



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2021-001430
PA/50929/2021 ; IA/02277/2021**

THE IMMIGRATION ACTS

**Heard at: Bradford (remote)
On the 8th July 2022**

**Decision and Reasons
Promulgated
On the 01st September 2022**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

**SAM
(anonymity direction made)**

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr Greer of Counsel

For the Respondent: Ms Young, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1995. He appeals with permission against the decision of the First-tier Tribunal (Judge Hatton).
2. The grounds upon which permission was granted are extensive, but I need not address all of them, since before me the parties are in agreement about at least one: the decision of the First-tier Tribunal is

flawed for procedural unfairness and so must be set aside in its entirety.

3. The basis of the Appellant's claim is that he has come to the adverse attention of the Jaff tribe, a large and powerful clan based in Iraqi Kurdistan. He says that he is blamed, wrongly, for the death of a man whose father is the leader of the Jaff, and that they wish to seek revenge against him. The Secretary of State did not believe the Appellant's evidence and refused protection on that basis. When the matter came before Judge Hatton, he did not believe it either. At the close of evidence Judge Hatton embarked on what Mr Greer describes as an "extensive line of questioning" of the Appellant. He put it to the Appellant that a 2017 CPIN *Iraq: Blood Feuds* says that the Jaff tribe does not in fact have a leader. He asked the Appellant to explain why he claimed that it did. The Appellant simply answered that in his experience there is a hierarchy in the tribes. Judge Hatton was not satisfied with this response, and at paragraph 62 of his decision, expressly takes the point against the Appellant: "I have no option but to find that the Appellant's assertion is fundamentally at odds with the above CPIN...". This was of course an adverse credibility point going to the heart of the Appellant's case: if there was no leader, there cannot have been a dead son, and the blood feud was a fiction.
4. As Judge Hatton points out, this was not a case where he had gone away after the hearing and conducted his own internet research. That would plainly be unfair: EG (post-hearing internet research) Nigeria [2008] UKAIT 00015. Here he told the parties squarely that he was aware of the CPIN evidence. Whilst this is not an inquisitorial process, there is nothing in itself procedurally irregular in this: if there is a matter already known to the Judge, which might affect his analysis of the evidence, it is correct and fair that he should let the parties know about that. The difficulty arises in what happened next.
5. Having heard the point put to his lay client, Mr Greer asked the Tribunal for an opportunity to address it. He pointed out that there may be countervailing evidence available about whether the Jaff tribe has a leadership structure. The Tribunal denied Mr Greer that opportunity, finding that he had already had it: he had been aware before the hearing that all of the Appellant's account was challenged, and so it was implicit in this that the challenge extended to whether or not the Jaff tribe had a leader as described.
6. I am quite satisfied, and the Secretary of State now accepts, that this was grossly unfair. Whether or not the Jaff tribe even had a leader was not a point taken in the refusal letter. It was not a point taken by the HOPO. It was a point taken, after the close of evidence, by the judge. In those circumstances it was incumbent upon the judge to ensure that the Appellant's representative had a chance to respond to this very specific forensic challenge. All that would have been

required would be to permit a very short stay in the decision being taken to enable the parties to make representations in writing, and introduce other evidence if it in fact existed. The unfairness in refusing such an adjournment is compounded by the fact that the CPIN evidence was not even as clear as the Tribunal interprets it to be, and the Tribunal would no doubt have been greatly assisted by some further submissions on the matter. The error identified being procedural in nature, I am invited by the Secretary of State to set the decision of Judge Hatton aside in its entirety and to remit the matter for hearing *de novo*.

7. I need not therefore deal with the multiple other grounds raised, although all of them had merit. I do however want to mention this. The decision below is peppered with unnecessary adjectives such as “astonishing” and “remarkable”. Mr Greer took no issue with this terminology but it is worth pointing out that judges in this jurisdiction should be cautious about the use of such terms. It is trite that in protection claims we are dealing with countries which have very different cultures, practices and social conventions than our own. Things which would seem “astonishing” to us might seem perfectly normal to an Iraqi Kurd, and vice versa. The only finding that any judge in this jurisdiction needs to make is whether the evidence before the tribunal is of sufficient weight to discharge the burden of proof.

Decisions

8. The decision of the First-tier Tribunal is set aside. No findings are preserved.
9. The decision in the appeal will be remade in the First-tier Tribunal by a judge other than Judge Hatton.
10. Having had regard to the new Presidential guidance on anonymity orders *Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private* I bear in mind the importance to be attached to the principle of open justice. I have nevertheless decided to make an anonymity order in this matter, in light of the fact that the Appellant continued to seek protection: see paragraph 28 of the Guidance Note. Accordingly I make an order for anonymity under Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

“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, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent.

Failure to comply with this direction could lead to contempt
of court proceedings”

Upper Tribunal Judge Bruce
8th July 2022