



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004157

First-tier Tribunal No: PA/54800/2022  
LP/01256/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

24<sup>th</sup> November 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**NN**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. C. Williams, Fountains Solicitors  
For the Respondent: Mr. P. Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 16 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. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Reed, (the "Judge"), dated 31 August 2023, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse his protection and human rights claim. The Appellant is a national of Iraq of Kurdish ethnicity.

2. Permission to appeal was granted by First-tier Tribunal Judge Hatton in a decision dated 26 September 2023 as follows:

“3. The 2<sup>nd</sup> ground asserts the Judge erred in failing to allow the Appellant’s appeal on human rights grounds. I accept this ground is arguable. In concluding thus, I am mindful the Respondent’s impugned decision (of 17 October 2022) makes explicit the refusal of both the private and family life aspects of the Appellant’s human rights claim. Whilst I am mindful the Respondent’s subsequent Review (of 28 May 2023) conceded the Article 8 ECHR aspect of the Appellant’s claim, I am correspondingly mindful the Respondent did *not* withdraw their refusal decision in this regard. Rather, on my reading of the Respondent’s Review at [8], the withdrawal of their decision to refuse the Appellant’s human rights claim was *conditional* upon the Appellant withdrawing his protection claim i.e. *“should the A wish to accept the R’s offer of leave to remain under Appendix FM, which would place A on a route to settlement, it is open to the A to withdraw his appeal and the R will take the appropriate steps to grant leave”*.

4. Plainly and obviously, the Appellant did not withdraw his protection appeal and therefore, the Respondent was not minded to grant the Appellant leave to remain on human rights grounds as made explicit by the parameters of their Review [see above].

5. Whilst I appreciate the Judge was potentially wrongfooted by the Respondent’s decidedly unorthodox terms (which in effect sought to offer the Appellant an inducement to withdraw his protection claim), it is arguable the Judge erred in failing to allow the Appellant’s appeal on human rights grounds, given that on the factual nexus presented, no aspect at the impugned decision of 17 October 2022 had been withdrawn, because the terms of the Respondent’s so-called *“offer to settle”* were contingent upon the Appellant withdrawing his asylum claim.

6. Permission is refused on the 1<sup>st</sup> ground and granted on the 2<sup>nd</sup> ground.”

### **The hearing**

3. Mr. Lawson accepted at the start of the hearing that the appeal should have been allowed on human rights grounds. He asked the Tribunal to find that the decision involved the making of an error of law in the Judge’s failure to allow the appeal on human rights grounds, and to remake the decision allowing it on human rights grounds, Article 8.

### **Error of law**

4. The Judge states at [23] of the decision:

“The Respondent’s Review conceded the Appellant’s Article 8 ECHR claim based on his relationship with a British partner and child.”

5. At [26] he states:

“It was confirmed that the Respondent conceded the Appellant’s Article 8 ECHR claim and that the Appeal would continue on protection grounds only.”

6. The Judge then proceeded to decide the Appellant’s appeal against the Respondent’s refusal to grant protection, which he dismissed. However he failed to allow the appeal on human rights grounds. Given the concession by the Respondent in respect of the Appellant’s Article 8 claim, I find that the failure to allow the appeal on human rights grounds is a material error of law.

### **Remaking**

7. As accepted by Mr. Lawson at the hearing, the Appellant's appeal falls to be allowed on human rights grounds. The Respondent accepts that the Appellant meets the requirements of Appendix FM of the immigration rules in respect of his relationship with a British partner and child.

### **Notice of Decision**

8. The decision of the First-tier Tribunal involves the making of a material error of law in the failure to allow the appeal on human rights grounds. The decision stands in relation to the Appellant's protection appeal and Articles 2 and 3.
9. I allow the Appellant's appeal on human rights grounds, Article 8.

**Kate Chamberlain**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
16 November 2023