



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07963/2018**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 30th April 2019

**Decision &
Promulgated
On 8th May 2019**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MR. M A I
(ANONYMITY NOT DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. F Aziz; Lei Dat & Baig Solicitors

For the Respondent: Mr. C Bates; Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq. He claims to have arrived in the UK on 1st December 2017 and claimed asylum on the same day. The claim was refused by the respondent for the reasons set out in a decision dated 11th June 2018. The appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Holt for the reasons set out in a decision promulgated on 17th August 2018. It is that decision that is the subject of the appeal before me.

2. There are two limbs to the appellant's claim for international protection. First, he is at risk upon return to Iraq because he is an atheist. Second, he is at risk upon return because he is of Kurdish ethnicity, from Kirkuk, and he cannot return to the IKR because he could not safely get from Erbil or Baghdad, to Kirkuk.
3. The FtT Judge's findings and conclusions are to be found at paragraphs [15] to [25] of the decision. The Judge found that the claim made by the appellant is not remotely credible. Although no clear finding is set out, one could infer from what is set out at paragraphs [16] to [20] of the decision, that the FtT Judge rejected the appellant's claim that he is an atheist. The FtT Judge rejected, for the reasons set out at paragraphs [21] to [23] of the decision, the appellant's account that he is from Kirkuk, and that he would be unable to return to the IKR.
4. Permission to appeal was granted by Mr Justice Swift on 29th November 2018. The matter comes before me to consider whether the decision of the FtT Judge involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
5. Before me, Mr Bates accepts that the Judge's approach to the assessment of the appellant's claim that he is an atheist, and the risk upon return, is irrational. He concedes that the Judge does not come to a clear finding as to whether the appellant is an atheist that is adequately reasoned, and the Judge therefore erred in his analysis of the claim advanced by the appellant. He accepts that the Judge failed to properly consider the issues in accordance with the decision of the Supreme Court in HJ (Iran) -v- SSHD [2010] UKSC 31, and RT (Zimbabwe) [2013] 1 AC 152.
6. The first stage is to consider whether the applicant is indeed an atheist. Although the Judge expresses concerns about the way in which the appellant and his representative expressed his 'belief' at the hearing, it is not clear, absent a clear finding, adequately reasoned, that it was open to the Judge to find that the appellant is not an atheist, if indeed

one is to infer that that is the finding that was made. If in fact the Judge accepted that the appellant was an atheist, the next stage was for the Judge to examine a group of questions which are directed to what his situation will be on return, an inquiry directed to what will happen in the future. At paragraph [19] of the decision, the Judge notes that “*..there is no obligation to tell the world and spread the “good news” about being an atheist. A free thinker or atheist can quite happily keep his thoughts to himself.*” The Judge appears not to have considered whether the applicant will in fact conceal the fact that he is an atheist, and if so, why he will do so. Mr Bates concedes that in failing to make clear findings in relation to material aspects of the claim, the decision of the FtT Judge is infected by a material error of law, and the decision should be set aside.

7. The decision of the FtT Judge is infected by a material error of law and must be set aside. As to the disposal of the appeal, both Mr Aziz and Mr Bates submit that the appropriate course is for the matter to be remitted to the FtT for hearing afresh. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President’s Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary, will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

Notice of Decision

8. The appeal is allowed the decision of FtT Judge Holt promulgated on 17th August 2018 is set aside.
9. The appeal is remitted the FtT for a fresh hearing of the appeal with no findings preserved.

Signed

Date

30th April 2019

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

No fee is payable and there can be no fee award

Signed

Date

30th April 2019

Deputy Upper Tribunal Judge Mandalia