



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/02832/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26<sup>th</sup> April 2017**

**Decision &  
Promulgated**

**On 9<sup>th</sup> May 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**A M H**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Smyth, Solicitor

For the Respondent: Miss Fijiwala, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

**DECISION AND REASONS**

1. The Appellant a citizen of Iraq (born 13<sup>th</sup> March 1999) appeals with permission against the decision of a First-tier Tribunal (Judge M A Khan) dismissing his appeal against the Respondent's decision to refuse his asylum/human rights claim.

## **Background**

2. The Appellant arrived in the UK on 10<sup>th</sup> September 2015 as a minor and claimed asylum. The core of the Appellant's claim centres on a property dispute which the Appellant's family have with another family from a different clan and who go by the name of M. The M family, it is claimed, have links with both ISIS and apparently with the Kurdish authorities. So far as this Appellant is concerned the reason why he left Iraq was because of difficulties he encountered with men who came to a garage where he worked.
3. The Appellant worked at the garage with his brother and a cousin. Some men who came to the garage were in possession of vehicles which appeared to be government/KDP vehicles. He was asked to do work on the vehicles and a letter was produced to him explaining that these were official vehicles. The driver of the car which brought the men was called M A.
4. Subsequently the Appellant was targeted by the men to plant explosives in Government vehicles. At that stage, he formed the impression that these men were working for ISIS. He refused to do what they asked and a fight broke out. The Appellant was slashed with a knife and beaten up. He attended hospital and the police were informed but no arrests followed.
5. After release from hospital the Appellant returned to the garage to wind down the business. A few days after the first incident M A accompanied by three men returned to the garage and attempted to kill the Appellant, his brother and his cousin, by shooting at them from a car. The Appellant escaped and the police were informed. Subsequently it became known to the Appellant that the perpetrators of the shooting were members of the M clan. The Appellant therefore left Iraq travelling to the UK and once in the UK met up with two older brothers who are already here.
6. The Appellant claimed asylum but the Respondent disbelieved the credibility of his claim and therefore refused it, following which the Appellant appealed that decision to the First-tier Tribunal.

## **First-tier Tribunal**

7. When the hearing came before the First-tier Tribunal part of the Appellant's case included evidence from his two older brothers Rw and Rn, both of whom had come to the UK and claimed asylum here. It is correct to note that both Rw and Rn's asylum claims cited the family feud with the M clan and lack of protection in Iraq as the central reasons for mounting their claims.
8. The Appellant's brother Rw attended the FtT hearing and gave oral evidence. The Appellant's brother Rn did not give oral evidence but there was produced at the hearing, as part of the Appellant's case, the determination of IJ Flynn who dealt with Rn's asylum appeal.

9. The judge made a finding that he did not accept the credibility of the Appellant's claim. He also made a finding that he did not accept the credibility of the Appellant's brother Rn's evidence. So far as the evidence of the appellant's brother Rn is concerned including that set out in the determination of IJ Flynn, the judge at [45] made a wraparound finding and said as follows:

"45. It is submitted on the appellant's behalf that I should follow the finding of IJ Flynn's decision in 2011. With respect to Counsel, this tribunal is not bound by the previous decision. Further, IJ Flynn's decision is with regards to the appellant's brother, Rn's case. I have Rn's written statement before me but he was not in attendance at the hearing and his statement remains untested. I make my (sic) on the evidence before me (sic). Mr Rn who gave evidence before me, claimed asylum in 2002, he was only given exceptional leave to remain in the UK. I do not find his evidence before (sic) to be credible or consistent, he made lot (sic) of evidence up as he went along during his oral testimony."

10. The judge then proceeded to assess further matters under the headings **Consideration of Risk on Return** and **Human Rights**.

He then dismissed the appeal on all counts.

### **Onward Appeal**

11. The Appellant sought and was granted permission to appeal on two grounds.
- The FtT had misdirected itself by failing to appropriately consider IJ Flynn's decision concerning the Appellant's brother Rn's appeal. This was on the basis that certain findings in IJ Flynn's decision centred on the same overarching matrix in the present case, namely a family feud with the M clan.
  - The approach and assessment on the credibility of the Appellant's brother Rn's evidence was flawed in that the judge's analysis and conclusions that this evidence was not credible, was made absent reasoned findings.

### **Error of Law Consideration**

12. I am satisfied that the FtT's decision is marred by error of law such that I need to set the decision aside. I now give my reasons for that conclusion and because the appeal will need to be reheard I will try to ensure that my decision refrains from making any indication that may have an effect on any future findings of fact or credibility.
13. The first issue before me concerned the judge's failure to consider appropriately the evidence disclosed in IJ Flynn's determination and which was given in connection with an appeal by the Appellant's brother Rn. It was always a central plank of the Appellant's case that there was a

longstanding feud between his family and the M clan in Kurdish Iraq. In support of this the Appellant has always maintained that his two older brothers both left Kurdish Iraq and travelled to the UK on account of this feud. After assessing the Appellant's evidence and finding inconsistencies, the judge said at [40]:

"40. The appellant stated that he only found out after he had been admitted to the hospital that the people attending the garage were M, (sic) However, his evidence also is that when these people came to the garage, they said that they were from M, (sic) I find that the appellant's evidence is inconsistent and not credible. It is for the appellant to provide evidence to establish his case on the lower standard of proof. The appellant has not provided any evidence to show that the M family are indeed influential as claimed and that they have links to the KDP government or indeed with the ISIS. The appellant said that although the KDP government may not have been aware of the M having links with the ISIS but (sic) local people knew about it. I do not find it credible or consistent that the Kurdish force who are fighting the ISIS in Iraq, would not be aware of their existence in one of the major city (sic) in Kurdistan."

14. The judge then said at [45] that which I have set out in paragraph 9 above. The judge is quite correct to say that he is not bound by the findings made by IJ Flynn, but equally he is not permitted to simply sideline that evidence without at least showing that he has given it consideration before reaching any conclusion upon it. He must therefore give some good reason why he discounts this evidence. Miss Fijiwala submitted that the judge had noted that he had Rn's statement before him and because he (Rn) was not in attendance his statement remained untested [45]. This she urged upon me was sufficient to show that the judge was entitled to discount Rn's evidence. I disagree with that. I see nothing in the decision to show that a careful and anxious scrutiny has been given to this evidence. It may well be that it is evidence which is not persuasive at the end of the day, but reasons have to be given as to why not.
15. The second issue concerned the approach of the judge to the credibility of the Appellant's brother Rw's evidence. Mr Smyth in his submissions before me pointed out that the Appellant's brother Rw provided a statement which set out corroborative evidence of the Appellant's claim. The judge dealt with this evidence in no more than a summary manner and was dismissive of the evidence simply saying that he did not find "the witness evidence credible and consistent" and that he was "vague and evasive"[42].
16. As Mr Smyth pointed out, the judge only noted one example of an inconsistency in Rw's evidence and that example concerned peripheral matters in any event.
17. Miss Fijiwala in response asked me to look at [31] of the decision and she submitted that this clearly indicated inconsistencies (plural) between the

evidence of the Appellant and that of his brother Rw. Therefore the judge was entitled to conclude that Rw's evidence should be discounted. I disagree with that assessment. It is incumbent upon a judge to look at the evidence holistically and I find force in Mr Smyth's submissions on this point, namely that the judge has found one inconsistency and has used that as a basis for discounting the whole of the Appellant's brother Rw's evidence.

18. Finally whilst both representatives were scrupulously fair in not mentioning it, this decision itself has a number of features suggesting that the matter did not have the care it deserved. There are multiple errors and omissions in the wording of the decision. It is clear that the judge did not properly review what he had written, and this reinforces my decision that this case must be set aside in its entirety.
19. For the foregoing reasons the decision of the First-tier Tribunal is set aside and remitted to that Tribunal for a fresh hearing to take place.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. No findings of fact are preserved. The hearing before the First-tier Tribunal should take place before a judge other than Judge M A Khan.

### **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 or any member of his family. 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

C E Roberts

Date

06 May 2017

Deputy Upper Tribunal Judge Roberts