



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Numbers: PA/04921/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34
On 21st July 2020**

**Decisions & Reasons Promulgated
On 5th August 2020**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**PAS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Duncan Lewis & Co

For the Respondent: Home Office Presenting Officers Unit

DECISION AND REASONS (P)

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 amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. In this decision I determine whether the decision of the First-tier Tribunal ('FTT') sent on 14 January 2020, discloses an error of law such that it should be set aside. I have made this 'on the papers' but with the assistance of written submissions from the parties.

Rule 34

2. On 26 April 2020 the Upper Tribunal ('UT') issued directions to the parties setting out the provisional view that in this case it would be appropriate to determine whether the making of the FTT's decision involved the making of an error of law, and if so, whether that decision should be set aside, on the papers. UTJ Bruce gave directions giving both parties an opportunity to make written submissions. The directions also provided an opportunity for both parties to indicate within 21 days of the notice being sent, if they opposed the matter proceedings without a hearing.
3. The appellant continued to rely upon the grounds of appeal as well as extracts from Counsel's attendance note of the FTT hearing. The respondent provided written submissions dated 10 June 2020. Neither party objected to the matter proceeding without a hearing. I am satisfied that it is in accordance with the overriding objective and the interests of justice for there to be a timely determination of the question whether there is an error of law in the decision of the FTT, and that it is entirely appropriate in the circumstances of this case for the error of law decision to be determined on the papers, to secure the proper administration of justice. For the avoidance of doubt, in reaching my decision I have taken into account the matters set out in the appellant's grounds of appeal and the written representations made by the parties in response to the directions.

Background

4. The appellant is a citizen of Iraq who claims that he has a well founded fear of persecution in Iraq for reasons relating to his political opinion. He asserted that: he worked as a driver and journalist for a Kurdistan TV channel, GM TV; he posted articles against the government on his Facebook account in October 2017, which was hacked; he was told that the PUK security services were looking for him as a result of this; his home was raided by the security services on 24 July 2018. In support of his asylum appeal before the FTT, the appellant relied upon considerable supporting evidence including: copies of his press passes; photographs of him working for GM TV; screenshots of Facebook pages; a letter from his neighbour together with CCTV footage, photographs and other evidence relevant to the appellant's car and address; a letter from his brother dated 7

September 2019; a country expert report prepared by Sheri Laizer dated 18 November 2019; a clinical psychologist's report dated 12 November 2019 prepared by Dr Thomas.

5. The FTT rejected the core of the appellant's account and concluded that the evidence relied upon by the appellant in support of his asylum claim was not credible.

Appeal to the Upper Tribunal ('UT')

6. The appellant advanced eight wide-ranging and lengthy grounds of appeal, and permission to appeal was granted by FTT Judge Bulpitt on 10 February 2020. Judge Bulpitt considered it arguable that the FTT erred in law when addressing the CCTV evidence and the country expert report. Although the remaining grounds appeared less arguable to Judge Bulpitt permission to appeal was granted on all grounds.

Discussion

Ground 1

7. Ground 1 submits that the FTT made two errors of fact which caused the appellant unfairness. First, the FTT declined to view the CCTV video footage said to show the PUK security forces (known as Asayish) actually entering the appellant's home on 19 July 2008. The FTT opted to only consider screenshots taken from the video footage which did not show the men actually going into the appellant's property. The respondent's written submissions simply assert that "*irrespective*" of the video footage, the appellant could not demonstrate on the evidence that the residence was his home. This is difficult to follow. It would have been far more helpful if the respondent had adopted a clear position on what the footage does show. I do not need to resolve this issue because in my judgment the second error identified in ground 1 is significant and clearly made out. This relates to the FTT's finding at [33] that there was "*nothing*" from the appellant's own family in Iraq to support his claim and the finding at [39] in these terms:

"The other particular point of note in assessing the appellant's claim is that his family are still living in the same location in Iraq and have not experienced any threats as a result of the appellant's actions. Further no threats appear to have been made against the appellant via his family..."

8. The FTT's factual findings predicated upon a perceived absence of evidence from any family members in Iraq entirely fail to address relevant evidence within the bundle of evidence before the FTT: a letter from the appellant's brother in Iraq dated 7 September 2019

with a certified translation. This letter provides corroboration of the appellant's claim in important respects:

- (i) The brother describes Asayish attacking the family home on 24 July 2018, during which time they stated that there were looking for the appellant and took his belongings including a laptop.
 - (ii) The brother explains that on this occasion he was threatened that if he did not disclose the appellant's whereabouts, he would "*face consequences as well*".
 - (iii) The brother also describes that on many occasions Asayish have attended his shop to ask about the appellant's whereabouts and he was threatened on each occasion that any news should be communicated straight away.
9. The respondent's written submissions do not address the failure to take the brother's letter into account. Reference was made to documents from the appellant's parents but the submissions do not address the letter from the appellant's brother, together with his identification (to be found at pages 46-71 of the appellant's bundle before the FTT), in any meaningful manner.
10. I am satisfied that the FTT failed to take into account relevant evidence material to the credibility of the appellant's account. This undermines the credibility findings and renders them unsafe. This error of law is sufficient alone to set aside the decision, with no findings preserved.

Country expert evidence

11. I am also satisfied that the FTT failed to take into account relevant evidence contained in the country expert report, when considering the plausibility of the appellant's account. At [33] the FTT appears to have drawn adverse inferences from the appellant's claim that Asayish attended the appellant's property without official documentation such as an arrest or search warrant or court summons. Although the FTT considered the country expert report in other respects, the FTT failed to consider the country background evidence to the effect that Asayish conducts security sweeps without warrants.
12. In addition, the FTT's acknowledgment that Dr Laizer considered it plausible in the context of Iraq for an employee to act up in another role at [35] is inconsistent with the finding at [36] that this was not plausible in the appellant's case. The FTT also found that the photographs of the appellant might be explained by being a driver but failed to reconcile this with the screenshots of the appellant acting as a journalist by actually interviewing people and holding a microphone whilst doing so.

13. I have carefully considered the respondent's written submissions regarding plausibility and the country expert evidence, but these do not clearly address the matters I have identified above.

Vulnerable witness

14. Ground 6 relies upon a very detailed 57-page report from Dr Thomas. This describes the appellant as a traumatised and psychologically distressed man who presented in a manner entirely consistent with an individual suffering from moderate-severe symptoms of Major Depressive Disorder. Dr Thomas considered that the appellant would find providing oral evidence challenging and safeguards should be put in place. When making its findings of fact in relation to his asylum claim, the FTT has not engaged in any meaningful manner with the detailed evidence in this report. The report is referred to later on in the decision at [42] when dealing with suicide risk under Article 3, but there has been a failure to engage with the findings in the report when making findings of fact for the purposes of the asylum claim. This breaches the relevant vulnerability guidance and constitutes an error of law - see AM (Afghanistan) v SSHD [2017] EWCA Civ 1123. As the respondent notes, it is not altogether clear how the failure to apply the vulnerability guidance materially impacted the outcome. I do not need to consider this in any more detail because I have already found that irrespective of any other ground of appeal, the failure to address the brother's letter on the part of the FTT is a material error of law, requiring the decision to be set aside.
15. I reject the submission in the respondent's written submissions that the grounds of appeal I have focussed upon above do no more than disagree with the FTT's conclusions. For the reasons I set out above, the FTT's decision contains errors of law and its decision is set aside.

Disposal

16. The assessment of a claim for asylum which turns on credibility such as this, is always a highly fact sensitive task, and in all the circumstances, I have decided that it is appropriate to remit this appeal to the FTT for a fresh hearing, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. The nature and extent of any judicial fact-finding necessary will be extensive.
17. When the decision is re-made by the FTT and when applying the relevant vulnerability guidance, care must be taken to address the appellant's psychological condition as outlined in Dr Thomas's report.

Notice of Decision

18. The appeal is allowed. The decision of the FTT is set aside, and I remit the matter for a re-hearing de novo by a judge other than FTT Judge Kemp, with no findings preserved.

Melanie Plimmer
Upper Tribunal Judge Plimmer

22 July 2020