



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/12859/2017

Appeal Number:

THE IMMIGRATION ACTS

**Heard at North Shields
On 12 October 2018**

**Decision & Reasons
Promulgated
On 12 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**W. J.
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rogers, Immigration Advice Centre
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iraq, entered the United Kingdom illegally in 2008 and claimed asylum. That claim was refused, and his appeal rights against that refusal were exhausted on 23 June 2010.

2. The Appellant lodged a further protection claim on 17 September 2013, which was refused on 15 November 2017. An appeal against the decision to refuse this protection claim was heard and dismissed by First Tier Tribunal Judge Moran in a decision promulgated on 5 February 2018. The Appellant did not attend the hearing.
3. In the course of his decision the Judge noted the absence of any explanation for the Appellant's non-attendance, and lack of any request for an adjournment. He records the enquiries he made to satisfy himself that the Appellant had been served, and having concluded that he had been served, he recorded why he decided to proceed to hear and determine the appeal in the Appellant's absence.
4. Permission to appeal was refused by First tier Tribunal Judge Mailer on 5 March 2018. The Appellant renewed his application to the Upper Tribunal, where it was granted by Upper Tribunal Judge Finch on 23 April 2018 on the single issue that it was arguable the Appellant had not been on notice that the Respondent proposed to argue that he could avoid the risks of harm he relied upon by relocation to the KRG.
5. A Rule 24 Notice has been lodged in response to the grant of permission to appeal, dated 24 May 2018. The Respondent pointed out that the Appellant had been properly served at the only address he had ever provided for service, and, that the issue of internal relocation to the KRG had been properly raised in the reasons given for the refusal of the protection claim.
6. Neither party has applied pursuant to Rule 15(2A) for permission to rely upon further evidence.
7. Thus the matter came before me.

The hearing

8. When the appeal was called on for hearing Ms Rogers, who did not appear below, accepted that a Notice of Hearing was properly served by the Tribunal on the only address for service provided by the Appellant. He has never provided the Tribunal with a contact mobile telephone number. That address was 135 Norton Rd, Stockton. It appears to be common ground that the Appellant never lived there. Ms Rogers invited me to consider the content of the letter dated 5 April 2018 from "Justice First" a charity, based at 135 Norton Rd, who had been assisting the Appellant.
9. That letter confirms that the charity had agreed to allow the Appellant to use their address for correspondence with the Tribunal. It goes on to state that whenever

anything is received by them for the Appellant, he is contacted by phone, and visits the office to pick up the mail and to deal with any issues arising from the content.

10. There is no evidence from the Appellant to contradict the content of the letter of 5 April 2018, or to explain why he did not attend the hearing. No request has been made to allow him to provide evidence pursuant to Rule 15(2A). As Ms Rogers accepted before me, the content of the letter of 5 April 2018 does not support the proposition that the Appellant may never have received the Notice of Hearing. On the contrary, it provides evidence to suggest that he did.
11. In addition, Ms Rogers accepted that the reasons given for the refusal of the protection claim did expressly contain the argument that the Appellant could relocate to the KRG in order to avoid any risk of harm that he claimed to face in the event he returned to Kirkuk.
12. Accordingly, and notwithstanding the terms in which permission to appeal was granted to the Respondent the grounds fail to disclose any arguable error of law in the approach taken by the Judge to the appeal.

DECISION

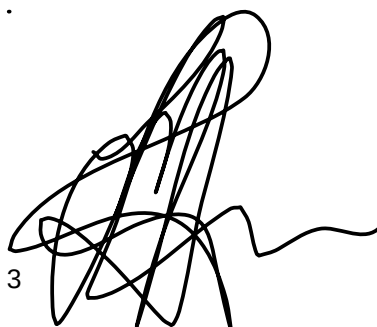
The Determination of the First Tier Tribunal which was promulgated on 5 February 2018 contained no error of law in the decision to dismiss the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 12 October 2018



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