



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003344

First-tier Tribunal No: PA/52426/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

24th October 2023

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

KI (Iraq)
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Decided on the papers on 12 October 2023

DECISION AND REASONS

1. It is common ground between the parties that a decision of First-tier Tribunal Judge Shergill (“the judge”) dated 15 March 2023 involved the making of an error of law, that it should be set aside, and that the appeal should be remitted to the First-tier Tribunal to be heard afresh by a different judge.

Procedural background

2. The appellant is a citizen of Iraq. He claimed asylum. The basis of his claim was, in summary, that he was a member of the Shabaki minority in Iraq, and, within that minority group, he was within a further minority grouping, the Bektashi. He claimed that he faced being persecuted by both Sunni and Shia Muslims.
3. The claim was refused on protection and human rights grounds, and the appellant appealed. The appeal was heard by the judge on 7 March 2023. The judge dismissed the appeal. First-tier Tribunal Judge Bulpitt granted permission to appeal against the judge’s decision on 1 August 2023. By a rule 24 notice dated 14 August 2023, the Secretary of State conceded that the decision of the judge involved the making of an error of law on grounds that included procedural unfairness.

The Secretary of State's concession

4. The rule 24 notice conceded the appeal and invited the Upper Tribunal to remit the appeal to the First-tier Tribunal to be reheard *de novo*. At para. 3 it stated:

"The SSHD accepts that the FTTJ's comment [8] "Having reviewed all the evidence post-hearing, I have taken a different view about the claimed lack of understanding of Arabic" supports the view that procedural unfairness took place as there is no suggestion that the FTTJ reconvened the hearing or otherwise notified the parties of their post-hearing concerns inviting comment pre-promulgation. There is no suggestion [24] that the FTTJ raised concerns before the parties at the hearing. The HOPO hearing minute confirms matters proceeded by way of submissions only and records no concerns as to any concessions made in the SSHD's refusal. As such the SSHD would support remittal to the FTT for 'de novo' hearing on the basis of material error relevant to the credibility assessment see also [31]- "I would have wanted to hear from the appellant about that had he not evaded giving evidence"; it is clear the 'language issue' was relied upon in assessing risk on return "He speaks Arabic and has lied about his ability to do so."

(FTTJ means First-tier Tribunal Judge; HOPO means Home Office Presenting Officer; SSHD means the Secretary of State for the Home Department)

5. In response to directions issued by the Upper Tribunal, the appellant's representatives stated in an email dated 27 September 2023 that, "we consent to the Upper Tribunal remitting the hearing back to the [First-tier Tribunal] for a *de novo* hearing."
6. The matter was passed to me to determine whether to allow the appeal on the papers.
7. Pursuant to rule 34(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Upper Tribunal may make any decision without a hearing. The views of the parties favour this approach, which is a factor to consider under rule 34(2). In my judgment, bearing in mind the overriding objective to decide cases fairly and justly, and the need to avoid delay so far as is compatible with proper consideration of the issues, it is appropriate to determine this matter on the papers. Both parties invite the Upper Tribunal to do so. I find oral hearing would serve no purpose and would only waste the time and resources of all parties concerned, since it is common ground that the hearing before the judge was procedurally unfair.

Unfair hearing before the judge

8. I agree that the Secretary of State's concession was properly made, for the reasons she set out at para. 3 of the rule 24 notice. I adopt those reasons.
9. I therefore find that the decision of the judge involved the making of an error of law and set it aside, with no findings of fact preserved. Since the appellant was deprived of a fair hearing before the First-tier Tribunal, the only appropriate course is to remit the appeal to the First-tier Tribunal to be reheard, by a different judge.

Anonymity

10. The judge made an order for anonymity. I maintain that order in light of the fact this appeal is yet to be determined.

Notice of Decision

The decision of Judge Shergill involved the making of an error of law and is set aside with no findings of fact preserved.

The appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Shergill.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 October 2023