



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

Appeal Number: PA/10192/2018

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**Determination & Reasons**

**On 3<sup>rd</sup> July 2019**

**Promulgated  
On 18<sup>th</sup> July 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**BZHAR NAJAT SHAREEF  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Mohzam (Solicitor)

For the Respondent: Mr D Mills, Senior HOPO

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Broe, promulgated on 11<sup>th</sup> October 2018 following a hearing at Birmingham Priory Courts on 18<sup>th</sup> September 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Iran, and was born on 21<sup>st</sup> March 2000. He appealed against the decision of the Respondent dated 13<sup>th</sup> August 2018, refusing his claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that he is a Sunni Muslim, from the IKR. He cannot return back to Iran because he fears his stepfather who has threatened to beat him up. This is because the stepfather sees the Appellant as not his son. He has beaten him in the past and kicked him out of the house once or twice a month. When this has happened, the Appellant has gone to live on the streets. He cannot go to his uncle's because they disowned his mother after she remarried. And two years after her remarriage, the stepfather began to sexually abuse the Appellant. The Appellant refused to have sex with the stepfather who would touch him when he was asleep. Eventually the Appellant would not allow him to touch him and the stepfather said that he would not let him remain in the house if he did not agree to have sex with him. He said he would kill him if he told anyone. The stepfather became more aggressive. The mother did not assist him (paragraph 20). In the end, the Appellant was given some money to the tune of 500 euros, by his older brother, with whom the Appellant had initially lived, but who was no longer prepared to keep him, and with that money, the Appellant was able to leave Iraq and come to the UK, travelling through Greece and other countries.

## **The Judge's Finding**

4. The judge, at the outset of the determination, made it clear, under the heading "My Findings of Credibility and Fact" that, "I am aware of the provisions of Section 8 of the Asylum and Immigration (Treatment of Claimant, etc.) Act 2004" (see paragraph 18). The judge then went on to consider the Appellant's claim, observing how the Appellant was just under 18 when he left Iraq and exactly 18 when he claimed asylum in the UK (see paragraph 19). The judge found the Appellant's claim to be inconsistent that his life was under threat, given that he did not claim asylum in Greece or in Spain through which he had travelled (paragraph 20). The failure to claim asylum when going through safe countries damaged the Appellant's credibility, including when he travelled through Italy. The judge held that this was not the behaviour of a person generally seeking protection. He went on to say that, "I accept that the Appellant has provided two photographs showing him to facial injuries but there is nothing to link those to his stepfather" (paragraph 21). In the end, the judge concluded that the Appellant could return to Iraq and that "he would be returned to the Kurdish region where he has relatives who can offer support" (paragraph 23).
5. The appeal was dismissed.

## **The Grounds of Application**

6. The grounds of application state that the judge erred in the following two respects. First, he applied Section 8 of the 2004 Act to conclude that the Appellant's credibility was damaged, and in so doing prevented himself from looking at other issues that were relevant to his claim for protection, and in this the judge violated the principles set out in **SM (Section 8: Judge's process) Iran [2005] UKAIT 00116**. Second, the judge did not actually make any proper finding in relation to the Appellant's claim that he was sexually abused by his stepfather and threatened by him and beaten up, and thrown out of the house. All he had said (paragraph 22) was in one sentence, namely, that "I accept that the Appellant has provided two photographs showing him to have facial injuries but nothing linking those to his stepfather". There was also, however, a third ground, and this was that the judge did not make a finding as to whether the Appellant had a CSID card, which was necessary given the latest case law of **AAH (Iraq) [2018] UKUT 212**.
7. On 14<sup>th</sup> December 2018, permission to appeal was granted by the Tribunal on the basis that it was arguable that the judge did err in law by failing to assess whether the Appellant could travel from Baghdad to Erbil on the basis of the latest country guidance case of **AAH (Iraq)** which did require consideration, rather than a consideration of the old authorities, to which the judge had regard. Second, it was arguable that the judge failed to take account of the Appellant's claimed history of sexual abuse, and therefore his potential vulnerability, when considering his credibility, on the basis that Section 8 had been engaged, and this violated what had been said in **SM [2005] UKAIT 00116**.

## **Submissions**

8. At the hearing before me on 3<sup>rd</sup> July 2019, Mr Mohzam, appearing as a solicitor on behalf of the Appellant, relied upon the grounds of application. He stated that the judge had made no findings on the core aspects of the substantive claim before the Tribunal when considering the appeal, save as to say that there were two photographs showing the Appellant to have facial injuries (at paragraph 21). Second, the judge appears to have concluded against the Appellant as lacking in credibility on the basis of Section 8, which is set out at the outset at paragraph 18 of the determination. Third, it was incumbent upon the judge to apply the latest country guidance case of **AAH (Iraq) [2018] UKUT 212**, because this went directly to the question of whether the Appellant had a CSID card, enabling to return back to Iraq.
9. For his part, Mr Mills submitted that the reliance upon **AAH (Iraq)** was academic, given that the Appellant was a person who originated from the IKR, and that by the time that this latest country guidance case was promulgated in June 2018, it was well-known that there were flights going

internally from Baghdad to Erbil, of which the Appellant could avail himself, as a person who had originated from the IKR. Therefore, the failure of the judge to have regard to the latest country guidance case, was not a material error of law. Second, and in any event, the fact that the judge drew attention to the fact that the Appellant “would be returned to the Kurdish region where he has relatives who can offer support” (paragraph 23) meant that any error in this respect was academic also because the Appellant could relocate to his area of origin where he had his brothers available who were in a position to help him. Mr Mills stated that he will accept that there was an error in the judge not making a finding as on the core event of the father’s sexual abuse of the Appellant, but this was not a material error because the judge had also found that “he has relatives who can offer support” (paragraph 23).

10. In reply, Mr Mohzam submitted that the losing party was entitled to know why they had lost and in this case the judge had not made findings on the core aspects of the Appellant’s claim, and this being so, the matter should be remitted back to the First-tier Tribunal with the finding of an error of law.

### **Error of Law**

11. I am satisfied that the making of the decision by the judge did involve the making of a finding of an error of law such that I should set aside the decision. My reasons are as follows.
12. First, this is a case where the Appellant has given extensive detail about the sexual abuse from his stepfather, which resulted in his being thrown onto the streets, and his finding refuge with his brother, who also then could not keep him for much longer, such that he gave him money to go away from Iraq. The Appellant is a person who, on the face of it, is a Claimant with a history of sexual abuse and, if that were to be the case then he would be potentially vulnerable, but no findings are made in this respect. There is only one sentence in relation to this at paragraph 23.
13. Second, although the judge does not expressly say so, the reference to the fact that the judge was “aware of the provisions of Section 8” (at paragraph 18), at the outset of the Section on “My Findings of Credibility and Fact” appears to suggest that the judge did not feel it necessary to make any further findings of fact. This is contrary to what was decided in **SM [2005] UKAIT 0016**, where the Tribunal had held that the blanket application of Section 8 “has the incidental effect of interfering with the well-established Rule that the finder of fact should look at the evidence as a whole, giving each item of it such weight as he or she considers appropriate” (paragraph 7). The Tribunal made it quite clear that “given the terms of Section 8, it is inevitable that the general fact-finding process is somewhat distorted, but that distortion must be kept to a minimum” (paragraph 9). In this case, that distortion has been unnecessarily amplified by a failure to make a finding on the core aspect of the claim, namely, the sexual abuse that the Appellant suffered from his father.

**Notice of Decision**

14. The decision of the First-tier Tribunal involved the making of an error of law. I set aside the decision of the First-tier Tribunal. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Broe, pursuant to practice statement 7.2(b).
15. An anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

12<sup>th</sup> July 2019