



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001109

First-tier Tribunal No:
PA/51035/2023
LP/00419/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 July 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

CAB
(ANONYMITY DIRECTION MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

REPRESENTATION

For the Appellant: Mr B Bedford, instructed by Braitch Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 28 June 2024

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Iraq and of Kurdish ethnicity. He arrived in the United Kingdom on 16 October 2019 and claimed asylum the following day. His claim was refused by the respondent for reasons set out in a decision dated 4 February 2023.

2. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Juss ("Judge Juss") for reasons set out in a decision dated 12 February 2024.
3. The appellant claims the decision of Judge Juss is vitiated by material errors of law. First, the judge failed to correctly apply the country guidance set out in *SMO & KSP (Civil status documentation; article 15) Iraq CG [2022] UKUT 00110 (IAC) ('SMO2')*. In summary, it is not possible to obtain an INID by proxy, and there is no finding anywhere in the country guidance to support the conclusion reached by the judge. Second, the judge failed to make any findings as to the appellant's credibility other than to say he does not find the appellant's claim of being at risk to be credible, without making any findings as to the appellant's account and explaining why his account is not credible and is rejected. Third, the judge failed to adequately engage with the expert evidence of Dr Rebwar Fatah. Finally, without any proper reasons, it was irrational to conclude that as the appellant's mother did not pay the ransom, the appellant is unlikely to be in 'that situation' again. The appellant claims the judge failed to make any finding on the risk to the appellant from the past failure to pay ransom and of the risk that the appellant would be targeted in the future.
4. Permission to appeal was granted on all grounds by First-tier Tribunal Judge Buchanan on 14 March 2024.
5. At the hearing before me, Mr Bates candidly accepted the decision of Judge Juss is infected by material errors of law and must be set aside, essentially for the reasons identified in the grounds of appeal. He acknowledged, the judge erred as to his consideration of the evidence, the assessment of the risk upon return, and in his conclusion that the appellant's family would be able to assist the appellant obtain an INID by proxy. He submits that reading the decision as a whole it is difficult to discern any findings that can properly be preserved.

DECISION

6. The claim advanced by the appellant is summarised in paragraph [4] of the decision. The judge's findings and conclusions are set out at paragraphs [17] to [28]. The judge referred to the expert evidence of Dr Rebwar Fatah that is relied upon by the appellant. However, he concluded that the appellant will not be at risk upon return even to the lower standard. At paragraph [24], the judge referred to the appellant's claim that he was kidnapped and held by Hashd al-Shaabi against his will, and, that they tried to obtain ransom funds from his family. The judge also referred to the appellant's *sur* place activities in the UK and said:

"22. ...Since the Appellant's mother did not pay this ransom I find he is unlikely to find himself in that situation again. He has no profile in Iraq. He is no more than a low-level activist due to his actions in the

UK and he will not be at risk. The Appellant also has not provided a full account of his Facebook but only selective posts...”

7. The judge went on to address the viability of the appellant’s return to Iraq by reference to the relevant country guidance. The judge found the appellant remains in contact with his family and at paragraph [26] said:
“...the Appellant can obtain an INID and his family can do that by proxy as evidenced.”
8. Although brevity is to be commended a, party appearing before a Tribunal is entitled to know, either expressly stated by it or inferentially stated, what it is to which the Tribunal is addressing its mind. Standing back, having considered the decision of the FtT I am satisfied that the decision of Judge Juss is vitiated by material errors of law for the reasons set out in the grounds of appeal and conceded by Mr Bates.
9. As to disposal, I am conscious of the Court of Appeal’s decision in *AEB v SSHD* [2022] EWCA Civ 1512, *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and §7.2 of the Senior President’s Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the FtT, whereas sub-paragraph (b) directs me to consider whether I am satisfied that 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.
10. Having regard to the nature of the errors of law, I accept the appellant was deprived of a fair opportunity to have his international protection claim, the risk upon return and the availability of the required ID documents considered by the FtT and the appropriate course, in fairness to the appellant, is for the appeal to be remitted for rehearing before the FtT.

Notice of Decision

11. The appeal to the Upper Tribunal is allowed.
12. The decision of First-tier Tribunal Judge Juss dated 12 February 2024 is set aside.
13. The appeal is remitted to the First-tier Tribunal for hearing afresh with no findings preserved. 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

28 June 2024