



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09259/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 29 March 2016

Decision and Reasons Promulgated  
On 29 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

A N A  
(ANONYMITY ORDER MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Schwenk (Paragon Law)  
For the Respondent: Ms S Sreeraman (Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the appeal of ANA, a citizen of Iraq born 1 June 1998, against the decision of the First-tier Tribunal on 27 January 2016 to dismiss his appeal against the making of removal directions under paragraph 2 of Schedule 2 to the Immigration Act 1971 following the refusal of his asylum claim on 5 June 2015.
2. His case as put before the First-tier Tribunal was that he was born in Qasri in the Kurdistan Region. His brothers had been in the Peshmerga there. His family had moved to Jalawla, a town in Diyala Governorate. His brother had told him that this was due to a family dispute. In October 2014 ISIS attacked their town and his father told him to hide. They began shooting; he was not sure how long the insurgents stayed in the house, but shortly thereafter his maternal uncle entered

the building, located the Appellant and covered his eyes before taking him to a ruined house outside the village, where he stayed in the cellar overnight. His uncle returned and told him that his family had been killed, and that he would need to make arrangements for him to leave the country. The Home Office refused his asylum claim because it did not accept that his account of moving to Jalawla was true: he had variously stated that he had moved there two years ago and at the age of two, and that his knowledge of the locality seemed was vague; there were additionally inconsistencies in his account of the attack on the family home.

3. The First-tier Tribunal found that, whilst the benefit of the doubt should be applied more generously when dealing with a child, his statements were not coherent and plausible, in particular regarding his move from Qasra to Jalawla, and his failure to claim asylum in Greece and France additionally damaged his claim. Much of his claim was potentially undermined by his age assessment interview at which he had proffered an account which was at odds with the fundamental tenets of his asylum claim: in particular he had not mentioned the family move from Erbil to Diyala. Noting that the age assessment took place at a police station which she agreed was not ideal, the Judge went on to find that the Appellant had said that he understood the interpreter at that interview notwithstanding his current claim that there had been difficulties in comprehension because of the difference between their dialects; the assessment was also impressive in that it included a wide range of areas of enquiry, and he said that he was sufficiently rested to participate in the interview notwithstanding that he had only recently arrived and had a few hours sleep; he was to be presumed as intelligent and articulate given his stated ambition of being a doctor, and that his statement that the agent had told history to lie did not sit comfortably with his self-evident objective of putting across a coherent asylum claim. She accordingly found that the age assessment was the most reliable history against which his asylum claim should be assessed. Furthermore, he had given scant evidence as to the tribal dispute that led to the move from Qasra to Jalawla. In these circumstances, his asylum claim was undermined, so that the events he claimed to have suffered from ISIS could not have taken place in Jalawla, a place where she did not accept that he had ever resided.
4. As to his mental health, she summarised aspects of the expert report, and in her findings stated that she accepted that he was suffering from a moderate depressive disorder, generalised anxiety disorder, moderately severe PTSD and an obsessional compulsive disorder. He had two brothers remaining in Iraq and she did not accept that they had been killed by ISIS: they were to be presumed as remaining in the family's original home area where he should have been able to contact them; his failure to assist the Respondent in tracing them was a matter for which he was culpable. In conclusion it was not accepted that the Appellant came from a contested part of Iraq, and he could reasonably be expected to return safely to the Kurdish north.

5. As he was born and raised in Iraq he presumably had social, cultural or family ties there, spoke Kurdish and studied Arabic, was nearly aged 18, and had had an opportunity to further his education here; in Iraq he would be able to assert his citizenship rights. It was in his best interests to remain in the United Kingdom but not overwhelmingly so. He would be able to integrate on a return to Iraq. Outside the Rules, the adverse factors such as the costs of his education here and his precarious immigration status, and the lack of any real likelihood that he would become self sufficient, and his limited English proficiency, outweighed his private life interests including the fact that his best interests pointed towards him remaining here.
6. Miss Pargeter's report of January 2016 set out that she was a Fellow at the Royal United Services Institute and that mental health care in Iraq was particularly underdeveloped, and the provision existing there made it unlikely he would be able to access the treatment he required. Dr Winton's report concluded that the Appellant's presentation was consistent with that of someone who had lost his family and with someone suffering PTSD; on a return his mental health would significantly deteriorate. He stated that

"It is also my opinion that he will be vulnerable when giving evidence in the Tribunal ... The psychological research shows that people with depression, anxiety and Post Traumatic Stress Disorder have impaired concentration and impaired memory ... this will impair his ability to answer questions put to him and would increase the risk of giving inconsistent answers. The danger here is that the Tribunal would see this as undermining his credibility whereas in fact it is merely an effect of his anxiety and depression."
7. Permission to appeal was granted without any limitation on the available grounds though with particular regard to these factors:
  - (a) As to the protection aspect of the appeal, by Judge Holmes for the First-tier Tribunal on 10 February 2016 because the Appellant's age had not been taken into account in the assessment of any discrepancies in his account;
  - (b) As to the Article 8 dimension, by Judge Smith for the Upper Tribunal on 4 March 2016, because of the arguable failure to adequately address the Appellant's age and the availability of reception arrangements in Iraq following his return.
8. In a response of 29 February 2016 the Secretary of State argued that the findings were ones which the First-tier Tribunal was entitled to have made.
9. Before me Mr Schwenk maintained that there had been a misdirection as to the standard of proof and the role for corroboration and that the impact of the medical evidence on the approach to credibility had not been properly assessed. Ms Sreeraman maintained that the approach to the evidence was lawful.

## Findings and reasons

10. The principal issue in this appeal is the adequacy of the treatment of the medical report. In *JL (medical reports-credibility) China* [2013] UKUT 145 (IAC) the Tribunal ruled that “judges should be aware that, whilst the overall assessment of credibility is for them, medical reports may well involve assessments of the compatibility of the appellant’s account with physical marks or symptoms, or mental condition.”

11. In this case the question was whether the Appellant's evidence might be affected by the difficulties that his mental health could be expected to cause him. As I raised at the hearing, no attention appears to have been given by the First-tier Tribunal to the Joint Presidential Guidance Note No 2 of 2010 addressing *Child, vulnerable adult and sensitive appellant[s]*:

“2. Although some individuals are by definition vulnerable others are less easily identifiable. Factors to be taken into account include:  
mental health problems ...

14. Consider the evidence, allowing for possible different degrees of understanding by witnesses and appellant compared to those are not vulnerable, in the context of evidence from others associated with the appellant and the background evidence before you. Where there were clear discrepancies in the oral evidence, consider the extent to which the age, vulnerability or sensitivity of the witness was an element of that discrepancy or lack of clarity.”

12. Although the First-tier Tribunal referred to the medical evidence before it, it did so only in the sense of summarising its contents and without engaging with the report’s conclusions as to the Appellant's likely presentation as a witness, which bore on the very basis of the Tribunal’s assessment of the Appellant’s evidence, in which it held the presence of discrepancies against his credibility. That was a serious failure to take account of a relevant consideration which on the facts of this appeal amounts to a material error of law. Given that that error infects all the factual findings including those as to the location and availability of family members to support him on art, the consequence is that the assessment of Article 8 ECHR is also flawed.

### Decision:

The making of the decision of the First-tier Tribunal contains a material error of law. Given that that error infects all of the findings of fact upon which the appeal falls to be determined, it is appropriate to remit the appeal to the First-tier Tribunal for both asylum and human rights grounds to be considered afresh.

**ANONYMITY ORDER**

As the Appellant's claim to be a Convention refugee remains unresolved, unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A handwritten signature in black ink, appearing to read 'MAS', with a long, sweeping underline that extends to the left and then curves back towards the right.

Signed:  
Deputy Upper Tribunal Judge Symes

Date: 27 April 2016