



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07151/2017

THE IMMIGRATION ACTS

Heard at Manchester

Determination & Reasons

On 11th June 2019

**Promulgated
On 17th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR YUSUF [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr C Bates (Senior HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Mark Davies, promulgated on 26th March 2019 following a hearing at Manchester Piccadilly on 14th March 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 26th June 1995. He appealed against the decision of the Respondent refusing his claim to asylum and to humanitarian protection pursuant to paragraph 339C of HC 395.
3. At the hearing before me on 11th June 2019, Mr Bates, appearing as Senior Home Office Presenting Officer, conceded that this was a case where there was an error of law in the determination of the judge for two reasons.
4. First, the judge had stated in his conclusions that, “I have made reference to the evidence flying in the face of the evidence given by the Appellant’s mother at her appeal hearing” (paragraph 38) when deciding that the Appellant was not a person of credibility. However, there had been no reference by the judge at all to the Appellant’s mother’s evidence at the appeal hearing. Therefore, given that this was the basis upon which the Appellant’s credibility had been impugned, it failed to disclose the precise reason for why the Appellant was not believable.
5. Second, the judge had stated that, “I have received no evidence as to the basis upon which the Appellant’s family members in the United Kingdom were granted refugee status, if indeed that was the case” (paragraph 41), even though the Appellant’s uncle gave evidence (as was also stated at paragraph 9 of his witness statement in the Appellant’s bundle at page 10). Moreover, the Home Office confirmed the grant of refugee status (see the Appellant’s bundle at page 18) to family members of the Appellant and this evidence was before the Tribunal but not considered by the judge. The uncle had given evidence that he had been granted refugee status due to the risk to him as a member of the [S] tribe and this had not been challenged by the Home Office.
6. The Appellant, however, was not in attendance, and neither was there anyone on his behalf in attendance. Instead, I had received an email, sent through Field House dated 7th June 2019, but received only the night before, out of hours, to the effect that the Appellant would not be able to attend the hearing because those representing him previously were not available, and nor was he able to get any alternative representation. In that letter, the Appellant had requested an adjournment.
7. Given the fact that the Senior Home Office Presenting Officer, Mr Bates, had today conceded that the decision of the judge below did indeed fall into error of law, I saw no reason to grant an adjournment, since the effect of my decision today is in favour of the Appellant.
8. Since the very issue that the Appellant seeks to have determined before me is now resolved in his favour, I conclude that the appeal is allowed, and that the matter be remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Davies in Manchester.

Notice of Decision

9. The decision of the First-tier Tribunal amounted to an error of law. It falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is set aside pursuant to paragraph 7.2(b) of the Practice Directions and is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Davies in Manchester.
10. No anonymity direction is made.
11. This appeal is allowed.

Signed

Date

Deputy Upper Tribunal Judge Juss

12th July 2019