



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

Appeal Number: AA/08042/2015

THE IMMIGRATION ACTS

Heard at Manchester

On 13 July 2017

Decision &

Promulgated

On 17 July 2017

Reasons

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**MOHAMMED SALEH ALLAWI AL-QARGHALLI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Walker, instructed by 1A Solicitors

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Mohammed Saleh Allawi Al-Qarghalli, was born on 18 June 1986 and is a male citizen of Iraq. The appellant appealed against the decision of the respondent dated 4 November 2014 refusing his asylum and Articles 2/3 ECHR claims. The First-tier Tribunal (Judge E M M Smith)

in a decision promulgated on 15 December 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant had claimed, *inter alia*, that he feared return to Iraq on account of his father's involvement in the regime of Saddam Hussein. That was the claim which was rejected by the judge [34]. In support of his claim, the appellant had produced in evidence an Iraqi identity document which he claimed had belonged to his father. In addition, the appellant had produced photographs which appear to show a man identified by the appellant as his father with Saddam Hussein. Several of these photographs have been annotated by the caseworker of the Home Office; at the hearing before the Upper Tribunal, Mr McVeety, for the respondent, agreed that the annotations had been added by one of his colleagues. One annotation reads "*a series of 8 photographs - person in these photos DOES match the photograph on ID card (attached). Original seen.*" The refusal letter [12] recorded the appellant's claim that his father had been linked to Saddam Hussein and also refers to the photographs and the ID card. However, the refusal letter observes that the appellant had provided no evidence of his father's role within the Saddam Hussein government and also that the ID card had not been translated. For that reason, little weight had been attached to it. However, by the time the appeal had reached the First-tier Tribunal, the appellant had obtained an English translation of his father's ID card. Given the particular reason for attaching little weight the card provided in the refusal letter and in the light also of the annotations added by the caseworker to the photographs, it is surprising that the judge makes no reference to the ID card in his decision. I am aware that the judge is not required to make findings in respect of each and every item of evidence which is adduced by either party but I do find that the significance of the document which the appellant claims is the ID card of his father was such that the judge should have considered it in his analysis. I find that his failure to do so amounts to an error of law.
3. Further, I find that the judge has dealt inadequately in the decision with evidence concerning the appellant's brother. It is apparent from the record of proceedings that the appellant's brother and the difficulties he had faced in Iraq had been discussed at length in cross-examination and also in submissions. However, the brother is referred to only fleetingly in the decision, in particular at [34], where the judge wrote;

"I take note that having escaped in the most unusual circumstances from his then captors, the appellant returned to Baghdad where he remained until he left Iraq, supposedly after his brother had been abducted for which a ransom was paid. No evidence has been provided from the appellant's brother to confirm this and the appellant's father statement makes no mention of it."
4. The parties agree that the judge misunderstood the evidence. The appellant had returned to Baghdad (where he had remained until he left Iraq) some time before his brother had been abducted; the appellant's

evidence was that the abduction had occurred in 2016. Given the significance of the brother in the appellant's claim, I find that the judge has failed to address adequately this element of the account.

5. Mr McVeety acknowledged that he was in some difficulty in defending the judge's decision. He made what I considered to be a good point when he told me that the judge appears to have attached excessive weight to the fact that the appellant's answers in the screening interview had made no mention of the appellant having left Iraq on account of problems concerning his father's association with Saddam Hussein. Whilst I agree with Mr McVeety that the judge was entitled to take account of apparent omissions in the screening interview answers, I acknowledge also that the appellant had referred to his father in the written statement which he produced after the screening interview and before the asylum interview in which he discussed his father at length. Moreover, there is force in Ms Walker's submission that the screening interview is not intended to be a full and thorough statement of an individual's asylum claim. A reading of the whole determination indicates that the judge appears to have considered the screening interview omissions as the primary reason for disbelieving the appellant's account; in consequence, he failed to analyse in sufficient detail other elements of claim.
6. Considered as a whole, I find that the errors which I have identified should lead me to set aside the First-tier Tribunal decision. Since these errors have infected the fact-finding analysis of the judge, none of the findings of fact shall stand. A new fact-finding exercise is better conducted in the First-tier Tribunal to which this appeal is now returned.

Notice of Decision

The decision of the First-tier Tribunal, which was promulgated on 15 December 2016, is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not judge E M Smith or E M M Smith) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 15 JULY 2017

Upper Tribunal Judge Clive Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 15 JULY 2017

Upper Tribunal Judge Clive Lane