



IAC-PE-SW-V1

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

Appeal Number: AA/01934/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**On 4 November 2014**

**Determination  
Promulgated**

**On 14 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**MR KOCHAR KHURSHID HASSAN**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT  
(NO ANONYMITY DIRECTION MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Ms Warren, Counsel instructed by GMIAU

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Mr Kochar Khurshid Hassan, date of birth 1 December 1978, is a citizen of Iraq. Having considered the facts there is no need for an anonymity direction.
2. This is an appeal by the respondent against the determination of First-tier Tribunal Judge M Davies promulgated on 1<sup>st</sup> May June 2014, whereby the judge found that the decision by the respondent was not in accordance

with the law and purportedly remitted the case back to the respondent for further consideration and a lawful decision.

3. The judge in the determination relies upon the respondent's operational guidance note of the 31 December 2013 specifically paragraph 6.3 concerning returns to Iraq of individuals were recognised medical conditions. The judge ruled that in considering the appellant's case and in making a decision the respondent had failed to take account of the policy identified and accordingly the decision was not in accordance with the law, specifically the respondent had failed to take account of the up-to-date medical evidence in respect of the appellant.
4. In coming to that conclusion judge refers to a previous determination in respect of this appellant and seems to conclude that the respondent has only taken account of the evidence, which was before the Tribunal on that previous occasion.
5. The appellant arrived in the United Kingdom on an unknown date. He made an application for asylum on 3 August 2008. That application was refused on 20 April 2010 and the appellant appealed. The appeal appeared before First-tier Tribunal Judge Frankish, who by determination of 9 July 2010 dismissed the appellant's appeal. At that time before the judge has noted in paragraphs 9 to 14 the substance of the appellant's case related to his psychiatric condition. There is reference to the medical support that the appellant was receiving together with psychiatric reports obtained for the purpose of the court hearing. The judge referred to the reports and to the fact that Asperger's syndrome and some level of autism may be the conditions the appellant was suffering from. The judge acted upon the psychiatric reports, which were before him.
6. Since that date further reports have been obtained. The reports are listed in paragraphs 3 and 17 of the reasons for refusal letter. At paragraph 13 of the reasons for refusal letter it is stated that the letter is in response to the further submissions made by the appellant on 8 March 2013 on 18 January 2014. A further immigration decision was taken in respect of the appellant, by which decision the appellant was to be removed from the United Kingdom.
7. There is a letter of refusal. The letter considers the original determination and the diagnosis of the appellant as suffering from autism spectrum disorder. It refers to the original findings by the first judge. It then sets out the additional evidence to which consideration is being given.
8. Paragraph 17 concludes by referring to the Medical Foundation report of 1 December 2011. That makes reference to torture. Before me the representative for the appellant is suggested that the comments in paragraph 19 of the reasons for refusal letter were misplaced. However it is clear that those comments are directly related to the report from the Medical Foundation. Having considered the Medical Foundation report the

letter refers to the availability of treatment and medicines within Iraq itself.

9. At paragraph 24 reference is made to all of the medical reports including specifically the report by Dr P Joshi, which is dated 15 August 2012. There appears to be a further report by Dr Schalker. There is some level of divergence as to the exact diagnosis but there is sufficient to be satisfied that the appellant is suffering from some form of condition on the autistic spectrum or pervasive developmental disorder. It is clear that the author of the letter has considered further psychiatric reports submitted post the decision of Judge Frankish.
10. Having referred to in the availability of treatment and medical services the letter concludes in paragraphs 32 and 33 that treatment would be available; that there was no evidence that the appellant would be denied treatment; and that there was no evidence that the appellant would be at risk on return to Iraq. In that regard paragraph 33 specifically important in that refers to the medical information available and specifically states that the appellant would not be at risk on return to Iraq.
11. It is clear and evident from the paragraphs referred to and specifically paragraph 24 that the diagnosed condition in the appellant within the reports was considered by the respondent in making the decision.
12. At paragraph 35 it is determined that the appellant would not be at risk on return to Iraq by reason of being a failed asylum seeker. Thereafter consideration is given to other aspects of the appellants claim to asylum or humanitarian protection or other relief.
13. At paragraph 43 it is stated that in light of the above case it is considered that it would be safer the appellant to return to Iraq but it also makes clear that further consideration is being given to the appellant's medical condition as to whether the appellant should be allowed to remain in the United Kingdom on other grounds.
14. For the reasons set out it is clear that the reasons for refusal letter does consider the up-to-date medical evidence. Accordingly there is a material error of law within the original determination and I set the decision aside. All the parties agreed that in the light of that the proper course with this matter to be remitted back to the first-tier to be heard a fresh.
15. There is a material error of law in the determination. I set the decision aside and remit the matter for a fresh hearing to the First-tier Tribunal.

Signed

Date **14 November 2014**

Deputy Upper Tribunal Judge McClure