Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08450/2018

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 27th January 2020	**On 4th March 2020**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

AK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Z Harper, instructed by Paragon Law
For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction was previously made. As this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, AK 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.

2. The appellant is a national of Iraq. His claim for asylum was refused by the respondent for reasons set out in a decision dated 21st June 2016. The respondent accepted the appellant is national of Iraq, that he is of Kurdish ethnicity, and that he lived in Hawija. The respondent rejected the claim that the appellant's father was a member of the Ba'ath party, that the appellant encountered any problems on account of his father's work, and that one of the appellant's maternal uncles was involved in the Kurdish government. The respondent concluded that in any event the appellant could internally relocate in the IKR.

3. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Graham for reasons set out in a decision promulgated on 31st December 2018. The appellant advances two grounds of appeal. First, the judge failed to take into account the totality of the evidence and to consider the claim being made by the appellant with anxious scrutiny. Second, the judge failed to correctly apply the relevant country guidance in her assessment of the Article 15(c) risk upon return and in determining whether the appellant can internally relocate. Permission to appeal was granted by First-tier Tribunal Judge O'Keefe on 28th January 2019.

4. I deal with each of the grounds of appeal in turn. The appellant relied upon a report prepared by Dr Rebwar Fatah dated 16th August 2018 that was specific to this appeal. The appellant claims the report was directly relevant to the assessment of the external credibility and plausibility of the claim made by the appellant. The appellant claims that in reaching her decision the judge failed to have any regard to the expert evidence. Dr Fatah had concluded that it was plausible that the appellant's father had been abducted and killed by ISIS if the family were in Hawija when it was captured by ISIS in June 2014. Furthermore, in reaching her decision the judge failed to take account

of the expert evidence that there was a heightened risk to the appellant as the son of a member of the Ba'ath party in Kurdish or Shia areas where a significant proportion of the population harbours resentment against the Ba'ath party.

5. Ms Harper submits Dr Fatah had commented upon the plausibility of the appellant's account and it was important for the judge to consider that evidence because the events relied upon by the appellant occurred when the appellant was very young and so the expert evidence was particularly relevant to the assessment of the account of events relied upon by the appellant. The expert dealt with what had happened in Hawija at paragraphs 450 to 474 of the report. At paragraph [34], the judge rejected the claim made by the appellant that he and his family would be at risk in Kirkuk without having any regard to paragraph 575 of the expert's report. Ms Harper submits Dr Fatah had expressly commented upon the plausibility of the appellant's account of events at paragraphs 477 and 478 of his report. She submits the failure to take into account the expert evidence at all, is a material error of law.

6. In reply, Ms Abhoni accepts the judge does not make any reference to the report of Dr Fatah in her decision, but she submits, that is not material because the judge adequately assessed the claim. She submits the judge accepted the appellant was a minor and accepted there are certain details the appellant would not know. Having considered the evidence relating to his father's activities, the judge accepted the appellant would have very little recollection of his father's role or activities within the Ba'ath Party. She submits it was open to the judge to find that the appellant's father aligned himself with Iraqi's rather than the Kurdish community in Hawija, for the reasons set out at paragraph [32] of the decision. She submits that at paragraph [33], the judge referred to the oral evidence of the appellant that following the fall of Saddam Hussein, his father was not questioned by the authorities regarding his political opinion and his

family did not suffer any retribution from members of the community. She submits it was open to the judge to conclude that the evidence of the appellant taken together with the background material indicates that if the appellant's father was a member of the Ba'ath Party, he did not hold a high or prominent position. Ms Abhoni accepts the judge does not refer to any internal inconsistencies in the account of the appellant.

7. I accept the judge erred in her assessment of the claim by failing to have any regard whatsoever to the expert evidence of Dr Fatah, that was specific to this appeal and the account of events relied upon by the appellant. The judge refers at paragraph [6] of her decision to the appellant's bundle and supplementary bundle, but there is no reference whatsoever in the decision to the report of Dr Fatah. The assessment of credibility can often involve an assessment of the plausibility, or apparent reasonableness or truthfulness of what is being said. Here, the judge considered the likelihood of aspects of the appellant's account based on inferences drawn from the background material but did not consider the expert's report that was at least capable of revealing the likelihood of what was said by the appellant, having occurred. The report of Dr Fatah was based on an understanding of events and life in Iraq. It is now well established that an account could be implausible yet credible, or plausible yet properly not believed. An assessment of the inherent likelihood or apparent reasonableness of a claim is an aspect of its credibility and in my judgement, in the absence of any inconsistencies in the account advanced by the appellant, the judge should have considered all the material before her, including the matters set out in the expert's report.

8. That in itself is in my judgement sufficient to establish an error of law in the decision of the First-tier Tribunal such that it should be set aside. There is however also some force to the second ground of appeal that in assessing the risk upon return, the judge erroneously proceeds

upon the basis that the appellant has close family in the IKR. Having accepted the appellant originates from the 'contested area of Hawija', it appears the judge proceeds upon the erroneous understanding that Kirkuk is in the IKR. At paragraph [12] of the decision, the judge refers to the appellant's mother having two brothers [M] and [A], who "*both lived in Kirkuk in the IKR"*. At paragraph [34] of her decision, the judge states "*... I have not accepted the appellant's claim that he and his family would be at risk in Kirkuk or elsewhere in the IKR because of his father's membership of the Ba'ath Party...".* Mrs Abhoni accepts the judge appears to be confused regarding whether Kirkuk is in the IKR, but she submits, the judge makes it clear that she is considering internal relocation to the IKR. The difficulty with that submission is that at paragraph [39] of her decision, the judge states that she has not accepted the appellant's account that he is unable to relocate to the IKR, because she has not accepted as credible, his account for the reasons outlined. The judge states the appellant could relocate to Northern Iraq "*where he has relatives who can support him upon return...".* The relatives that were referred to by the appellant are his maternal uncles who the judge noted at paragraph [12], lived in Kirkuk.

9. I am satisfied that the decision of the First-tier Tribunal Judge is vitiated by a material error of law and should be set aside. As to disposal, the parties submit that the appropriate course is for the appeal to be remitted to the First-tier Tribunal for hearing de-novo with no findings preserved. The parties submit that the Tribunal will be required to hear extensive evidence and to and address the risk upon return by reference to the recent country guidance set out in SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC). Ms Harper submits the appellant has been denied a fair opportunity of having all the evidence considered by the First-tier Tribunal. In all the circumstances, I am persuaded that the appropriate course is for the matter to be remitted for rehearing before the First-tier Tribunal with no findings preserved.

NOTICE OF DECISION

10. The decision of First-tier Tribunal Judge Graham promulgated on 31st December 2018 is set aside.

11. The matter is remitted for rehearing before the First-tier Tribunal. The parties will be notified of a hearing date in due course.

Signed Date 27th February 2020

Upper Tribunal Judge Mandalia