevant to Article 8 ECHR.
 - v) The tribunal fell into speculation and failed to consider the appellant's evidence supporting his claim that his family would be unable to support him in Iraq.
7. Permission to appeal was granted on the basis sought.
8. Sian Rushforth of the Specialist Appeals Team filed a Rule 24 response dated 9 August 2023, in which the following comments were made.

The respondent to this appeal is the Secretary of State for the Home Department. Documents relating to this appeal should be sent to the Secretary of State for the Home Department, at the above address.

The respondent does not oppose the appellant's application for permission to appeal and accepts that the judge erred in failing to consider the appellants suicide attempts and the expert evidence in relation to his mental health.

The respondent proposes that the appeal is remitted for a denovo hearing.

Decision on error of law

9. Upon receiving the Rule 24 response, I directed that an email message be sent to the parties to indicate that I was proposing to set the decision aside and remit to the First-tier Tribunal. I took this course as the grounds were unclear as to whether a remittal was sought. I received no response from the parties to indicate that an alternative disposal was sought and I accordingly proceeded to determine this matter.
10. I am satisfied that the respondent's concession was rightfully made and that the errors identified in the grounds are made out and are material to the outcome of the appeal. I consider it appropriate to set aside the decision in its entirety as suggested by the respondent because the errors in relation to the medical evidence infect the entirety of the judge's findings.
11. Given that there are no preserved findings of fact. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), I have carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of an adequate consideration of his appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error 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 at Newport to be reheard by any judge except First-tier Tribunal Judge CH O'Rourke.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 August 2023