



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

Appeal Number: PA/07121/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 19 December 2019**

**Decision & Reasons Promulgated
On 14 January 2020**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**W K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Emma Daykin instructed by Rashid & Rashid
For the Respondent: Ms R Bassi, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Swinnerton promulgated on 6 September 2019 dismissing his appeal on protection and human rights grounds. The appellant is Kurdish and arrived in the United Kingdom in 2015. His immigration history is as set out in Judge Swinnerton's decision at paragraph 6. There is no need to repeat that here.
2. In summary it is evident that the appellant did not give evidence before the judge on the basis he was unfit to do so, that being confirmed by a psychiatric report by Dr Ahwe dated 18 February 2019. The judge did not

accept that the appellant was at risk nor did he accept that the appellant would not be able to relocate within Iraq. The judge did not however address Article 8 or the Immigration Rules other than through the means of assessing the protection claim.

3. The appellant sought permission to appeal on two grounds, the first being in effect that the judge had misdirected himself in terms of the assessment of credibility, that he had failed to have regard to the UNHCR handbook and failed properly to treat Section 8 of the 2004 Act and a few other matters of generic nature. The second ground is that the judge failed to consider Article 8 this is expressed as Article 8 outside the Immigration Rules. There is no attempt to address Article 8 within the Rules.
4. Permission was granted by Judge Chohan on 8 November 2019, the judge stating there is no substance in the first ground in respect of the issue of Article 8 although the judge refers to it in dealing with the burden and standard of proof however, no further consideration has been given in the decision. It is not clear from the judge's decision whether Article 8 was duly argued during the hearing. Nevertheless, it may be open to argument the judge erred in failing to consider Article 8.
5. Dealing with ground 1 as Ms Daykin fairly accepted there was no grant of permission on that ground and she also fairly conceded and this was correct, that there is no merit within ground 1. That ground is in effect in its entirely generic and fails to address any specific instances in which it could be said that there had been an improper assessment of credibility. Worryingly the ground is also framed in terms of the authorities in Albania rather than Iraq.
6. Turning to ground 2 as was pre-figured in the grant of permission, the issue is whether the point was put to the judge. It is conceded by Ms Daykin that there is nothing she can rely on to show that article 8 was addressed in the skeleton argument. It is unclear, there being no evidence either way, if it was addressed in submissions and whilst I accept that there is a degree of consideration of Article 8 within the fresh claim submissions and also in the refusal letter, the references to it in the grounds of appeal to the First Tribunal are formulaic and generic. In any event, taking the case at its highest the appellant, lives with his family members in the United Kingdom.
7. I am not satisfied that submissions on article 8 were properly made to the judge. A judge is not required to indulge in a wide-ranging analysis of whether removal would be in breach of article 8 when it has not been the focus of submissions or detailed grounds of appeal as is the case here. Second, and in any event, it is difficult to see how any error in failing to deal with Article 8 on the facts of this case could be material. There is in my view no basis on which it could be said that taking the appellant's case at its highest that his removal would be disproportionate in terms of Article

8 and for these reasons I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it

Signed

Date 9 January 2020

A handwritten signature in black ink, appearing to read 'James Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul