



IAC-BH-PMP-V2

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00120/2020 (V)**

THE IMMIGRATION ACTS

**Heard by Skype for business
On the 13 January 2021**

**Decision & Reasons Promulgated
On 27 January 2021**

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**A I
(ANONYMITY DIRECTION MADE)**

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C. Holmes, Counsel instructed on behalf of the appellant

For the Respondent: Ms R. Pettersen, Senior Presenting Officer

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Iraq, appeals with permission against the decision of the First-tier Tribunal (Judge Rose) (hereinafter referred to as the "FtTJ") who dismissed his protection and human rights appeal in a decision promulgated on the 28 February 2020.
2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings

relate to the circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Background:

3. The basis of the appellant's claim is set out in the papers and also summarised succinctly in the decision of the FtTJ at paragraph 2.
4. The appellant is a citizen of Iraq. The basis of his claim was that he had a well-founded fear of persecution in Iraq on the basis of his membership of a particular social group (a victim or a potential victim of an honour crime having had a sexual relationship with K, the wife of a high-ranking member of the PUK).
5. The appellant was born in a village in Tuz -Khurmatu in Salah-al Din and lived there with members of his family until October 2017.
6. The appellant and his family members left the area due to ISIS and went to live in X in Kurdistan (in the area of Sulaymaniyah) where the appellant had a paternal uncle.
7. Whilst there the appellant claims that he began a relationship with K who was the wife of a high-ranking member of the PUK. They began their relationship having met on Facebook in July 2018 and thereafter had a sexual relationship. The appellant claimed that she would collect him in her car from his place of work and they would meet in an orchard owned by her husband.
8. It is said that they were in regular contact from 25 July 2018 until two days before he left Iraq on 1 September 2018. They met approximately 7 to 8 times face-to-face.
9. It is claimed that K's husband found out about the affair and the appellant was informed by K that he should leave Iraq because her husband had threatened to kill him.
10. The appellant left Iraq on 1 September 2018 and entered Turkey illegally where he stayed for approximately three weeks leaving on 24 September 2018. He travelled by lorry and boat and arrived in Italy where he was fingerprinted on 28 September 2018 and then travelled to France.
11. The appellant claimed asylum on 22 November 2018.
12. In a decision letter dated 20 December 2019 the respondent refused his protection and human rights claim. The decision letter accepted that he was a national of Iraq and was of Kurdish ethnicity but for the reasons set out at paragraphs 31 - 49, the respondent rejected his

account that he been involved in a sexual relationship with K or that he had been the subject of any threats made by her husband. The decision letter set out a number of issues relating to the appellant's credibility and the inconsistency of his claim. The respondent considered his return to Iraq and that his claim was that he feared a return to Kurdistan. For the reasons set out at paragraphs 56 - 87 the respondent considered that he would be able to return to Iraq and obtain the relevant documentation in order to return to his home area or in the alternative to internally relocate to another area in Iraq.

13. The appellant appealed that decision, and it came before the FtT on 12 February 2020.
14. In a decision promulgated on the 28 February 2020 the FtTJ dismissed his appeal. The FtTJ did not find that the appellant had given a credible account for the reasons set out at paragraphs 16 - 20 and at paragraphs 22 - 23 reached the conclusion that the appellant by engaging the Red Cross could obtain documents from his family to enable him to return.
15. Permission to appeal was sought on behalf of the appellant and permission was granted by FtTJ Boyes on 28 April 2020 on grounds 2 and 3 and upon renewal, UTJ Jackson granted permission on ground 1.

The Hearing before the Upper Tribunal:

16. In the light of the present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules, directions were sent out to the parties that the provisional view was that it would be appropriate to determine whether the decision involved the making of an error on a point of law without a hearing. Following further directions the appeal was listed as a remote hearing.
17. The hearing took place on 13 January 2021, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
18. The advocates attended remotely. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.
19. Mr Holmes, on behalf of the appellant relied upon the written grounds of appeal. There were also further written submissions dated 17 December 2020. There was a rule 24 response dated 14 September 2020.

20. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

Decision on error of law:

21. It was accepted on behalf of the respondent by Ms Pettersen at the hearing that the grounds advanced on behalf of the appellant demonstrate the making of an error on a point of law and that as the grounds challenge the adequacy of reasoning in relation to the events that the appellant claimed to have occurred in Iraq and also when dealing with the issue of documentation and return to Iraq, that the decision should be set aside and remitted to the FtT for a rehearing afresh.
22. In view of the agreement reached by the parties it is only necessary for me to set out in brief terms why I agree with that approach and why the decision of the FtT discloses the making of an error on a point of law.
23. The grounds settled by Mr Holmes, who was Counsel before the FtT, challenge the adequacy of reasons given by the FtT for rejecting the appellant's account and within that challenge asserts that there was a mistake of fact underpinning paragraph 20 of the judge's decision.
24. Dealing with the mistake of fact, the grounds refer to the decision at paragraph 20. It reads as follows:

"I also found the appellant to be evasive in how he answered some of the questions put to him by the presenting officer, particularly about how he was informed that his life was at risk. Given that, on his account, he was picked up from work, informed of what had happened and then had to hide before leaving Iraq, I would have expected him to be able to say what happened on his last day at work, but he was unable to."
25. It is submitted on behalf of the appellant that it did not appear from Counsel's record of proceedings that the appellant was questioned on either how he was informed that his life was at risk or about what had happened on his last day at work.
26. It is plain from reading the grant of permission that the Tribunal file did not contain a record of proceedings. That being the case Counsel has provided his typed and contemporaneous record of the questions asked and the evidence given and also there is a short, typed copy of an extract entitled "cross-examination" was sent on behalf of the respondent on 14 September 2020.
27. I have had the opportunity of reading both of those documents. When looking at the typed record produced by Mr Holmes there was a reference to the last day of work and the appellant not being able to remember the exact date. In the extract from the respondent, which is a much shorter extract, there is reference to "last day left work last

time you attended work? The reply was “in month 813, 14, 15”. The next question appears to be “before or after last conversation with girlfriend? Reply recorded “I have done that with you, my girlfriend and I left.”.

28. As can be seen from those two extracts, it is entirely unclear what evidence the FtTJ was referring to in his factual finding at paragraph 20. It is also wholly unclear in my judgement as to why the FtTJ found the appellant to be “evasive”. As Ms Pettersen observed it is usual when making such a finding to set out the questions that were posed alongside the answers given to demonstrate why that evidence was not credible or believable. As the grounds set out, it is not possible to discern from paragraph 20 why the judge disbelieved the appellant and in particular what questions the judge had in mind at paragraph 20 of his decision and secondly, which of the appellant’s responses was said to be “evasive”. I agree with that submission and I am satisfied that there is no particularisation of the evidence to support the findings made at paragraph 20.
29. The advocates agree that paragraph 20 provides no understanding of the evidence or why the judge had reached the conclusion that he had been “evasive” concerning two particular areas-how he was informed that his life was at risk or what happened on the last day at work. In my view this was not a mistake of fact as set out in the grounds but is more properly characterised as the failure to give reasons by reference to the evidence to support the assessment made.
30. Dealing with the other grounds, it is accepted by the advocates that the FtTJ failed to give adequate reasons for rejecting the appellant’s core account as to the events that occurred in Iraq. Beyond the finding at paragraph 20 as set out above, the judge set out his factual findings at paragraphs 16- 19. At paragraphs 16 - 18 the judge found that the appellant had been inconsistent in his account as to why he left Iraq given the evidence in his screening interview and his later account. As Ms Pettersen accepted even if that were a finding open to the judge to make, there were no other findings made beyond that expressed at paragraph 19 where the judge found the appellant’s account of being collected by K was not credible because it would put the appellant at risk. She accepted that the findings were inadequate as the grounds submitted and that the FtTJ did not engage with the core aspects of the appellant’s account and give adequate reasons as to why he disbelieved the account given.
31. As to the final ground, Mr Holmes submitted that the judge had failed to apply the country guidance decisions when considering the issues of return and the documentation. As can be seen from the decision the FtTJ addressed this in a short paragraph at [23] where the judge appeared to suggest that as the appellant’s family was in Iran they could assist in obtaining replacement documentation. However, no factual findings were made by the FtTJ as to where the appellant

originated from and his "home area" nor did he make any factual findings as to the circumstances in which the appellant's family were said to have left Iraq nor whether in fact the appellant was in contact with his family members or whether the judge had rejected his account of not being in touch with his family members. Furthermore as Mr Holmes sets out in his grounds, the judge made no factual findings as to how it was said in the light of the country guidance how the appellant would be able to redocument himself.

32. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. When looking at the decision reached on this particular appeal, both advocates agree that there was inadequacy of reasoning for the reasons set out in the grounds. This is a protection claim and required anxious scrutiny and therefore as a result of the error of law, the decision cannot stand.
33. Consequently, I am satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision should be set aside.
34. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

35. Both advocates submit that the venue for hearing the appeal should be the FtT. I have considered their submissions in the light of the practice statement recited above. As it will be necessary for the appellant to give evidence and to deal with the evidential issues, further fact-finding will be necessary alongside the analysis of risk on return in the light of the relevant evidence, and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing.

36. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision should be set aside and remitted to the First-tier Tribunal for a fresh hearing.

Notice of Decision

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT shall be set aside. It will be remitted to 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. 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 Upper Tribunal Judge Reeds
Dated 14 January 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is 'sent' is that appearing on the covering letter or covering email