



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/00680/2015  
AA/00681/2015

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 20 October 2015**

**Decision & Reasons Promulgated  
On 29 October 2015**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB**

**Between**

**ASAA  
MWAJ  
(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr C Simmonds of Duncan Lewis Solicitors

For the Respondent: Mr M Diwaycz, Home Office Presenting Officer

**REMITTAL AND REASONS**

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) in order to protect the anonymity of the appellants who claim asylum. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellants. Any disclosure and breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or court.

## **Introduction**

2. The appellants are citizens of Iraq who were born respectively on 15 October 1986 and 22 July 1992. They are married. They arrived in the United Kingdom on 25 September 2014. They claimed asylum based upon a fear from Sunni and Shia armed militia in Iraq. The first appellant claimed that his sister's brother-in-law, who was his employer, had been murdered by militia on 11 April 2015. He had experienced physical violence at the hands of the militia, their family home had been attacked and he feared the militia on return.
3. On 11 December 2014, the Secretary of State refused the appellants' applications for asylum. The Secretary of State refused each of the appellants leave to enter and proposed to remove them to Iraq.
4. The appellants appealed against those immigration decisions to the First-tier Tribunal.

## **The Hearing before the First-tier Tribunal**

5. The hearing before the First-tier Tribunal took place on 19 June 2015. The appellants were not represented. Following the hearing, in a determination promulgated on 1 July 2015 Judge Coaster dismissed each of the appellants' appeals on asylum and humanitarian protection grounds and under the European Convention on Human Rights.
6. In reaching her decision, the judge made an adverse credibility finding against the appellants. In addition, she did not accept that the appellants could succeed under Art 15(c) of the Qualification Directive.

## **The Appeal to the Upper Tribunal**

7. The appellants sought permission to appeal to the Upper Tribunal on two grounds. First, it was argued that the proceedings before the First-tier Tribunal were unfair as the judge should have adjourned the hearing in order to allow the appellants to be represented and in order to allow the appellants to obtain translations and have authenticated two documents submitted at the hearing, namely a death certificate in relation to the first appellant's sister's brother-in-law and a threatening letter from a militant Shia group. Secondly, the judge had wrongly failed to give no weight to the death certificate despite the judge accepting that it was genuine.
8. On 29 July 2015, the First-tier Tribunal (Judge Kelly) granted the appellants permission on both grounds.
9. Thus, the appeal came before me.

## **Discussion**

10. Mr Simmonds, on behalf of the appellant relied on the two grounds of appeal. As regards ground 1, he submitted that the hearing before the

First-tier Tribunal was unfair as the appellants' legal representatives had withdrawn nine days before the hearing and the appellants were unable properly to prepare for the appeal hearing including submitting appropriate background evidence. Secondly, it was unfair not to adjourn the hearing in order to allow the appellants to obtain a certified translation and authentication of the death certificate and threatening letter.

11. As regards the second ground, Mr Simmonds submitted that in para 42 the judge had been wrong to give the death certificate "no weight" when she accepted that it was authentic and that it showed, consistently with the first appellant's account, that his sister's brother-in-law had died as a result of a bullet wound to the head.
12. On behalf of the respondent, Mr Diwaycz did not accept that the proceedings were unfair as a result of the absence of legal representation. He submitted that there was no reason to conclude, reading the determination as a whole, that the judge did not assist the appellants in presenting their appeals. However, he indicated that he was troubled by the judge's approach to the documents and the fact that the appellants were not given an opportunity to obtain translations and to authenticate the documents. He drew my attention to para 22 of the judge's determination where the contents of the threatening letter is set out and said to be the "interpreter's translation of the letter". Mr Diwaycz accepted that it was not clear whether the interpreter, whose function was to interpret and not translate written documents, had interpreted the letter as read out by the first appellant or had given a translation of the written document. Having heard Mr Simmonds' submissions, Mr Diwaycz indicated that he accepted that the First-tier Tribunal's decision could not stand because of the judge's treatment of the documents.
13. I entirely agree with Mr Diwaycz's position. The appellants had made an application shortly before the hearing to adjourn it on the dual grounds of seeking legal representation and in order to obtain translations of the documents. That application was refused on paper on 16 June 2015.
14. Although no new application was made at the hearing, the appellants were legally unrepresented and it was a continuing obligation of the judge to consider whether the proceedings should be adjourned on any basis that would otherwise lead to the proceedings being unfair. Here, the appellants were relying upon two documents which were not in translation but which were obviously relevant to their claims. To form part of the appellants' case at the hearing, those documents had to be provided in English translation (see the Tribunal Procedure Rules 2004, Rule 12(5)(b)). As Mr Diwaycz acknowledged, it is not clear how any English translation was before the judge. It appears, however, that it was in some way derived from the interpreter who was present (see para 38 of the determination). It is not clear whether that interpreter was qualified to translate documents rather than interpret evidence given at the hearing. In any event, given the relevance of these documents, the appellants were entitled to the opportunity to have them translated and authenticated (if

that were possible) and submitted to the Tribunal as part of their case. Both the respondent's representative at the hearing and the judge in her determination called into question the authenticity of the threatening letter. Although the judge accepted the authenticity of the death certificate, like the threatening letter, it was not submitted in translation and the only source of its contents could have come from the interpreter.

15. As Mr Diwaycz acknowledged, there are serious concerns about the process by which translations of these documents were before the judge. The proper procedure was to allow the appellants an opportunity to have the documents translated and (if possible) authenticated. In failing to provide the appellants with that opportunity, albeit inadvertently, the proceedings were unfair as the appellants were denied an opportunity to present relevant evidence to their claims.
16. I agree with Mr Diwaycz's concession that the First-tier Tribunal's decision cannot, as a result, stand.
17. In the light of that I need say no more about Mr Simmonds' submission based upon the absence of legal representation.

### **Decision**

18. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellants' appeals involved the making of an error of law. The First-tier Tribunal's decision is set aside.
19. Given the nature and extent of fact-finding required and having regard to para 7.2 of the Senior President's Practice Statement, these appeals are remitted to the First-tier Tribunal for a *de novo* re-hearing before a judge other than Judge Coaster.

Signed

A Grubb  
Judge of the Upper Tribunal