



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003027

First-tier Tribunal No: PA/00515/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th January 2024

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

ROM (IRAQ)
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr M. Schwenk, Counsel instructed by
For the Respondent: Ms M. Diwnycz, Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 10 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant 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 him. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1989. He appeals with permission against the decision of the First-tier Tribunal (Judge Lodato) dated the 23rd July 2021.
2. The Appellant did not attend the hearing before Judge Lodato in July 2021. He now says that was because he was unaware of it.
3. In 2020 the Appellant made further representations to the Home Office asking for protection. He submitted that he had been political active in the UK campaigning against the current government of the IKR and that he would face a real risk of persecution on return as a result. The Respondent refused this claim on the grounds that the Appellant's activity was 'low profile' and would not therefore attract the adverse attention of the IKR authorities. In its written decision the First-tier Tribunal dismissed the protection claim on the same grounds. Noting that the dispute here was whether the Appellant was as active as he claimed, and the extent of the risk revealed by the country background material Judge Lodato said this: "I was not able to explore any of these themes with the appellant because he did not attend the hearing without explanation".
4. The Appellant also made a fresh human rights claim, on the basis that he was, at that point, five years into a relationship with a British woman who would be unable to safely go and live in Iraq with him. That element of his appeal was dismissed for a lack of evidence that the relationship was subsisting: "without her evidence, I am left in a state of uncertainty about whether the relationship continues to this day and whether they are currently living together".
5. The Appellant submits that in respect of both these grounds of appeal, his absence from court on the day of the hearing was pivotal. Mr Diwnycz agrees. The only question then, is why he wasn't there.
6. The uncontested facts are these:
 - i) When the Appellant filed his application to appeal to the First-tier Tribunal his then representatives completed the form for him. They gave the Appellant's correct postal address, no telephone contact number and the wrong email address;
 - ii) At some point after they filed that application those solicitors then came off record;
 - iii) When the notices of hearing were sent out for the hearing before Judge Lodato, they were only emailed (this is confirmed by an email from the First-tier Tribunal to the Appellant's current representatives dated the 28th September 2022);
 - iv) The Appellant did not therefore know about the hearing, and failed to attend;
 - v) When Judge Lodato promulgated his decision it was only served by email (again, confirmed by First-tier Tribunal staff);

- vi) In 2022 he instructed new solicitors, whom he instructed to make enquiries about why there was such a delay in his appeal being listed;
 - vii) Those solicitors were informed by telephone on the 20th August 2022 that the appeal had been dismissed the preceding year;
 - viii) There followed approximately 10 days of communication between the solicitors and Tribunal staff with the aim of establishing what had gone wrong;
 - ix) The Appellant made an out of time application for permission to appeal to the Upper Tribunal on grounds of procedural unfairness;
 - x) Permission was granted on the 11th July 2023.
7. Mr Diwnycz agreed that in light of this series of events it would be appropriate to set the decision of Judge Lodato, not because of any fault on his part, but because there had obviously been a procedural irregularity giving rise to material unfairness. I agree. The decision is set aside the matter remitted so that it may be heard *de novo* by a judge of the First-tier Tribunal other than Judge Lodato.

Decisions

- 8. The appeal is allowed.
- 9. The matter is remitted so that it may be heard *de novo* by a judge of the First-tier Tribunal other than Judge Lodato.
- 10. There is an order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
10th January 2024