



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004944
First-tier Tribunal No:
PA/52408/2021 (IA/06236/2021)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MMA
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Johnrose, Legal Representative

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 3 August 2023

DECISION AND REASONS

1. The Appellant is a national of Iraq, date of birth 1 January 1989, who on 27 January 2020 applied for asylum. The Respondent refused his application in a decision dated 16 April 2021 because the Respondent did not accept the Appellant's claim, he had been targeted because of his father's beliefs albeit it was accepted the Appellant's father had been killed because of his beliefs.
2. The case was listed before Judge of the First-tier Tribunal Davies (hereinafter referred to as the FTTJ) on 4 May 2022 who subsequently dismissed the Appellant's appeal under the Refugee Convention and on human rights grounds,

Case No: UI-2022-004944
First-tier Tribunal No: PA/52408/2021 (IA/06236/2021)

3. Permission to appeal was initially refused by the FTTJ. Permission to appeal was granted by Upper Tribunal Judge Perkins on 23 November 2022 because:

“.... the Judge did not explain adequately what he made of evidence, which is identified painstakingly in the grounds supporting the application for permission from the First-tier Tribunal, that supported the Appellant’s case. Judges do not have to comment on every strand of evidence and the Decision and Reasons may stand scrutiny but I am satisfied that it is arguable that it should not and I give permission on each ground.”

4. Mrs Johnrose submitted the FTTJ had materially erred by failing to make findings on what had happened in 2019 which led to the Appellant leaving Iraq. Mrs Johnrose referred the Tribunal to a documentary that occurred in November 2019. This transcript had been specifically requested by the FTTJ but having been sent it the FTTJ failed to make any reference to the said document and its contents in his determination. The transcript referred to the Appellant by name and his family and also identified where he came from. It was the Appellant’s claim that this evidence triggered adverse attention in him and led to him leaving Iraq. The FTTJ erroneously stated the Appellant was not named or identified in the article. Additionally, the FTTJ failed to make findings on an article which was on page 692 of the UT Bundle. This article goes on to say at bottom of the page legal measures by Fatwa committee would be taken if complaint made as would be considered an apostate. After 2019 the problems intensified, and he said house raided and he was targeted. This evidence was not considered in 2017 assessment ([83] to [85]). The FTTJ stated there were no screenshots of the 2017 threats, but these were contained in the bundle (pages 581 to 589 of the original bundle). Taking these issues together Mrs Johnrose submitted there was an error in law.
5. No Rule 24 response had been filed but Mr Diwnycz conceded the failures identified above amounted to an error in law.
6. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DISCUSSION AND FINDINGS

7. This appeal is based on the Appellant's grounds of appeal that the FTTJ failed to make appropriate findings and/or give adequate reasons for his findings. For the reasons hereinafter provided I found there was an error in law.
8. This appeal centred around credibility of the Appellant's account and whilst the FTTJ's decision was detailed and thorough there were issues with his decision that were highlighted in the detailed grounds of appeal. At today's hearing Mrs Johnrose expanded on those issues and given this was a credibility assessment the failure to take material documents into account must amount to an error in law. There were a number of issues highlighted by Mrs Johnrose but in this decision I have concentrated on two of them.
9. Firstly, the Appellant provided screenshots of threats. The FTTJ in his decision stated at paragraph [71] that the Appellant claimed to have received threats. These were contained in the bundle and whilst it had been open to the FTTJ to reject them there was no evidence that these documents were considered.
10. Secondly, and more importantly, the FTTJ allowed post hearing evidence to be submitted and it was this document that mentioned the Appellant, his family and his location. This was the trigger, according to the Appellant, for his problems and why he left Iraq. Again, it was open to the FTTJ to reject such evidence but his decision did not engage with this evidence which was surprising since it was he who had requested the evidence in the first place. Given this was the Appellant's reason why he fled Iraq it was incumbent on the FTTJ to consider the same and make findings.
11. I have not considered the other grounds that were advanced at the hearing because Mr Diwnycz conceded there was an error in law which was also the conclusion I myself had reached.
12. As this is a credibility assessment, I find no findings should be preserved. Mrs Johnrose indicated that given some of the findings made by the FTTJ about the failure of the brothers to give evidence would mean that any new hearing would involve probably two further witnesses and a lengthier hearing.
13. Paragraph 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it 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.

14. In my judgment, given that it is necessary for all the issues in this case to be considered afresh on the merits, this case falls within para 7.2 (a) and (b) because further evidence, including oral evidence is likely, and findings of fact on the issues will need to be made.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety.

This case is remitted to the First-tier Tribunal for a fresh hearing on all issues on the merits by a Judge other than Judge of the First-tier Tribunal Davies.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
8 August 2023