



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

Appeal Number: PA/08601/2017

THE IMMIGRATION ACTS

Heard at North Shields

On 27 March 2018

**Decision & Reasons
Promulgated
On 05 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**R. H.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq who entered the UK illegally, and who then claimed asylum on 14 January 2016. That protection claim was refused on 23 August 2017. His appeal against that refusal came before the First-tier Tribunal at North Shields on 3 October 2017, when it was heard by First-tier Tribunal Judge Heatherington. The appeal was dismissed on asylum and human rights grounds in a decision promulgated on 5 October 2017, although no reference was made to the humanitarian protection appeal that was before him within that decision.

2. The Appellant's application for permission to appeal was granted by First tier Tribunal Judge Nightingale on 18 November 2017 on all of the grounds advanced. The Judge had described the Appellant as a "mountebank", but his rejection of his evidence was based simply upon a failure to claim asylum in France and a failure to provide corroborative evidence of his account.
3. Both parties are agreed that once it has been stripped of its recitals, this was on any view a very brief decision. It is however not merely brief, but deficient in a number of obvious respects. The Judge fails to engage with the humanitarian protection appeal at all. There is no analysis of the evidence concerning the disputed issue of where the Appellant had previously lived in Iraq, and no clear findings of fact upon what his "home area" was. The human rights appeal is dismissed, but the decision fails to identify, or to engage with to any degree, the nature of the claim advanced.
4. Whilst the Judge did make clear findings rejecting the Appellant's evidence, the Appellant is in my judgement correct to criticise the reasons offered for those findings. Only two are offered; the failure to provide corroboration, and the failure to claim asylum in France. It is far from clear what corroborative evidence the Judge expected the Appellant to be able to source from Iraq and provide to him. Equally it is far from clear what approach the Judge took to section 8 of the 2004 Act; the reader is left with the distinct impression that the Judge took the view that the failure to claim asylum in France meant, of itself, that the Appellant was a witness upon whose evidence no weight could be placed. Although the Judge states [8.14(c)] baldly that he also considers the account is "incoherent and implausible", and [8.12] that he considers the Appellant a "mountebank", "unimpressive" and "inherently unreliable" the decision fails to record adequate reasons for such conclusions.
5. In consequence, it is in my judgement plain that this is a decision that is unsafe. I am not satisfied that its content demonstrates that either of the parties enjoyed a fair hearing of the appeal.
6. Thus the decision must be set aside and remade. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.
7. To that end I remit the appeal for a fresh hearing by a judge other than Judge Heatherington at the North Shields Hearing Centre, with a Kurdish

Sorani interpreter booked. The remitted hearing shall be listed on the first available date after 16 April 2018.

Notice of decision

8. The decision promulgated on 5 October 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo with the directions set out above.

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

Date 27 March 2018

Deputy Upper Tribunal Judge J M Holmes