



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04331/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 4th September 2019

Decision & Reasons Promulgated
On 16th September 2019

Before

Upper Tribunal Judge Chalkley

Between

MOHAMMED [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timpson of Counsel

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant was born on 2nd September 1997 and is a citizen of Iraq. The appellant made application for recognition as a refugee and the respondent refused the claim. In doing so the respondent issued a Notice of Refusal of leave to enter which resulted in the appellant appealing to the First-tier Tribunal.
2. His appeal was heard by First-tier Tribunal Judge Herwald on 11th June 2019. The appellant said he was born in Tikrit in the district of Tuz in Iraq. He said that he left because his father had been a member of the Ba'ath Party and had been some form of

spy against the Peshmerga. He claimed that this would cause him difficulties were he to return to the IKR. He also feared Hasht-al-Shabi, a Shia militia, and at paragraph 9 of the judge's determination, he sets out in full the appellant's claim.

3. The judge made adverse findings against the appellant and noted that the appellant's mother and sister still lived in Iraq and he found, therefore, that they could obtain the documents necessary for the appellant to obtain a CSID. In doing so he erred in law, because the appellant is from a disputed area and his mother and sister do not live in that area any longer. They would not be able to obtain the documents. The judge further erred in law at paragraph 14(l) of the determination when he considered the evidence that the appellant gave about his father. The judge appears not to have appreciated that in answers to questions 16 and 17 of the substantive asylum interview the appellant had already indicated that his father acted as a spy for the Ba'ath Party.
4. Mr McVeety told me that there was shortly to be a new country guidance case promulgated by the Upper Tribunal in relation to the risk under Article 15(c) and he explained that he was not opposed to the remittal of the determination, given the errors on the part of the judge.
5. I set aside the judge's determination in its entirety. I believe that the error in relation to credibility contained in paragraph 14(l) may very well have tainted the other credibility findings and it seems to me much safer to enable a new judge to start making fresh credibility findings.
6. I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Herwald. A Kurdish Sorani interpreter will be required. Two hours should be allowed for the hearing of the appeal.

Richard Chalkley

Upper Tribunal Judge Chalkley
10th September 2019