



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

Appeal Number: PA/13969/2016

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 23 January 2018**

**Decision & Reasons**

**Promulgated**

**On 28 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES**

**Between**

**Z. O.**

**(ANONYMITY DIRECTION MADE)**

**and**

Appellant

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Brakaj, Solicitor, Iris Law Firm

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Iraq who entered the UK illegally, and when encountered at port, claimed asylum. That protection claim was refused on 6 December 2016. His appeal against that refusal came before the First-tier Tribunal at North Shields on 19 May 2017, when it was heard by First-tier Tribunal Judge Cope. He dismissed the appeal on all grounds in a decision promulgated on 14 June 2017. The Appellant sought to challenge that decision, and his application for permission to appeal to the Upper Tribunal was granted on all of the grounds advanced, by First-tier Tribunal Judge Mailer on 25 September 2017. Thus the matter comes before me.

2. The grounds take a number of points of challenge to the decision. Before me the parties agreed that there was one challenge which if made out meant that it was unnecessary to engage with the others. That complaint relates to paragraph 66 of the decision in which the Judge expressed himself thus;

*"I do not wish to stereotype or make assumptions about family patterns in particular societies. All that I can say is that I have heard nearly 100 appeals both asylum and otherwise involving people from an Iraqi Kurdish background and in none of them has the appellant been the single child of effectively single child parents with no grandparents or cousins or other relatives of their parents being alive."*

3. In short the Appellant's complaint is that no such passage should ever appear in a decision of the Tribunal. It is not based upon any evidence that the Appellant has ever seen, and it makes no allowance for either particular family circumstances, or the effects of modern armed conflict. The Respondent accepts that this passage is, of itself, sufficient to demonstrate that the Judge's approach to the weight that could be given to the evidence was unsafe, and that as a result none of his findings of fact could stand. I agree. In the circumstances it is unnecessary to engage with the other complaints raised against the decision which turn on the absence of identifiable reasons for adverse findings of fact, notwithstanding the length of the decision.
4. I turn then to the question of whether or not the appeal should be remitted or whether the decision is capable of being remade before me today. Both parties urge me to remit. 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 13 November 2014. 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 13 November 2014.
5. To that end I must remit the appeal for a fresh hearing by a judge other than Judge Cope at the North Shields Hearing Centre. It is not anticipated that any further evidence is to be filed. A Kurdish Sorani interpreter is required.

#### Notice of decision

6. The decision promulgated on 14 June 2017 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 for rehearing de novo with the directions set out above.

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.

Signed

Date 23 February 2018

Deputy Upper Tribunal Judge J M Holmes