



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

Appeal Number: PA/07970/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 24 May 2019**

**Decision & Reasons Promulgated
On 29 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**S. H.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Najah, Counsel instructed by Barnes Harrild & Dyer
For the Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

The Appellant, a citizen of Iraq, entered the UK illegally in December 2017 and made a protection claim which was refused on 10 June 2018. The Appellant's appeal against that decision was heard, and dismissed, by First-tier Tribunal Judge Caskie, in a decision promulgated on 6 September 2018. The Appellant's application for permission to appeal was granted by Upper Tribunal Judge McGeachey on 1 February 2019 on all the grounds advanced. The Respondent did not reply to that grant with a Rule 24 response.

The Appellant's case was that he had come to the adverse attention of the authorities in the KRG as a result of his political activities, and that as a result

he faced a real risk of harm upon return to the KRG. As a Kurd he said he could not be expected to relocate elsewhere in Iraq.

Before me both parties accept that the Judge's starting point in his self directions was that the Respondent did not place in issue any part of the Appellant's account [4]. That was incorrect. The refusal letter had expressly placed in issue whether the Appellant's account of his experiences in Iraq was credible [67-8, 84, & 89]. It is accepted by the Appellant that no concessions were made at the hearing to alter that stance.

In the circumstances both parties agree that a fresh hearing is the only pragmatic course open. I agree. None of the findings of fact made by the Judge are safe, or can be preserved. In circumstances such as this, 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 parties of the opportunity for their 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 required 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.

To that end I remit the appeal for a fresh hearing by a judge other than First tier Tribunal Judge Caskie, at the North Shields Hearing Centre.

A Kurdish Sorani interpreter is required.

The remitted appeal is suitable for the short warned list. The parties should expect the appeal to be called on for hearing at short notice after 10 June 2019.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, 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 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.

Signed

Date 24 May 2019

Deputy Upper Tribunal Judge J M Holmes