



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Prepared 8 September 2023

Case No: UI-2023-001464

First-tier Tribunal No: PA/51499/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

31st October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

[H M M]
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Sepulveda, counsel
For the Respondent: Mr Diwnycz, Senior Presenting Officer

Heard at Field House on 8 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a national of Iraq, appealed against the decision of First-tier Tribunal Judge Atkinson, who on the 5th May 2023 dismissed the Appellant's appeal seeking protection, by reference to paragraph 276ADE(1)(iv) of the Immigration Rules and Article 8 of the ECHR.
2. Permission to appeal was given on the ground that the First-tier Tribunal Judge had failed to consider and explain why he rejected the claims that were being made and there is no issue that that as a fact was correct. The Home Office's robust response to the matter was that because the judge had found against the credibility of the Appellant's claim to be at risk on a return to Iraq that it did not matter that those issues had not been dealt with because, in effect, the Appellant's claim, having been rejected that represented the fullness of consideration that needed to be given.
3. There may be no merit in the grounds being argued as to why paragraph 276ADE(1)(vi) was not engaged but there is no analysis of it and thus fairness, given it clearly was an issue raised, showed that the omission by the Judge was a material error of law.
4. There is no attack upon the Judge's conclusions in relation to the implications for return in relation to documentation. The Respondent made no Rule 24 response but accepted that if there was an error of law the matter needs to be considered further by way of fresh evidence in the First-tier Tribunal.
5. I concluded that Ms Sepulveda's argument irrespective of its merits succeeds because the matter was not addressed as to be expected by the First-tier Tribunal Judge.. I found that there was a material error of law in failing to give sufficient reasons for rejecting the Appellant's claim. I concluded therefore that there was the need for this matter to be remade in the First-tier Tribunal.

Decision

6. The appeal is allowed to the extent that the Original Tribunal's decision cannot stand. The matter must be remade in the First-tier Tribunal in Bradford.
7. Time estimate of 2 hours. Interpreter required. Kurdish Kurmanji. Not to be relisted before Judge Atkinson . To be dealt with de novo in relation to Article 8 and paragraph 276ADE(1)(vi).
8. No further directions given except any necessary must be sought of the First-tier Tribunal in writing with reasons.



Judge of the Upper Tribunal
Immigration and Asylum Chamber