IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005352

First-tier Tribunal No: PA/50418/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

26th October 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ARF
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr S Vokes, counsel instructed by Anthony Brindley Halliday Reeves
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 17 October 2023

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.

DECISION AND REASONS

1. The appellant is a national of Iraq and of Kurdish ethnicity. He arrived in the United Kingdom in June 2018 and claimed asylum. The claim was refused and an appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Broe for reasons set out in a decision promulgated on 9 October 2020. The appellant made further submissions to the respondent in June 2021 relying upon evidence that had not previously been considered. The appellant's claim was refused but the respondent accepted it to be a fresh claim giving rise to a further right of appeal. The appeal was dismissed by FtT Hena for reasons set out in a decision dated 12 September 2022.

2. The appellant claims that in her decision Judge Hena referred to a letter from "Ashti", a charitable human rights organization, and found, at [22(ii)], that the letter from Ashti appears to rely upon information provided by the appellant. Judge Hena went on to say that *"The document may have been viewed in a different light if the organisation had provided a follow up of exactly how they became involved and how they verified the situation."*. In the absence of such evidence, at paragraph [28], Judge Hena said that little weight can be placed on the document. She accepted the letter is from a human rights organisation but rejected the appellant's account as to why it had not been provided at the hearing of his appeal previously in 2020. At paragraph [29] the judge said there was no updating evidence from Ashti about how they concluded there were issues with the family, and she attached little weight to the letter. The appellant claims the difficulty with that finding is that on 18 November 2020 the appellant's representatives had emailed 'Ashti' and they replied on the same day confirming they had "confirmed" his case, and that his life would be at risk on return. A copy of that response was at page 26 of the respondent's bundle and appears to have been overlooked by the Judge.

3. Second, the appellant claims Judge Hena accepts the appellant has sincere political beliefs against the government of the IKR but he will be able to avoid questioning on those political beliefs because he has family to help him obtain ID, and so reduce questioning at checkpoints. The appellant claims that in Erbil (his home area) the INID has been rolled out and has replaced the CSID. Therefore he cannot use a proxy family member to obtain an INID card. The appellant claims that on return to the IKR, he would be expected to show documentation and without documentation, he is likely to be questioned by the Asayish at the airport, and at other checkpoints. As such his political views will become known, and he cannot be expected to lie about his political views.

4. Finally, the appellant claims that at paragraphs [34] and [35], Judge Hena makes findings that there is a sufficiency of protection available for the appellant should he encounter any issues in the future and that in any event, the appellant can internally relocate, without further elaboration or explanation.

5. Permission to appeal was granted on all grounds by First-tier Tribunal Judge Curtis on 9 November 2022.

6. At the hearing of the appeal before us, Mr Lawson, quite properly in our judgement, concedes the decision of Judge Hena is vitiated by a material error of law and should be set aside. He accepts Judge Hena failed to have regard to relevant evidence, and that the factual basis of the appellant's claim has not been adequately addressed. He also accepts that in reaching her decision, Judge Hena failed to properly engage with the relevant country guidance when addressing the risk upon return.

Decision

7. The appellant's evidence before the FtT is summarised at paragraphs [12] to [14] of the decision. Judge Hena accepted the letter relied upon by the appellant from 'Ashti' and his evidence regarding his *sur place* activities is new evidence. Judge Hena found the appellant had failed to give adequate reasons as to why he did not think it would be helpful to produce the letter from Ashti confirming his problems at the previous hearing before Judge Broe in 2020.

8. Putting aside the appellant's failure to give adequate reasons as to why he did not produce the letter in support of his appeal previously in 2020, Judge Hena addressed the letter from 'Ashti' at paragraphs [28] to [30] of her decision. She said the letter does not set out how the charity confirmed the family dispute and it appears the charity simply accepted what it had been told by the appellant. Without any further update as to how the charity concluded there were issues with the family, she attached little weight to the letter. She went on to find the appellant is not at risk upon return from his family.

9. At paragraph [22(iii)] Judge Hena found the appellant to be honest as to how he became interested in Kurdish politics, but at paragraph [22 (iv)] she did not accept that the appellant's political activities in the UK are high profile or very significant.

10. The appellant's *sur place* activities are addressed at paragraphs [32] and [33] of the decision. Judge Hena noted the appellant had become interested in the political activities since 2020 and she accepted the appellant has attended two demonstrations and post political information of his Facebook account. At paragraph [33] she said:

> "I do no *(sic)* find that those activities in the UK would make him someone of interest when returned to Iraq. I do not find that there is evidence to support that he would be questioned on his political beliefs. He has family in Iraq that can help him with obtaining ID which would reduce questioning at checkpoints.

11. At paragraphs [34] and [35], Judge Hena said:

> "*Sufficiency of Protection*
>
> 34. I find that should the appellant incur any future issues there is sufficiency of protection for him.
>
> Internal Relocation
>
> 35. I find that if the appellant feels he needs to relocate he can do so within the Kurdish region"

12. As Mr Lawson quite properly recognises, at page 26 of the respondent's bundle before the First-tier Tribunal, there was a translation of a letter from 'Ashti' dated 18 November 2020, that appears to have been overlooked by Judge Hena. That is

material to the outcome of the appeal because at paragraph [29] of her decision, Judge Hena referred to the previous letter from 'Ashti' that predates the decision of First-tier Tribunal Judge Broe promulgated on 9 October 2020, but makes no reference to the additional letter from 'Ashti' dated 18 November 2020. There plainly was further evidence before the Tribunal from 'Ashti' and if the judge had considered that evidence, it may have impacted upon the weight attached to the evidence from 'Ashti' overall.

13. It is common ground between the parties that the consideration of the core of the appellant's claim that he will be at risk upon return to Iraq from his family, also has an impact upon the Tribunal's consideration of other matters such as sufficiency of protection, internal relocation and the appellant's ability to obtain the necessary identity documents. Those are matters that Judge Hena failed to properly engage with.

14. We accept the decision of Judge Hena is vitiated by material errors of law and must be set aside. As to disposal, we have considered whether the proper course is to remit the appeal or to order that the decision be remade in the Upper Tribunal. In doing so, we have considered what was said in Begum (remaking or remittal) [2023] UKUT 46 (IAC). Given that the decision on the appeal needs to be taken afresh, and given the nature of the error into which the FtT fell, we have concluded that the just and proper course is to remit the appeal to the FtT for rehearing.

15. The parties agree that the discrete findings made by Judge Hena at paragraphs 22(iii) and (iv) of her decision regarding the appellant's *sur place* activities can be preserved. They are:

> "(iii) With regards to the sur place activities I found the appellant to be honest as to how he became interested in Kurdish politics.
>
> (iv) I do not find that the appellant's political activities in the UK are high profile or very significant, given his own evidence that he is limited due to his education."

Notice of Decision

16. The appeal to the Upper Tribunal is allowed.

17. The decision of First-tier Tribunal Judge Hena is set aside.

18. The appeal is remitted to the First-tier Tribunal for hearing afresh save that the discrete findings of First-tier Tribunal Judge Hena set out at paragraph [15] above are preserved.

19. The parties will be advised of a hearing date in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber
17 October 2023