



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000458
First-tier Tribunal No:
PA/50359/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 August 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

NZAR MUHAMMED ABDALLA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jagadesham instructed by Fisher Stone Solicitors.
For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

Determined on the papers, by consent, on 27 July 2023

DECISION AND REASONS

1. The appellant, a national of Iraq, claimed protection as a refugee on 1 February 2017. That was refused by the Secretary of State and an appeal against that decision dismissed by First-tier Tribunal Judge Hillis in a determination promulgated on 29 July 2019.
2. The appellant was not removed from the United Kingdom and lodged further submissions on 24 February 2021 which, although accepted as a fresh claim by the Secretary of State, were refused in a decision letter dated 18 January 2022. The appellant's appeal against that decision came before the First-tier Tribunal sitting at Newcastle on 26 October 2022, Judge Fisher ('the Judge').
3. Following consideration of the evidence, which included medical evidence, the Judge dismissed the appellant's appeal on both protection and human rights grounds.
4. The appellant sought permission to appeal which was granted by another judge the First-tier Tribunal on 7 February 2023, the operative part of the grant being in the following terms:
 2. With respect to ground 1, the medical expert does consider explicitly whether shrapnel might account for some of the scarring (combined bundle, p. 108, paras.

73, 75). Arguably, it is not obvious what other combat-related mechanisms such as might befall a peshmerga member ought to have been considered. The judge does not specify these. One might think it unlikely in modern warfare that combatants would sustain stabbing injuries. In those circumstances, the judge was arguably wrong to discount the medical expert's report for not giving explicit consideration to whether the scars could be accounted for by his time in the peshmerga.

3. With respect to ground 2, I think the judge's reasons are fairly clear by implication that the judge does not accept the appellant is a practising Zorastarian. But the judge does not actually say that, and it is arguable that this ought not to be left to implication or that the implication is doubtful. If the appellant was a practising Zorastarian, albeit only sur place, the judge would have been required to assess what risk, if any, there was on return arising from this. There is no discussion of that in the judge's reasons.
5. In a Rule 24 reply dated 27 March 2023 the Secretary of State conceded the error.
6. On 24 July 2023 the Upper Tribunal received an email from the appellant's representative proposing the matter be dealt with on the papers, by consent, rather than remaining listed for an Error of Law hearing at Bradford on 28 July 2023. A letter from Fisher Stone Solicitors of 24 July 2023 seeks an order that the appeal is remitted in accordance with Begum headnote 2.
7. In an email dated 25 July 2023 Mr Jagadeshm wrote:

In summary, the Appellant has proposed resolution of this matter on the papers, subject of course to the views of the Upper Tribunal, on the basis of the parties' agreement as to the resolution and disposal of this matter. The parties are agreed that the decision of the First-tier Tribunal, dismissing the Appellant's appeal, is infected by an error of law. Furthermore, the parties are agreed that a rehearing is thus necessary. Finally, Ms Young has confirmed that the Respondent is in agreement with the Appellant's proposal (as per the attached correspondence) that the appeal be remitted to the First-tier Tribunal - i.e., as opposed to being retained in the Upper Tribunal - observing that the First Tier's consideration of the medical report links into the overall credibility assessment which the Rule 24 concedes is infected by legal error. The Respondent thus agrees with the Appellant's submissions as summarised in the attached letter in terms of the disposal of this matter. Please note that it is my understanding that there would be no preserved findings of fact from the decision of First-tier Tribunal Judge Fisher; the Rule 24 response's reference to "findings in the first appeal" concern a previous determination of Judge Hillis. Ms Young will please correct me if I am wrong in my stated understanding.

8. In a further email received by the Upper Tribunal Ms Young confirmed the summary set out above is "entirely correct" and on behalf of the Secretary of State agreed with the proposal for disposal of the appeal.
9. In the case of Begum (Remaking or remittal) [2023] UKUT 00046 the Upper Tribunal gave guidance on the approach to be taken by judges where an error of law had been found and consideration was being given to whether the appeal be retained within the Upper Tribunal or remitted to the First-tier Tribunal. The headnote of that decision reads:

(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.

(3) Applying *AEB v Secretary of State for the Home Department* [2022] EWCA Civ 1512, in considering the question of whether the appeal should be retained or remitted it will be material to take account of the loss of the two-tier decision making process if the decision is retained. Not every finding of an error of law concerning unfairness will require the appeal to be remitted: the nature of the unfairness and the extent of its impact on the findings made overall will need to be evaluated as part of the decision as to whether the general principle should be departed from.

10. The grounds of appeal include an assertion the Judge erred in law in his treatment of the medical evidence that had been provided on the appellant's behalf, and that at [11] the Judge appears to discount the medical evidence on an unsafe basis, referring to an issue of which the doctor was fully aware when the Judge stated the doctor was not. The failure of the Judge to properly take into account the medical evidence and factor it into the decision-making process is said to have been material to the assessment of the credibility of the appellant's claim.
11. The grounds also assert the Judge failed to make specific findings upon whether the appellant's conversion to Zoroastrian in the UK, even if a sur place event, placed him at risk on return to Iraq.
12. It is conceded that fundamental aspects of the evidence were not properly considered or factored into the decision-making process by the Judge. It is clear that the failure to consider all the evidence holistically and to make findings incorporating all that evidence, made on the basis of a proper assessment of the same, has denied the appellant a fair hearing. It is clear that the Judge's findings are infected by the conceded error to the point that none of them can stand.
13. I find on that basis that a de novo rehearing is required, with no preserved findings. In light of the fairness issue I find it is appropriate to remit the appeal to the First-tier Tribunal at Bradford to be heard afresh by a judge other than Judge Fisher.

Notice of Decision

14. The First-tier Tribunal has been found to have erred in law in a manner material to the decision to dismiss the appeal. The determination shall be set aside. There shall be no preserved findings. The appeal shall be remitted to the First-tier Tribunal sitting at Bradford to be heard afresh by a judge other than Judge Fisher.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 July 2023