



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

Appeal Number: PA/03209/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 28 November 2018**

**Decision & Reasons Promulgated  
on 5 December 2018**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**AA**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer

For the Respondent: Ms A Radford, counsel, instructed by Turpin & Miller LLP

**DECISION AND REASONS**

1. In a decision promulgated on 14 August 2018 Judge of the First-tier Tribunal J Pacy (the judge) allowed the appeal of AA (hereafter claimant) both on asylum grounds and humanitarian protection grounds.
2. The claimant, a national of Iraq, entered the UK in 2015 as a minor and claimed asylum on the basis that his family had been arrested by Daesh and that he held a well-founded fear of persecution from Daesh, alternatively, that he was entitled to a grant of humanitarian protection. In a decision dated 15 February 2018 the SSHD did not

consider that the claimant was entitled to refugee status and that he did not qualify for humanitarian protection. this decision was appealed to the First-tier Tribunal.

3. The judge heard oral evidence from the claimant and his former foster carer. In a detailed and well-reasoned decision, the judge found the claimant to be a credible witness. From [51] to [56], the judge gave legally sustainable reasons for concluding that the claimant's fear, whilst genuine, was not well-founded.
4. The judge then went on to consider whether the claimant was nevertheless entitled to a grant of humanitarian protection. The judge took account of a psychiatric report indicating that the claimant suffered from moderately severe PTSD, that he came from a contested area of Iraq, that, despite genuine efforts, he had been unable to contact any relatives in Iraq, that he did not have any identity documents (including a CSID), that he was unlikely to be able to obtain a CSID, that he had no experience of working in Iraq and would be unlikely to secure employment or accommodation, that he did not speak Arabic, and that he would not be able to relocate to the IKR. None of these factual findings have been challenged.
5. Having made her factual findings, the judge allowed the appeal both on asylum grounds and on humanitarian protection grounds.
6. The SSHD's grounds of appeal asserted that the judge intended to dismiss the asylum appeal and that by a 'slip of the pen' she inadvertently allowed the appeal on asylum grounds. The grounds requested that the asylum claim be dismissed as this was clearly intended by the judge. The grounds noted that humanitarian protection could only be granted where the individual did not fall to be recognised as a refugee but nevertheless required protection. The grounds state, "we are grateful to the FTTJ for his [*sic*] findings; however we are arguing grounds only on the erroneous decision notice on the asylum element of the claim, which contradicts the FTTJ's own findings throughout the determination. This requires a re-promulgation and the error must be corrected.... We do not believe this will prejudice the [claimant] as to the FTTJ's overall findings and this does not preclude the [claimant] from appealing further should he wish to do so."
7. At the error of law hearing Mr Kandola accepted that there had been no challenge to the judge's decision as to the claimant's entitlement to humanitarian protection. Mr Kandola said that his 'hands were tied' and issue was only taken with the judge's decision in respect of the asylum appeal.
8. I am satisfied, having carefully considered the judge's decision, that she could not have intended to allow the claimant's asylum appeal. It

is satisfactorily clear from her findings at [52] to [57] that she found the claimant did not have a well-founded fear of persecution. This conclusion is incompatible with the decision to allow the asylum appeal. I consequently set aside this particular aspect of the judge's decision. The claimant is not a refugee and is not entitled to refugee status.

9. I hasten to add that the judge was fully entitled to allow the appeal on humanitarian protection grounds. This finding has not been challenged and remains undisturbed. The claimant is entitled to a grant of humanitarian protection.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains an error on a point of law and is set aside to the limited extent that the asylum appeal is dismissed.**

**The First-tier Tribunal was nevertheless entitled to allow the appeal on humanitarian protection grounds, and this aspect of the First-tier Tribunal's decision is undisturbed.**

### **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 their 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.



28 November 2018

Signed  
Upper Tribunal Judge Blum

Date