



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04938/2016

THE IMMIGRATION ACTS

Heard at Bradford UT
On 22nd May 2017

Decision & Reasons Promulgated
On 26th June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A.M.A.
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Diwyncz, Senior Home Office Presenting Officer
For the Respondent: In person.

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a First-tier Tribunal (Judge Duff) allowing the appeal of A.M.A. against the Secretary of State's decision of 26th April 2016 refusing his claim to asylum/humanitarian protection/human rights.
2. For the sake of clarity, I shall throughout this decision, refer to the Secretary of State as "the Respondent" and to A.M.A. as "the Appellant" reflecting their respective positions before the First-tier Tribunal.

Background

3. The Appellant is a citizen of Iraq, born 1994. He originates from Dohuk City in Iraqi Kurdistan. He arrived in the UK around 24th November 2016 and was arrested by immigration enforcement officers in Banbury. He claimed asylum on arrest. His claim was refused by the Respondent and the Appellant appealed that refusal to the First-tier Tribunal ("FtT").

FtT Hearing

4. When the Appellant's appeal came before the FtT the judge took oral evidence from him and noted that the core of the claim centred on the Appellant's sexual relationship with his girlfriend. When the girl's family became aware of the relationship they threatened to kill him and therefore he had to leave his home and travel abroad.
5. The Respondent disbelieved the Appellant's account altogether. However it is right to say that the FtT found the Appellant to be a credible witness so far as the account of the relationship with his girlfriend is concerned. What the judge did not accept however was the Appellant's claim that the widespread influence of the girl's family meant that they would have the means to seek retribution against him throughout the whole of the Kurdish Autonomous Region.
6. The judge made findings at [29] and [30] that he could see no reason why the Appellant could not return to Iraq and relocate safely to another part of Kurdistan, notably Sulemeiya.
7. The judge then concluded his decision by setting out at [37] under a heading entitled Notice of Decision

"The appeal is allowed on asylum grounds, humanitarian protection grounds and human rights grounds."

Onward Appeals

8. Both the Respondent and the Appellant sought permission to appeal. The Appellant's application was on the basis that the FtT had described him as "a citizen of Afghanistan" and because he disagreed with the judge's findings on the safety or

otherwise of relocation in Iraq. Permission was refused in the Appellant's case and suffice to say he has taken that decision no further.

9. The Respondent sought permission to appeal on the basis that the FtT's decision contained material error because
 - the factual findings set out in the substantive part of the decision did not tally with the Notice of Decision allowing the appeal
 - in accordance with **Katsonga (Slip Rule: FtT's general powers) [2016] UKUT 228**, this error meant that the decision must be set aside in its entirety and the matter remitted to the FtT for a fresh hearing
10. Permission having been granted by DJ Woodcraft, the matter comes before me to decide whether the decision of the FtT contains a material error of law requiring it to be remade.

Error of Law

11. Before me, Mr Diwyncz appeared for the Respondent. The Appellant appeared in person. Difficulties arose at the start of the hearing because the Appellant was not represented nor was there an interpreter available to assist. However the Appellant did have some command of English and I was satisfied that it was sufficient to enable him to understand the purpose of the hearing.
12. Mr Diwyncz's submissions relied upon the written grounds seeking permission. The Appellant in his submission sought to say that the judge had decided matters wrongly and to point out that he was not from Afghanistan but came from Iraq. He said that his life was in danger and he could not return to any part of the Kurdish region because it was a small area and he would be found.

Consideration

13. I find I am satisfied that the decision of Judge Duff contains a material error of law as identified in the Respondent's grounds seeking permission. It is clear from reading the decision as a whole that either the judge's Notice of Decision is recorded in error or that the findings in the substance of the decision are perverse given the final outcome. Whichever of those alternatives is the correct one however is not clear.
14. Added to this, there is a clear finding at [14] that there was a concession by the Appellant's counsel who appeared at the FtT hearing, that it was not contended that the Refugee Convention was engaged. Counsel sought humanitarian protection only for the Appellant. In apparent disregard of that, the judge's Notice of Decision allows the appeal on asylum grounds.
15. As matters have now gone so far as to come before this Tribunal, I find that there is no alternative but to set aside the decision in its entirety; no findings can be preserved. The decision will have to be remade. This finding is in accordance with

the decision in **Katsonga**. The matter will now be remitted to the First-tier Tribunal for a fresh decision to be made by that Tribunal.

Notice of Decision

The decision of the First-tier Tribunal is set aside. The matter is remitted to the First-tier Tribunal for a fresh hearing, before a judge other than Judge Duff.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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.

Signed

C E Roberts

Date

26 May 2017

Deputy Upper Tribunal Judge Roberts