



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/13327/2016

THE IMMIGRATION ACTS

Heard at Bradford

On 20 October 2017

Decisions

Promulgated

On 01 December 2017

and

Reasons

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

[B R]

~~(ANONYMITY DIRECTION NOT MADE)~~

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hussain (Counsel)

For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (hereinafter "the tribunal") which was sent to the parties on 1 February 2017, whereupon it dismissed the claimant's appeal against a decision of the Secretary of State of 25 October 2016, refusing to grant him international protection.

2. By way of brief background the claimant, who was born on 1 January 1997, is a national of Iraq of Kurdish ethnicity. He claims to be from a part of Iraq which is just outside the territory under Kurdish rule ("the KRG") and which is located in a "contested area". In seeking international protection he asserted that he was at risk in Iraq at the hands of the Jaff tribe in consequence of a claimed land dispute. He also asserted a fear of the organisation sometimes called Islamic State ("IS"). But the respondent did not find the claimant to be credible and did not consider, therefore, that he had made out his claim.
3. The tribunal heard the claimant's appeal on 24 January 2017. Both parties were represented and he gave oral evidence. In a careful determination the tribunal explained why it too disbelieved much of his account. Crucially, the tribunal decided, notwithstanding what he had to say about his origins and home area, that he had actually been born in the KRG and had lived there safely for all of his life until he came to the UK. So it followed, said the tribunal, that he could safely return there. That meant it was not necessary for it to consider whether, notwithstanding what it found to be his untruthfulness about his claim to be at risk, it would or would not be unduly harsh for him to internally relocate away from a "contested area". But the tribunal did say that, were he not from the KRG, he would be returned to Baghdad and that, given his personal circumstances and the lack of any support in Baghdad, it would be unduly harsh to expect him to permanently relocate there. Of course, though, given the tribunal's primary finding as to his being from the KRG that did not impact upon the outcome.
4. An application for permission to appeal to the Upper Tribunal followed. Although initially refused, permission was eventually granted by a Judge of the Upper Tribunal. In consequence, a hearing before the Upper Tribunal was arranged so the question of whether or not the tribunal had erred in law could be considered. Representation at that hearing was as indicated above and I am grateful to each representative.
5. Mr Hussain sought to build upon the written grounds which he had drafted. Mr Diwnycz said that he would concede that the tribunal had erred regarding the adequacy of its consideration as to the claimant's origins. Put another way, I suppose what was being said was that its reasoning as to why it found he was from the KRG had been inadequate.
6. I have, earlier in this decision, described the tribunal's decision as being careful. It is. But Mr Diwnycz, a Senior Home Office Presenting Officer, concedes an error before me and specifies what he considers that error to be. I suppose I am not bound by that but such concession from a Senior Home Office Presenting Officer is difficult to ignore. There was, effectively before me, no dispute about the matter between the parties.
7. In the circumstances described above I have decided it is appropriate given the agreement before me for me to set aside the tribunal's decision on the basis of the agreed error. That is what I do. I have also issued some brief

directions which may be varied or replaced but which might assist, to a degree, with the rehearing which will now have to follow.

Directions

- A. Since the decision of the tribunal has been set aside, there shall be a complete rehearing of the appeal before a differently constituted tribunal.
- B. The rehearing shall have a time estimate of three hours. It shall take place at the Bradford Hearing Centre. The claimant shall be provided with a Kurdish Sorani speaking interpreter.
- C. Nothing shall be preserved from the findings and conclusions of the First-tier Tribunal as contained in its decision sent to the parties on 1 February 2017.
- D. Either party may submit further documentary material which has not previously been sent to the First-tier Tribunal or the Upper Tribunal. However, any such material should be received by the First-tier Tribunal at Bradford at least ten working days prior to the date which will be fixed for the rehearing. When such material is sent to the First-tier Tribunal by a party, copies must simultaneously be sent to that parties opponent. Any such written material must be in the form of an indexed and paginated bundle.

Decision

The decision of the First-tier Tribunal is set aside. The case is remitted for a complete rehearing before a differently constituted tribunal.

No anonymity direction is made. None had been made previously and none was sought before me.

Signed

**M R Hemingway
Judge of the Upper**

Tribunal

Date

30 November 2017

Fee Award

I make no fee award.

Signed

**M R Hemingway
Judge of the Upper**

Tribunal

Date

30 November 2017