



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004267
First-tier Tribunal No:
PA/53624/2022
IA/11279/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 05 September 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE LOUGHRAN

Between

HMA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Masih, Counsel instructed by MH Solicitors LLP

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

Heard at Field House via CVP on 13 August 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 the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This Secretary of State for the Home Department appeals with the permission of First tier Tribunal Judge Chohan against the decision of First-tier Tribunal Judge Lester dated 6 September 2024 allowing HMA's appeal against the refusal of his protection and human rights claim dated 23 August 2022.

2. We shall refer to the Secretary of State for the Home Department as the Respondent and HMA as the Appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.
3. The Appellant is a national of Iraq of Kurdish ethnicity born on 23 March 2002. The Appellant arrived in the UK on 21 December 2019 and claimed asylum. The Appellant claimed to be a victim of domestic violence and victim of modern slavery and to be at risk of an honour crime and re-trafficking. The Appellant also claimed that Articles 2, 3 and 8 of the ECHR would be breached on account of the risk of destitution because he did not have the necessary documents for re-documentation.
4. On 16 June 2022, the Single Competent Authority made a conclusive grounds decision that the Appellant was a victim of modern slavery and had been subjected to forced labour in Iraq. In a decision dated 23 August 2022 and in the undated Respondent's review the Respondent concluded that the Appellant's claim did not engage a convention reason, the positive conclusive grounds decision did not detract from the Appellant's damaged credibility and that the Appellant would have the correct documentation to safely return to Iraq.
5. The Appellant's appeal against the refusal of his protection and human rights claim came before First-tier Tribunal Judge Lester on 5 July 2023. The judge made the following findings before allowing the Appellant's appeal:
 17. In this case the evidence of the Appellant is essentially a series of unsubstantiated assertions. In passing I note that on his own evidence he appears to have able to avail himself of effective recourse to law enforcement protection after the alleged assault by his uncle as his uncle was imprisoned.
 18. However, the Appellant drew attention to the fact that this case relies on the lower standard. Whereas the SCA in considering the NRM referral decided the Appellant was a victim of modern slavery. As the Appellant advocate noted this exercise by the SCA involved an assessment of essentially the same evidence as in this case and to a higher standard, that of the civil standard of the balance of probabilities. In that exercise the SCA had concluded to a higher standard on similar evidence that he was a victim of modern slavery, and by implication had therefore accepted his credibility.
 19. In my view the lynchpin of this case for the Appellant is his credibility. If that is established then all matters would flow from it. Likewise, if it is not established then the opposite conclusions would be reached. Here he argues that the SCA conclusion establishes his credibility on the those matters and that this conclusion can then be carried across in assessing his credibility in this case. It is argued that this is bolstered by the higher standard which the SCA applied. While the SCA conclusion took place when he was younger (and he is now older) it was still the same evidence being considered.
 20. I find those arguments reasonable. I then factor in the SCA conclusion in assessing his credibility. I find that they strengthen his credibility such that it passes the lower standard applicable in this case.
6. The Respondent sought permission to appeal against the judge's decision on the grounds that he failed to have regard to the current country guidance case of *SMO and KSP (Civil status documentation, article 15 (CG) [2022] UKUT 00110*, failed to give reasons why the Appellant was a member of a particular social group and failed to consider/make any findings on the credibility of the Appellant's account, risk of re-trafficking, sufficiency of protection, internal relocation or re-documentation and feasibility of return.

7. Permission was granted by the First-tier Tribunal Judge Chohan on all grounds. The Appellant did not provide a rule 24 response.
8. The matter came before us for a hearing on 13 August 2024. Ms Masih did not oppose the Respondent's application and conceded that the judge had failed to apply *SMO and KSP* and had made inadequate findings. Ms Masih made it clear that she did not accept that the Appellant's appeal was bound to fail. She submitted the appropriate course of action was to remit the matter to the First tier Tribunal to be heard afresh because there were key aspects of the Appellant's evidence that the judge had not considered.
9. Ms Masih's concession was properly made. It is clear that the judge failed to apply *SMO and KSP* and failed to consider extant issues in the Appellant's appeal. The judge allowed the Appellant's appeal on the basis of the positive conclusive grounds decision without considering whether there was an ongoing risk to the Appellant or whether the risk could be mitigated by sufficiency of protection or internal relocation. This is a clear error which materially impacted on the judge's assessment of the Appellant's claim.
10. Accordingly, First tier Tribunal Judge Lester's decision has to be set aside in its entirety and the decision re-made. There are no findings which are capable of being preserved. The appropriate course, in such circumstances, is for the matter to be decided afresh and for the case to be remitted to the First-tier Tribunal for a hearing before another judge aside from First tier Tribunal Judge Lester.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

We set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal to be heard by a different judge, with no findings of fact preserved.

G. Loughran

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 August 2024