



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number:
PA/13577/2017

THE IMMIGRATION ACTS

**Heard at: Columbus House, Determination Promulgated
Newport**
**On: 17 September On: 4 October 2018
2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

RSA

(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr O Manley, Counsel instructed by Crowley & Co

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in order to protect the anonymity of the Appellant who claims asylum. This direction prohibits the disclosure directly or indirectly (including by the

parties) of the identity of the Appellant. Any disclosure and breach of this direction may amount to a contempt of court. This direction shall remain in force unless revoked or varied by a Tribunal or Court.

2. This is an appeal against the decision of First-tier Tribunal Judge Waygood in which he dismissed the appeal of the Appellant, a citizen of Iraq, against the Secretary of State's decision to refuse asylum and issue removal directions.
3. The application under appeal was refused on 1 December 2017. The Appellant exercised his right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Waygood on 30 January 2018 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge Martins on 21 March 2018 in the following terms

The grounds assert that, the judge erred, in that he made an adverse credibility finding, because of a factual error; that the basis of the decision that the appellant can safely return to the IKR is wrong, as is the finding that the appellant would be returned by the respondent to the IKR. It is further submitted that the judge failed to take account of the relevant guidance in pertinent CG cases. The finding that the appellant could obtain a travel document in the UK is also wrong in the light of case law.

Background

4. The history of this appeal is detailed above. The Appellant is a citizen of Iraq born on 25 February 1996. He claims to have arrived in the UK on 1 June 2016 and he claimed asylum the following day. The basis of his claim was that he feared persecution in Iraq because of his imputed political opinion. The Appellant claimed that he left his home area of Makhmour because ISIS were approaching and that, having fled to Manzawa in Erbil governate he left the country altogether because ISIS would take people from the area where he was staying.
5. The Respondent did not accept that the Appellant had given a credible account and refused his application. At the appeal the Appellant was represented by counsel and gave oral evidence and submitted a supporting bundle containing 30 pages including a detailed witness statement.
6. The Judge dismissed the appeal finding that the core elements of the Appellant's account were not credible and that he would not face persecution or a risk of serious harm upon his return. In

dismissing the appeal, the judge accepted (at paragraph 62) that the Appellants home area was contested and that it was not reasonable to expect the Appellant to return there. The Judge went on to consider whether the Appellant could be returned to the IKR and found that it would not be unduly harsh to expect him to do so.

Submissions

7. At the hearing before me Mr Manley appeared for the Appellant and Mr Howells for the Respondent.
8. For the Appellant Mr Manley referred to the grounds of appeal and said that the primary ground is the first. The Judge makes an adverse credibility finding (at paragraphs 45 to 47) because at interview the Appellant said that his family were living at a camp with a specific name "Arina camp" whereas in cross examination he claimed not to know the name of the camp and denied that he named the camp at interview. Mr Manley referred to the statement from the Appellant's solicitor Samantha Heenan submitted after the First-tier hearing. Ms Heenan confirms that she listened to the audio record of the Appellant's asylum interview and that when asked where his family were he replied, "I don't know exactly where but they told me we are in a camp". The interviewing officer incorrectly wrote "Arina camp" rather than "are in a camp". Although the Judge could not have been aware of it at the time this was an error of fact which infected the credibility finding. It could have been the "nail in the coffin". The third ground also shows an error of fact. The Judge finds (at paragraph 63 and 65 that Manzawa is part of Erbil governate and therefore within the IKR whereas the Appellant is from Makhmour in the Ninewah governate outside the IKR. In fact, Manzawa whilst within the Erbil governate is outside the IKR as the border stops at Erbil city.
9. For the Respondent Mr Howells said that the Appellant's representatives did not notify the error in the interview record until after the hearing. This was not before the First-tier Judge. This was not the only credibility point. It is accepted that this was an error of fact, but it was not known at the time. It is also accepted that the Judge was wrong in finding that Manzawa was within the IKR.
10. I reserved my decision.

Decision

11. This is a very detailed decision by an experienced First-tier Tribunal Judge in which the Appellant's appeal has been considered very carefully indeed. The Judge makes well-reasoned credibility findings from paragraph 43 to paragraph 50. In doing so the Judge finds a number of reasons for doubting the Appellant's overall credibility. A significant aspect of the credibility findings and later of the reasonableness of relocation relates to the Appellant's contact with his family and knowledge of their whereabouts. At paragraphs 45 to 47 the Judge notes that whereas the Appellant said in oral evidence that he did not know where his family had moved other than that it was to a camp he was clearly recorded as giving a specific location at interview. The interview record showed that he claimed his family were living in "Arina Camp".
12. The hearing took place on 30 January 2018. After the hearing the Appellant's solicitors submitted a statement from Samantha Heenan dated 8 March 2018. Ms Heenan says that she listened to the interview record with an interpreter. The Appellant when asked about his family stated, "I don't know exactly where but they told me we are in a camp". The interviewing officer incorrectly wrote "I don't know exactly where but they told me the Arina camp".
13. This evidence was not before the Judge so he cannot be criticised in any way but there is a clear mistake of fact. Mr Howells did not suggest that the statement from Ms Heenan was inaccurate in any way or that there was such a place as "Arina Camp". It is a mistake that is very easy to understand after all "are in a camp" and "Arina Camp" are phonetically identical. Whereas this is an error of fact which came to light after the hearing it relates to a matter that was in existence at the time of the hearing. Mr Howells rightly points out that this was not the only matter that caused the Judge to make an adverse credibility finding but it is clear from reading the decision that it was a very significant aspect. In my judgement this mistake of fact was material to the Judge's adverse credibility finding. It is a material error of law.
14. Having found a material error in this respect concerning the credibility findings I can deal briefly with the other main ground being the location of Manzawa. The Judge deals with internal relocation finding that although the Appellant's home is in Makhmour in Ninewah, a contested area, he can relocate to the IKR in part because he had already moved with his family to Manzawa which being in the Erbil governate is in the IKR. This is wrong, and Mr Howells accepted that this was wrong. Manzawa is in the former Erbil governate but the boundary of the IKR is

on the edge of Erbil city and Manzawa falls outside the IKR. In my judgement this error of fact makes the internal relocation decision unsafe.

15. My conclusion is that this decision contains material errors of law regarding credibility and internal relocation and as a result I allow the Appellant's appeal and I remit the decision to the First-tier Tribunal. As the principle error relates to credibility no findings are preserved.

Summary

16. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the appeal and remit to the First-tier Tribunal for the decision to be remade with no findings preserved.

**Signed:
2018**

Date: 27 September

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

**J F W Phillips
Deputy Judge of the Upper Tribunal**