



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number:
PA128152016

THE IMMIGRATION ACTS

**Heard at: Columbus House,
Newport
On: 25 August 2017**

**Decision and Reasons
Promulgated
On: 31 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**MTM
(anonymity direction made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Bayoumi, Counsel instructed by Qualified Legal Solicitors

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

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Solly in which the Judge dismissed the appeal of the Appellant, a citizen of Iraq, against the Secretary of State's decision to refuse asylum and set removal directions.

2. The Appellant arrived in the United Kingdom on 16 May 2016 and claimed asylum the same day. His application was refused by the Respondent on 11 November 2016. The Appellant exercised his right of appeal against this decision and this is the appeal that was heard before Judge Solly on 3 February 2017 and dismissed. The Appellant's application for permission to appeal against the First-tier Tribunal Judge's decision was refused by First-tier Tribunal Judge Grant on 14 March 2017 but on renewal to the Upper Tribunal was granted on 3 May 2017 by Upper Tribunal Judge Taylor in the following terms

"The renewed grounds argue that the judge made a number of factual errors in the determination. I note that the judge who refused permission to appeal in the first tier also acknowledged the difficulties with the determination but refused permission on the ground that no challenge was made to the relocation findings in relation to Baghdad. However, the area where the appellant comes from is within Baghdad. It is right to say that on the face of it, the original judge did not explain why she considered some of the matters put forward by the appellant to be inconsistent with each other, and there is a lack of clarity in her reasoning. It may be that on further exploration they are not material. However, it is right that permission ought to be granted, so that arguments can be pursued."

3. By a rule 24 response dated 18 May 2017 the Respondent opposed the appeal.
4. At the hearing before me Mr McVeety appeared for the Secretary of State and Ms Bayoumi represented the Appellant and submitted a written skeleton argument.

Background

5. The Appellant is 31 years old and a citizen of Iraq from Baghdad. His claim for international protection is based on persecution by government backed militia due to his perceived political opinion because of his association, through employment, with a former deputy president of Iraq and the general risk associated with a return to his home area.
6. In dismissing his appeal, the First-tier Tribunal Judge found that the Appellant's account was not credible due, in the main, to discrepancies and inconsistencies in his account highlighted at paragraph 54 of the statement of reasons. So far as general risk was concerned the Judge found that he was at no greater risk than other members of the Sunni population in his area and following the decision in BA (returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC) the level of general violence was not sufficient to justify the grant of subsidiary protection.

Submissions

7. Ms Bayoumi relied on the grounds of appeal to the Upper Tribunal. Mr McVeety said that he had discussed the grounds with Ms

Bayoumi and had considered the inconsistencies referred to at paragraph 54 of the statement of reasons. He accepted that the credibility findings were 'jumbled' and that matters highlighted by the Judge as inconsistencies or discrepancies were not inconsistent or discrepant at all. He accepted that the decision could not stand.

8. I said that the appeal would be allowed and I reserved my written decision.

Error of law

9. In dismissing the appeal the First-tier Tribunal Judge found (at paragraph 54) that the appellant's claim for asylum was not credible because "it contains discrepancies and statements which are contradictory and not internally consistent, the cumulative effect of which is to cast serious doubt upon the reliability of the Appellant's evidence and the veracity of his individual evidence". The Judge goes on to detail examples of the defects in his account.
10. The grounds of appeal (at paragraph 4) address the examples put forward and explain why these are not examples of inconsistency. Mr McVeety, on behalf of the Respondent, accepts that matters found to be inconsistent or discrepant are not inconsistent or discrepant at all.
11. It is clear, and indeed accepted, that the Judge fell into error by taking into account irrelevant matters in making an adverse credibility finding. The effect of this error must be to render the credibility findings as a whole unsafe. Due to the nature of the error of law and in accordance with the President's direction it is appropriate for this matter to be remitted to the First-tier Tribunal for hearing de novo with no findings preserved.

Conclusion

12. The decision of the First-tier Tribunal involved the making of an error of law for the reasons set out above.
13. I set aside the decision of the First-tier Tribunal and in accordance with the President's direction this matter is suitable for and should be remitted to the First-tier Tribunal. No findings are preserved.

Signed:
30/8/2017

Date:

J F W Phillips
Deputy Judge of the Upper Tribunal