



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

Appeal Number: PA/04429/2016

THE IMMIGRATION ACTS

**Heard at North Shields
On 11 May 2017
Prepared on 11 May 2017**

**Decision & Reasons Promulgated
On 12 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

**M. M.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel instructed by Halliday Reeves Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant says that he is a citizen of Iraq. He entered the UK illegally and made an application for protection on 22 October 2015. The Respondent refused that application on 20 April 2016, and the Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 14 October 2016. It was dismissed on all grounds, in a decision promulgated on 20 October 2016 by First Tier Tribunal Judge Hands.
2. The Appellant was granted permission to appeal that decision on 23 January 2017 by Upper Tribunal Judge Plimmer on the basis that it was

- arguable the decision did not engage with the evidence relied upon, or, the submissions that had been made on behalf of the Appellant. Thus it was arguable the Appellant had not enjoyed a fair hearing of his appeal.
3. The Respondent has filed a Rule 24 Notice in relation to the grant of permission dated 10 February 2017, although as Mr Diwnycz accepts it does not properly engage with the Appellant's case. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

Error of Law?

4. The Appellant said from the outset that his home was the city of Gwer. This city does not lie, as the Judge concluded, in the Kurdish Regional Governate [52]. It was, as the Respondent had accepted in her refusal an area that was under the control of ISIS, and thus lay in a "contested area" for the purposes of any consideration of the Appellant's ability to return to his home area in safety, and, his ability to obtain documents from his home area. Since the Appellant denied having any identity documents in his possession this issue also went to the heart of the question of whether his return to Iraq was "feasible" for the purposes of his humanitarian protection appeal. It is therefore common ground before me that the Judge approached the appeal upon the basis of a significant and material error of fact, and that this amounted to a material error of law.
5. The Judge also concluded that the Appellant was not a credible witness. Much of his account had however been accepted by the Respondent as true, and the relevant concessions of fact were not withdrawn. Before me the Respondent accepts that the Judge's approach to the issue of credibility as reasoned in paragraphs 45-47 of the decision was inadequate and unsafe.
6. Finally, whilst the Judge did not have the benefit of the decision of the Upper Tribunal in BA (returns to Baghdad) Iraq CG [2017] UKUT 18, there was objective evidence placed before her that was also before the Upper Tribunal in that appeal, and also the various country information reports upon Iraq of August 2016. It is plain that the Judge's approach to the question of whether the Appellant could physically be returned to the KRG, or relocate there after a return to Baghdad did not foreshadow the approach of the Upper Tribunal to that issue. The Respondent accepts that the approach to this issue is also unsafe, and, that there was no adequate consideration of the Appellant's ability to relocate to Baghdad itself as one who would be perceived, correctly, to be a Sunni Kurd from the area of Gwer. The issue of relocation goes to both the asylum, and, the humanitarian protection grounds of appeal.
7. In the circumstances, as the Respondent accepts, the decision discloses material errors of law that render the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. In circumstances where it would appear that the relevant evidence has not properly been considered by the First

Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012. Having reached that conclusion, with the agreement of the parties I make the following directions;

- i) The decision is set aside, and the appeal is remitted to the First Tier Tribunal for rehearing at the North Shields hearing centre. The appeal is not to be listed before Judge Hands.
- ii) A Kurdish Sorani interpreter is required for the hearing of the appeal.
- iii) The time estimate is estimated to be 3 hours.
- iv) It is not anticipated by the Respondent that she has any further evidence to be filed. The Appellant anticipates that a review of the evidence is required and that a short further witness statement may be filed. The Appellant is therefore to file and serve any further evidence to be relied upon at his appeal by 5pm 25 May 2017
- v) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 29 May 2017 for final hearing, but given the location of the Appellant's representatives it shall only be listed after consultation with the Appellant's solicitors. Whilst it is desirable that Ms Sanders be available to present the appeal it is not necessary that she should do so.
- vi) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.
- vii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

8. The decision promulgated on 20 October 2016 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 11 May 2017