



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001390

First-tier Tribunal No: PA/53776/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 2nd of October 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN

Between

AA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Saikolahi, Counsel instructed by D J Webb & Co
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 30 September 2024

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, who is a national of Iraq, appeals the decision of First-tier Tribunal Judge Atkins promulgated on 28 February 2024 dismissing his appeal against the respondent's decision dated 14 June 2023 refusing his asylum claim.

Background

2. The appellant entered the UK by small boat on 11 May 2021 having previously been unsuccessful in claiming asylum in Sweden and Italy. He claimed asylum in the UK the same day on the basis that his life was at risk in Iraq from a Shi'a militia who he had refused to assist. However, in the decision dated 14 June 2023, the respondent refused the appellant's claim on the basis that she did not find his account of persecution to be credible.

The appeal before the First-tier Tribunal

3. The appellant's appeal against the respondent's decision was heard by Judge Atkins ("the judge") on 15 February 2024. While the judge accepted that the appellant had refused to work for the militia and that, as a result, they had shot him, the judge found that the appellant had sought to embellish his case by claiming that the militia continued to have an adverse interest in him. The judge was not satisfied that the appellant was of continuing interest to the militia and the appeal was therefore dismissed on 28 February 2024.

Grounds of appeal to the Upper Tribunal

4. The appellant was subsequently granted permission to appeal by Upper Tribunal Judge Norton-Taylor on 18 July 2024. While Judge Norton-Taylor did not seek to restrict the grant of permission, he identified one ground as having particular merit. That was whether the judge had made a material error of law at [45] and [46] in finding that the appellant's case was undermined by his claim that his brother had told him in January 2021 that their family home in Iraq had been set fire to by the militia when the evidence was that this had not taken place until March 2021. Judge Norton-Taylor was satisfied that it was arguable that the judge had conflated an alleged attack on the family home in January 2021 with another event, in March 2021, when the militia returned and set fire to the house. The appellant argued that the judge had failed to take into account paragraphs 30 and 33 of his witness statement which referred to two separate events.

Conclusion - Error of Law

5. At the hearing before me, Mr Terrell, representing the respondent, accepted that the judge had made a material error of law at [45] and [46] by conflating two separate claimed events.
6. I cannot say that the judge's conclusions would have been the same had he not made that error and I therefore set aside the decision of the First-tier Tribunal.
7. Ms Saikolah, representing the appellant, submitted that the judge's findings of fact that the appellant had refused to work for the militia and, as a result, had been shot by them, should be preserved. However, she also submitted that the appeal should be remitted on the basis that the appellant wished to advance an additional point not previously argued before the First-tier Tribunal, that he could not safely return to Iraq because he lacks identity documents. This was a point dealt with by the respondent in her decision of 14 June 2023 and it is not therefore a "new matter" for the purposes of s.85 of the Nationality, Immigration and Asylum Act 2002. Mr Terrell was of the view that if the appellant wished to

advance an additional ground, it was more appropriate to remit the appeal with no findings of fact preserved.

8. In the circumstances, I am of the view that none of the findings of fact can be preserved. Taking into account the nature and extent of the findings of fact required to remake the decision, applying paragraph 7.2 of the *Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal* I am satisfied that remittal for a de novo hearing is the appropriate course of action.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on a point of law.

The decision of the First-tier Tribunal is set aside with no findings preserved.

The remaking of the decision in the appeal is remitted to the First-tier Tribunal at Hatton Cross, to be remade afresh and heard by any judge other than Judge Atkins.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

1st October 2024