



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2024-001869

First-tier Tribunal No:  
PA/54807/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 19<sup>th</sup> of September 2024**

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**MR**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C. Cole, Solicitor, Parker Rhodes Hickmotts Solicitors  
For the Respondent: Ms McKenzie, Senior Home Office Presenting Officer

**Heard at Field House on 4 September 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. The Appellant, a national of Iraq, appeals with permission against the decision of First-tier Tribunal Judge Howard promulgated on 30 December 2023, against the decision of the Respondent to refuse his protection and human rights claim.
2. The Appellant's claim in summary was that he was at risk on return to Iraq because he had a relationship with a woman from a different tribe. The couple wanted to marry but instead the woman had to marry another man. That other man was a commander in the KDP. The Appellant and the woman continued their relationship after the woman's marriage to the commander. When the couple's illicit relationship was discovered, the woman and the Appellant were at risk of honour-based violence. The Appellant fled Iraq and arrived in the United Kingdom through various countries and sought asylum here.
3. A hearing took place at the hearing centre in Birmingham on 20 December 2023. The Judge heard evidence and considered the parties' respective bundles of documents. The Judge made various adverse findings of fact against the Appellant and dismissed the Appellant's appeal on both protection and human rights grounds.
4. In dismissing the appeal, the Judge noted the Appellant's account of what had happened in Iraq, and which had caused him to leave Iraq. The Judge concluded that there were significant differences and discrepancies between what the Appellant said at the Asylum Interview with the Home Office, compared with what the Appellant said later. The Judge highlighted several such matters of concern in his decision.
5. The Judge concluded that he was not satisfied as to the veracity or truth of the claim, and he therefore dismissed the appeal. The Judge considered whether the Appellant would be able to obtain relevant Civil Status Identity Documentation (CSID) for travel purposes within Iraq/Kurdistan and concluded that in view of the unreliable evidence of the Appellant, that he could, because the Appellant would have the assistance of family and others to obtain that documentation. The Judge further dismissed the appeal based on Article 8 ECHR, noting the limited private life established by the Appellant since his arrival in the United Kingdom in 2018.
6. It was made clear to me during the hearing that there is no appeal against the findings in respect of the CSID because the Appellant has it and there was no appeal against the Article 8 ECHR findings.
7. The Appellant sought permission to appeal against the Judge's decision. The grounds of appeal are not set out separately. The grounds can be summarised as stating that the Judge erred by failing to take into account a witness statement which had been provided by the Appellant in response to the matters raised by the Respondent in her Reasons for

Refusal Letter. The matters raised by the Appellant include that the Judge was wrong to make adverse findings because:

- (1) The Judge referred to matters in the Asylum Interview, but there was no consideration of what was added to that in the Appellant's witness statement;
  - (2) It was incumbent upon the Judge to consider the responses provided by the Appellant in his witness statement to the Respondent's Reasons for Refusal Letter; and
  - (3) The Judge's credibility findings were not sustainable in any event.
8. Permission was granted on limited grounds on 29 April 2024.
  9. There was no response from the Respondent to the grounds of appeal pursuant to rule 24, of the Tribunals Procedure (Upper Tribunal) Rules 2008.
  10. At the hearing before me, Mr Cole on behalf of the Appellant said that the single issue was whether the account was reasonably likely to be true. There was a material error and in the Judge's decision because he had relied on the Respondent's Reasons for Refusal Letter, but there was no reference to two statements from the Appellant. The Appellant had also provided oral evidence. None of this was in the Judge's reasons and so the Appellant remained unsure why his appeal was dismissed. It was submitted that there was a clear fundamental error. I was invited to set aside the decision.
  11. Ms McKenzie said in summary that the grounds were a mere disagreement with the Judge's decision. The Judge had dealt with the witness statement. Paragraph 45 of the decision had considered the secret relationship and about the friend. Paragraph 42 onwards did deal with the October 2023 witness statement. Ms McKenzie said that there was an onus on counsel on the day to tell the Judge that there was another witness statement from December 2023 too.
  12. In respect of disposal if I was to find that there is a material error of law in the Judge's decision, the parties said that the matter ought to be remitted to the First-tier Tribunal in respect of the protection issues.
  13. Having considered the rival submissions it is clear to me that the Judge has not adequately considered the Appellant's witness statement. In this protection claim, I cannot be satisfied that the most anxious scrutiny was applied by the Judge when making his decision. Whilst the Judge made various adverse findings, the lack of reference to the matters set out within the Appellant's witness statement inevitably leads me to conclude that the witness statement was not used sufficiently in making those findings. The Judge appears to have relied on the Respondent's Reasons for Refusal Letter but has then not considered the Appellant's witness statement to consider the Appellant's explanation or response to that Reasons for Refusal Letter.

14. I reject Ms McKenzie's submission that it was for the Appellant's counsel to tell the Judge that the witness statements were in the stitched bundle. Indeed, I note that in any event, the Judge listed the items which he was considering, including both the initial and the further witness statement. I do not see on what basis it can properly be submitted that a Judge has to be told about every document in a bundle. It is for the Judge to consider the evidence and to give it what weight is thought to be appropriate. The witness statement was not some document of minor relevance because it was a specific witness statement of the Appellant himself. As that was not taken into account then it is not possible to see how there was a fair and lawful consideration of the Appellant's claim and his response to the Respondent's Reasons for Refusal Letter. The Judge clearly knew about both witness statements because he listed them in his decision. It was therefore necessary to take them into account and to make findings in respect of the core aspects to which they referred.
15. Whilst I note that the explanations provided by the Appellant in his witness statements are perhaps not the most illuminating, I cannot be satisfied that had the Judge had taken those explanations into account, that he might have come to a different decision.
16. In the premises, I conclude that there is a material error of law in the Judge's decision and that it must be set aside for a re-hearing.
17. I canvassed with the parties the appropriate disposal of this case in terms of future steps.
18. I have applied *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and have carefully considered whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice Statement. I take into account the history of this case, the nature and extent of the findings to be made. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal remake the decision.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside in respect of the protection claim only. The Article 8 ECHR claim remains dismissed.
2. I remit the matter to the First-tier Tribunal for re-hearing in respect of the protection claim. None of the findings in respect of the protection claim shall stand.

Signed  
Abid Mahmood  
Judge of the Upper Tribuna

Date: 4 September 2024