



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12637/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Newport

On 8 November 2017

**Decision & Reasons
Promulgated**

On 15 November 2017

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

K M

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O'Dair, Counsel, instructed by OTS Solicitors

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge A E Walker promulgated on 26 April 2017, dismissing his appeal against the decision of the respondent made on 8 November 2016 to remove him from the United Kingdom having refused his protection claim.
2. The appellant is a citizen of Iraq and an ethnic Kurd from Mosul. His claim was based on a feud with the Sorchi tribe and he asserted that he would not be safe anywhere in Iraq. The respondent did not accept his case and concluded that he could safely be returned to Iraq.

3. The appellant stated during the hearing that he had problems with his memory, something which he said had also occurred during his interview on 4 November 2016 (see decision at [15] and [32]). The judge noted also that the quality of the evidence was poor [43] and at [50] attributed the failure to give detailed answers because he simply did not remember what he had written. She noted that there was no medical evidence to support the contention that the appellant was not able to work [53] though it was noted that he was taking a low dose of antidepressants [53].
4. The appellant sought permission to appeal on the grounds that:-
 - (i) the judge had failed to take into account the unchallenged psychiatric report by Professor Ikkos that the appellant was suffering from post-traumatic stress disorder which he described as impairing the appellant to narrate details of his ordeal; and, that the failure to address this undermined the credibility findings;
 - (ii) the judge had erred in taking over cross-examination on behalf of the Home Office;
 - (iii) the judge had failed to direct himself in accordance with **Chiver**.
5. After some discussion between the representatives, it became clear that an additional bundle had been served on 9 December 2016 prior to the hearing. The psychiatric report from Professor Ikkos contained in that bundle is referred to expressly in Mr O'Dair's written submissions which were served after the close of the hearing in accordance with the directions given by the judge.
6. Given the length of time that elapsed between the hearing and the signing of the judgment, it may well be the case that parts of the material placed before the judge became detached from the file as the only document from the additional bundle on file is the witness statement of the appellant. I have no reason to doubt Mr O'Dair's submissions which refer directly to the report or to doubt that the letter enclosing additional bundle was received by the court on 9 December. It is not at all clear what happened but for reasons which may not have been the fault of the judge a relevant psychiatric report which expressly addressed the appellant's difficulty to recall and that this was not taken into account in assessing credibility.
7. I am satisfied an error occurred in this case whereby relevant evidence was not put before the judge and was not taken into account. I am therefore satisfied that the decision reached was unsafe as regards the findings on credibility as relevant evidence could not have been taken into account and that accordingly the decision involved the making of an error of law.
8. In the circumstances, given that the appeal will need to be reheard, I am satisfied that it would be appropriate to remit the decision to the First-tier Tribunal for a full hearing on all the issues. The matter must not be listed before Judge A E Walker.

Summary of Conclusions

- (1) The decision of the First-tier Tribunal involved the making of an error of law.
- (2) I set aside the decision and I remit it to the First-tier Tribunal for a full hearing on all issues.
- (3) The appeal must not be listed before First-tier Tribunal Judge A E Walker.
- (4) I maintain the anonymity order made by the First-tier Tribunal.

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 their 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

Date: 14 November 2017



Upper Tribunal Judge Rintoul