



IAC-FH-CK-V1

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

Appeal Number: PA/06452/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 11 March 2020**

**Decision & Reasons Promulgated
On 24 March 2020**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**'AAR'
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

By virtue of the appellant appealing an asylum decision, 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. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: Ms A Patyna Counsel, instructed by Fisher Jones
Greenwood Solicitors

For the respondent: Ms A Everett, Counsel.

DECISION AND REASONS

These are a written record of the oral reasons given for my decision at the hearing.

Introduction

This is an appeal by the appellant against the decision of First-tier Tribunal Judge Thew (the 'FtT'), promulgated on 14 January 2020, by which she dismissed the appellant's appeal against the respondent's refusal on 24 June 2019 of the appellant's protection and human rights claims. That decision had in refused the appellant's application for leave to remain on the basis of asylum or in the alternative humanitarian protection and the appellant's claim that such refusal would breach his rights under articles 2, 3 or 8 of the European Convention on Human Rights ('ECHR').

The core points taken against the appellant by the respondent were as follows. While it was accepted that the appellant was an Iraqi citizen of Kurdish ethnic origin, she disputed that the appellant was a minor, as claimed (aged 16) at the time he claimed asylum. She further disputed that the appellant's father had been the subject of adverse interest from a Shia militia, the 'Popular Mobilisation Forces,' or 'PMF'. She rejected his account that ISIS had attacked the appellant's village and mistreated him; and that he had lost contact with family members. The respondent concluded that the appellant could internally relocate in Iraq if necessary.

The FtT's decision

The FtT did not accept that the appellant was a minor when he entered the UK. The FtT did not regard it as necessary to treat the appellant as a vulnerable witness, by virtue of his educational or social background, ([18]). The FtT accepted that ISIS had attacked the appellant's village as claimed ([23]) although she did not appear to make any reference to the appellant's claims of ill-treatment.

The FtT then went on to consider the appellant's general credibility and accepted that, as a result of the ISIS attack, the appellant's family had moved to Tuz Khurmatu, but she did not accept the remainder of the account, including adverse interest by the PMF, as truthful. This included the account of the circumstances in which the appellant and his father received a telephone call to say that weapons had been found in his father's lorry; and the circumstances in which the appellant had fled Iraq.

The FtT noted that at the time of the FtT hearing, there was an expectation that country guidance, later reported as SMO KSP & IM (Article 15 (c); ID documents) Iraq CG [2019] UKUT 00400 IAC, would be issued. At [10], she recorded that *'there was some discussion about further written submissions being made, time permitting, but I have not received any further submissions.'* The FtT then in her decision applied the guidance set out in SMO, including that the appellant could return to Tuz Khurmatu (see [433] of SMO), and considered whether the appellant had a sufficiently enhanced risk profile so as to engage Article 15(c) of the

Qualification Directive. The FtT found that the appellant was not a credible witness on the core of his claim, as to the reason why he left Iraq; and he had provided a false identification document, with no evidence of how the false document was obtained. The FtT concluded that the appellant would be able to obtain a replacement CSID card and also concluded that there would not be very significant obstacles to his integration in Iraq, as a man of 24, in good health, who would be returning to where his family still lived.

Having considered the evidence as a whole, the FtT rejected the appellant's appeal.

The grounds of appeal and grant of permission

The appellant lodged grounds of appeal on six grounds:

- 1.1. Ground (1) - the appellant's Counsel had, at the FtT hearing, asked to be given the opportunity to make further written submissions on any country guidance, if it were issued prior to the FTT's decision being determined. The FtT had ignored Counsel's request, which was a material error in light of the FtT's application of SMO.
- 1.2. Ground (2) - the FtT had appeared to accept the appellant's account of ISIS invading his village but failed to proceed on the basis that the appellant had previously been ill-treated which was a material fact relevant to his credibility, including his vulnerability and future risk, applying paragraph 339K of the Immigration Rules.
- 1.3. Ground (3) - the FtT had erred in concluding that the appellant was not a vulnerable witness for the purposes of the Joint Presidential Guidance Note No. 2.
- 1.4. Ground (4) - the FtT had failed to take into account the expert evidence of Dr Fatah about the consistency of the appellant's account of adverse interest from the PMF in Tuz Khurmatu, with objective evidence. The assessment instead focussed on the plausibility of the appellant's account, was consequently flawed.
- 1.5. Ground (5) - the FtT had failed to apply SMO correctly, in particular by reference to the sliding scale risk to the appellant as someone of Kurdish ethnic origin, having previously been the victim of previous ill-treatment by ISIS, and having moved from an area previously controlled by ISIS; and as someone who did not speak Arabic. Even on the basis of his Kurdish ethnic origin alone, the appellant would face risk.
- 1.6. Ground (6) - the FtT's conclusions on whether the appellant remained in contact with his family were unclear at [52] to [55].

First-tier Tribunal Judge Grant-Hutchison granted permission on 14 February 2020. She regarded it as arguable that there had been a misunderstanding about the circumstances in which the appellant's Counsel would be given the opportunity to make further written

submissions in light of SMO. The grant of permission was not limited in its scope.

The hearing before me

At the beginning of the hearing Ms Everett made concessions on grounds (1) and (5), specifically that the FtT had erred in law in proceeding to reach her decision without providing the opportunity to Counsel to address her on the country guidance authority of SMO. In relation to ground (5), Ms Everett conceded that the FtT had failed to apply SMO correctly including by reference to the risk factors already identified.

Whilst the remainder of the grounds were not conceded in the same terms, Ms Everett accepted that as a consequence of these errors of law, that with an exception of one preserved set of findings, the terms of which were agreed by the representatives, the conceded errors went to the core of the decision, which required a complete remaking, including in relation to the appellant's credibility. The findings that it was agreed I should preserve were at [23] and [41] of the FtT's decision:

"Given the respondent accepted in the refusal letter that there were ISIS offensives in the area, albeit that the appellant's own village had not been identified as invaded, I find it plausible that there was ISIS activity in his home area, as described."

Paragraph [41] continues:

"I find it reasonably likely that the attack on his village of Albu Najm happened as claimed and that the family moved to Tuz Khurmatu."

Subject to these preserved findings, the representatives agreed with me that in light of the remainder of the findings being unsafe, it was unnecessary for me to determine the other grounds of appeal, suffice it to say that by reference to ground (3), I have not preserved any findings in relation to the appellant's age, noting that there is no bright line in terms of vulnerability between somebody who may either be only just a minor or only just an adult; and that the FtT is not tasked with carrying out an age assessment by way of judicial review.

Decision on error of law

In light of the respondent's concessions, I find that the decision of the FtT contains errors of law, such that it is unsafe and cannot stand, subject to the preserved findings that the attack on the appellant's village of Albu Najm happened as claimed and that the family moved to Tuz Khurmatu.

Disposal

1. With reference to paragraph 7.2 of the Senior President's Practice Statements and the necessary fact-finding relating to the appellant's credibility, this is one of the rare cases that has to be remitted to the First-

tier Tribunal for a complete rehearing. Both representatives were agreed on this course of action should I find there to be material errors of law.

I direct that it is remitted to be reheard at Taylor House Hearing Centre, but not before First-tier Tribunal Judge Thew. A Kurdish Sorani interpreter is needed.

Notice of Decision

The decision of the First-tier Tribunal contains errors of law and I set it aside.

I remit this appeal to the First-tier Tribunal for a complete rehearing, subject to the preserved findings that findings that the attack on the appellant's village of Albu Najm happened as claimed and that the family moved to Tuz Khurmatu.

The remitted appeal shall not be heard by First-tier Tribunal Judge Thew.

The anonymity directions continue to apply.

Signed **J. Keith**

Date: 19 March 2020

Upper Tribunal Judge Keith