



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02925/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 5th September 2019

Decision & Reasons Promulgated
On 12th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

HNS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Khan of Counsel instructed by WTB Solicitors

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

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge A J Parker (the judge) of the First-tier Tribunal (the FtT) promulgated following a hearing on 31st May 2019.
2. The Appellant is a citizen of Iraq born 1st April 1995, of Kurdish ethnicity. He claimed asylum, fearing the Iraqi government on the basis that he would face execution for treason and failure in his duties when he served in the army in Mosul.

He also feared the KDP in the Iraqi Kurdish Region (the IKR) who had imprisoned him in Iraq between January 2016 and April 2018. He also feared an individual member of the KDP, KS, who had threatened to kill the Appellant because the Appellant's sister would not marry him.

3. The claim for international protection was refused on 14th March 2019 and the Appellant appealed to the FtT.
4. The FtT dismissed the appeal on all grounds.

The Application for Permission to Appeal

5. The Appellant relied upon two grounds.
6. Firstly, it was contended that the judge erred by failing to give the case the most anxious scrutiny. The grounds, settled by Counsel, describe the decision as "chaotic and confused". It was contended that the decision had not been properly proof read and at times makes little sense. Reliance was placed upon ML (Nigeria) [2013] EWCA Civ 844.
7. The second ground contends that the judge erred in requiring corroboration of the Appellant's evidence. At paragraph 26 the judge had recorded "there is also the fact is a lack of corroboration in the form of documentary evidence regarding his court case".
8. It was submitted that the judge did not acknowledge in the decision that there was no requirement for corroboration and wrongly held this point against the Appellant.

The Grant of Permission to Appeal

9. Permission to appeal was granted in the following terms;
 - "2. The Appellant seeks permission to appeal against this decision on the grounds that the judge made arguable errors of law. It is alleged that the judge failed to give the appeal 'the most anxious scrutiny'. The grounds allege that the decision is 'confused and chaotic and makes little sense'. Further it is alleged that the judge erred in not accepting the Appellant's account without corroboration.
 3. It is arguable that the judge's decision does not make clear findings of fact which are supported by adequate reasoning. It is arguable that the judge's finding 'We have no objective evidence that there are barbers who join the military' misunderstands the Appellant's evidence as recorded in his statement dated 23rd April 2009 at paragraphs 2 and 3. This shows that the judge has not considered the evidence with adequate care. An error of law has been made in the assessment of the evidence. Further it is arguable in the reading of the paragraph 20 of the determination that the judge has failed to give adequate reasons for the findings made."
10. Directions were issued that there should be a hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision should be set aside.

The Upper Tribunal Hearing

11. Mr Tan accepted that the FtT decision disclosed material errors of law as set out in the grounds seeking permission to appeal, read together with the grant of permission. Mr Tan accepted that specific findings had not been made on the Appellant's claim. It was accepted that there appeared to be a lack of anxious scrutiny. It was also accepted that the decision indicated a requirement of corroborative evidence. The judge had not made any findings in relation to the Appellant's claim that he had been threatened with death by KS which is why he had fled Iraq.
12. In the light of the concession made by Mr Tan, Miss Khan had no further submissions to make, except to agree that it would be appropriate to remit the appeal back to the FtT to be heard afresh.

My Findings and Conclusions

13. In view of the concession made by the Respondent I set aside the decision of the FtT.
14. In my view the FtT did not make adequate findings supported by sustainable reasons. I set out below the headnote to Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC);

“It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”
15. In my view the judge did not comply with the guidance set out above. As conceded by Mr Tan, there were no findings made in relation to the aspect of the claim, which related to KS and the threats made to kill the Appellant, which is the reason given by the Appellant for fleeing Iraq.
16. It does appear that the judge misinterpreted or misunderstood the Appellant's evidence when recording at paragraph 20 “We have no objective evidence that there are barbers who join the military”. The judge finds it implausible that the Appellant spent his time in the military as a barber, but gives no adequate reasons for the finding of implausibility.
17. The decision records that findings and reasons commence at paragraph 16, but what is recorded thereafter does not in fact amount to findings of fact with reasons.
18. As accepted by the Respondent, the decision is unsafe, and needs to be made again. No findings of fact are preserved.

19. Having considered the Senior President's Practice Statements at paragraph 7.2, I find it appropriate to remit the appeal back to the FtT to be heard again. This is because there is substantial fact-finding to be undertaken.
20. The hearing will take place at the Manchester Hearing Centre. The parties will be advised of the date in due course. The appeal is to be heard by an FtT Judge other than Judge A J Parker.

Notice of Decision

The decision of the FtT is set aside with no findings preserved and the appeal is allowed to the extent that it is remitted to the FtT to be heard afresh.

Anonymity

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant or any member of his 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. This direction is made because the Appellant has made a claim for international protection. This direction is made pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 5th September 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

No fee award is made. The issue of a fee award will need to be considered by the FtT.

Signed

Date 5th September 2019

Deputy Upper Tribunal Judge M A Hall