



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006238

First-tier Tribunal No: PA/50667/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17th of November 2023

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

BA
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Coyte

For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Cardiff Civil Justice Centre on 9 November 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant is a national of Iraq and of Kurdish ethnicity. He claims to have left Iraq in February 2018. He was encountered by the police in the UK on 14 March 2018 and the following day he made a claim for asylum. The claim was refused by the respondent in December 2019 and the appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Lever for reasons set out in a decision promulgated on 11 March 2020.
2. On 14 October 2021, the appellant made further submissions to the respondent. The thrust of the claim advanced by the appellant was that he would be at risk upon return to Iraq because of his attendance at demonstrations and materials posted on his social media account in the UK. The respondent refused the appellant's claim for international protection for reasons set out in a decision dated 20 January 2022. That decision gave rise to a further right of appeal.
3. The appellant's appeal was dismissed by First-tier Tribunal Judge Lester for reasons set out in a decision promulgated on 21 November 2022.
4. The appellant claims the decision of Judge Lester is vitiated by material errors of law. In particular, Judge Lester erred in his assessment of the risk upon return by referring to the decision of the Upper Tribunal in XXX (P/IAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023. That is country guidance relevant to the risk upon return to Iran, and the appellant claims, Judge Lester failed to give adequate reasons for concluding that the appellant's social media activities are not such as would advance or establish a claim. The appellant also claims Judge Lester failed to have an or any proper regard to the country guidance that is relevant to the risk upon return to Iraq set out in SMO and KSP (Civil status documentation, article 15) (CG) [2022] UKUT 00110 ("SMO and Others II").
5. Permission to appeal was granted by First-tier Tribunal Judge Aldridge on 29 December 2022. Judge Aldridge considered it arguable that Judge Lester has failed to properly consider whether the appellant may potentially be at enhanced risk as a result of being a Sunni Kurd, and has failed to apply country guidance in respect of redocumentation in Iraq.
6. Before me, Mr Lawson accepts the decision of Judge Lester is vitiated by material errors of law and must be set aside. He accepts Judge Lester has failed to properly engage with the claims made by the appellant, and importantly, failed to address whether the appellant has access to relevant documents, so that he will not be at risk upon return are set out in SMO and Others II.
7. I have considered the decision of Judge Lester for myself. It is on the face of it, a lengthy decision, but it contains a lengthy extract of what is described as 'the appellant's claim' that is 'cut and paste' from the appellant's skeleton argument and 'Notice of Appeal'. At paragraph [22] Judge Lester sets out the issues and at paragraph there is a further 'cut and paste' from the previous decision of Judge Lever. Judge Lever had considered the issue of 're-documentation' based upon the country guidance in force at that time; SMO, KSP & IM (Article 15(c); identity

documents) (CG) [2019] UKUT 400 (“SMO I”). That, by the time of the hearing before Judge Lester, had been superseded by SMO and others II and it was incumbent on the Judge to address the risk upon return by reference to the updated country guidance. The judge did not do so.

8. The findings and conclusions reached by Judge Lester are set out in four short paragraphs at paragraphs [32] to [35] of the decision. Although brevity is to be commended a, party appearing before a Tribunal is entitled to know, either expressly stated by it or inferentially stated, what it is to which the Tribunal is addressing its mind. In some cases, it may be perfectly obvious without any express reference to it by the Tribunal; in other cases, it may not. The parties are also entitled to be provided with adequate reasons (even if brief), so that they can understand the reasons the judge reached the decision he or she did.
9. I am satisfied the decision of Judge Lester, as Mr Lawson accepts, must be set aside with no findings preserved. I should add that Judge Lester was entitled to have regard to the decision of the Upper Tribunal in XXX (PJAK - sur place activities - Facebook) Iran CG, because it provides useful assistance regarding the assessment of social media activity, but bearing in mind throughout, that the Upper Tribunal there was considering the position (*including the reach of the authorities and their ability to monitor an individual’s activity*) as it is in Iran, and not elsewhere.
10. As to the disposal of the appeal, as the decision of the First-tier Tribunal is set aside because the judge simply failed to properly address the claim, and no findings at all can be preserved so that the appeal must be heard afresh, to do justice in the appeal, the appropriate course if for the appeal to be remitted to the FtT for a fair hearing. To do so reflects the guidance given in Begum (remaking or remittal) Bangladesh [2023] UKUT 46 (IAC).

Notice of Decision

11. The appeal to the Upper Tribunal is allowed.
12. The decision of First-tier Tribunal Judge Lester is set aside.
13. The appeal is remitted to the First-tier Tribunal for hearing afresh with no findings preserved. The parties will be advised of a hearing date in due course.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 November 2023

