



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

Appeal Number: PA/05574/2019

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 10 January 2020**

**Decision & Reasons Promulgated
On 28 January 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

**KH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Bashow, instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Parker promulgated on 3 October 2019 dismissing his appeal against the decision of the Secretary of State dated 15 May 2019 to refuse his protection claim made on arrival in the UK on 25 February 2015.

2. Designated First-tier Tribunal Judge Manuell refused permission to appeal in the Upper Tribunal on 18 November 2019. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Pitt granted permission to appeal on 9 December 2019.

Error of Law

3. For the reasons set out below I am satisfied that there was a material error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside and remitted to be remade afresh in the First-tier Tribunal.
4. The appellant first came to the UK in 2008 and claimed asylum. Thereafter, that claim was rejected and his subsequent appeal dismissed by the First-tier Tribunal in June of 2010. He returned to the UK in 2015. In fresh submissions the appellant maintained he remains at risk on return to Iraq owing to a conflict with a rival family. He relied on further evidence to substantiate parts of his factual claim that were not substantiated previously by documentary evidence.
5. In granting permission to appeal Judge Pitt granted permission only on the grounds set out in paragraphs 7 and 9 through 12 of the application. Although rejecting the other grounds as being either devoid of any merit or immaterial to the outcome of the appeal, Judge Pitt considered it arguable that the First-tier Tribunal failed to address the new evidence provided by the appellant which specifically sought to address the adverse credibility findings of the earlier Tribunal decision, observing that the error may potentially undermine the overall credibility assessment and the findings as to the appellant's circumstances in Iraq on return, in particular whether he is in contact with his family and whether he can obtain a CSID. Judge Pitt also stated that the comment in paragraph 39 of the decision about there being no need for a solicitor if someone is telling the truth is not easy to understand and is arguably an incorrect approach to the assessment of the evidence.
6. At paragraph 25 of the decision the First-tier Tribunal observed that the previous Tribunal decision found the appellant not credible and concluded that those findings had not been successfully answered by the appellant in the hearing before Judge Parker. The judge acknowledged the change in the law since the earlier decision and took into account the new documents but found that the basic inconsistencies in the appellant's evidence remained. In the succeeding paragraphs the judge then set out those inconsistencies and credibility findings. However, the grounds submit that nowhere does the judge engage with the new documentary material. I have to agree and, very properly, Mr Tan conceded that it is plain from the decision that the judge had not grappled with that new material. In those circumstances and for that reason independently of the other grounds this decision cannot stand.

7. In relation to the comment about a solicitor and telling the truth, from paragraph 32 of the decision the judge addressed what were said to be inconsistencies between the appellant's screening interview and what he said in oral evidence at the hearing. The judge correctly referred to the case law of YL, which explains that whilst not intended to be a comprehensive account, answers given at a screening interview are expected to be true and may fairly be compared with a subsequent account. At paragraph 38 the judge considered that a completely different story had been given to that put forward in the earlier screening interview. At paragraph 39 of the decision the judge addressed the concerns raised on the appellant's behalf that he was interviewed over the phone at a time when he was not legally represented. The judge then stated, "if a person tells the truth in an interview a solicitor is not required."
8. It is not clear what the judge meant by this comment. The grounds at paragraph 9 assert that if this represents the judge's approach to the assessment of credibility, it is wholly inconsistent with the case law and provides no scope for, for example a mistake, human error, errors of translation or a distressed claimant representing himself. I find the comment was unnecessary and I am not satisfied that it ought to have been made. I am not even clear what it was intended to convey.
9. On consideration of the submissions, I accept that it may indicate a flawed approach and for that reason is an error of law. I also note that the decision gives inadequate assessment to the issue of the availability of a CSID. At paragraph 44 it appears that in stating "the appellant does have a CSID card" the judge may have intended to say that he did not have a CSID card but went on to say he had parents and siblings in Iraq who could help him and make sure he had got his CSID card as soon as he arrived. Whether or not there was a typographical error in paragraph 44 or not, I am satisfied, and Mr Tan concedes, that the judge failed to properly address the issue of the CSID card and there is a clear lack of reasoning in the decision for the findings made, which findings take no more than a few lines.
10. In all the circumstances, for the reasons outlined above, it is clear that this decision is flawed for error of law, cannot stand and must be set aside to be remade.

Remittal

11. When a decision of the First-tier Tribunal had been set aside Section 12(2) of the Tribunal's Courts and Enforcement Act of 2007 requires either that the case is remitted to the First-tier Tribunal with directions or it must be remade by the Upper Tribunal. The scheme of the Tribunal Courts and Enforcement Act 2007 does not assign the function of primary fact-finding to the Upper Tribunal given the errors in this case. Effectively there has not been a valid determination of the issues in the appeal. Further given the very recently issued new country guidance in SMO, KSP and IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC), a remaking of

the decision in the appeal will have to take into account this new guidance. In all the circumstances at the invitation and the request of both parties I relist this appeal for a fresh hearing in the First-tier Tribunal on the basis that it falls squarely within the Senior President's Practice Statement at paragraph 7.2.

Decision

12. The making of the decision of the First-tier Tribunal did involve the making of an error of law on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the directions below.



Signed

Upper Tribunal Judge Pickup

Dated

20 January 2020

Consequential Directions

1. The appeal is remitted to the First-tier Tribunal at Manchester.
2. The appeal is to be decided afresh with no findings of fact preserved.
3. The appeal may be listed before any First-tier Tribunal Judge with the exception of Judge Parker and Judge Manuell.
4. The estimated length of hearing is three hours.
5. An interpreter in Kurdish Sorani will be required.
6. The First-tier Tribunal may give such further or alternative directions as are deemed appropriate.

A handwritten signature in black ink, consisting of a large, stylized letter 'A' with a vertical stroke extending downwards and a horizontal stroke at the top.

Signed

Upper Tribunal Judge Pickup

Dated

20 January 2020