



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

Case No: UI-2024-000259

First-tier Tribunal No:
PA/53058/2022; IA/07502/2022

THE IMMIGRATION ACTS

Decision Issued:

On 13th Of March 2024

**Before
UPPER TRIBUNAL JUDGE SMITH**

Between

**S J T
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Kiai, Counsel instructed by Duncan Lewis solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on Thursday 7 March 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 appeals against the decision of First-tier Tribunal Judge J A Simpson dated 25 October 2023 (“the Decision”), dismissing on protection and human rights grounds his appeal against the Respondent’s decision dated 2 August 2020 refusing his protection and human rights claims.
2. The Appellant is a national of Iraq of Kurdish ethnicity. He was at the time of the First-tier Tribunal hearing aged 20 years. He was 17 years old when he left Iraq and came to the UK. The Appellant’s protection claim is based on his asserted atheism and the discovery of this by his family via social media. Given the way in which the appeal proceeded before me, I need say no more about the details of the claim save that the Respondent disputed the credibility of the Appellant’s account.
3. The Appellant also provided medical evidence in support of his claim that he suffers from mental health problems. The Judge accepted that the Appellant was suffering as described in the reports of Dr Galappathie who is a Consultant Forensic Psychologist but did not accept that the Appellant’s mental health problems were caused by the events in Iraq as the Appellant asserted.
4. The Respondent was not represented before Judge Simpson and therefore there was no cross-examination of the Appellant who did however give evidence. Judge Simpson rejected the Appellant’s protection claim as not credible. He did not accept that the Appellant’s medical condition met the threshold of Article 3 ECHR. He did not accept that there were very significant obstacles to the Appellant’s integration in Iraq and, outside the Immigration Rules, found that removal would be proportionate. Article 8 ECHR was not therefore breached. The appeal was therefore dismissed on all grounds.
5. The Appellant appeals the Decision on four grounds which can be summarised as follows:

Ground 1: Facebook Evidence - the Judge determined the issues in this regard taking into account matters which were not put to the Appellant and/or were not disputed by the Respondent. Further, the Judge had misunderstood the nature of the evidence.

Ground 2: Age, Mental Health and Vulnerability - the Judge failed to consider whether the Appellant’s age when he left Iraq and came to the UK and his mental health problems rendered him a vulnerable witness and/or failed to treat him as such and/or failed to take these factors into account when making findings. In summary, the hearing and Decision were procedurally unfair for those reasons.

Ground 3: Medical Evidence - the Judge failed to take into account material evidence, finding that the doctor’s conclusions were based entirely on the Appellant’s account and/or took a wrong approach in law

by discounting those conclusions simply because they were based on the Appellant's account.

Ground 4: Country Expert Report - the Judge wrongly excluded the expert's view on the basis that this was founded only on the Appellant's account.

6. Permission to appeal was granted by First-tier Tribunal Judge R A Pickering on 25 January 2024 for the following reasons:

"1. In relation ground two it is arguable that there may be procedural unfairness on the basis that it is unclear whether the Judge treated the appellant as a vulnerable adult witness and the impact of that upon the assessment as a whole. There was an application to treat the appellant as a vulnerable adult witness [ASA and §8 of the determination] and the Judge appears to have accepted the diagnosis if not causation at §48. Dr Galappathie made a number of recommendations in relation to the conduct of the hearing [HB p.227] and it is not apparent if modifications were made to facilitate the appellant's evidence.

2. As ground two goes to procedural fairness of the hearing this goes to the assessment of ground one, three and four.

3. Permission is granted."

7. The matter comes before me to consider whether the Decision does contain errors of law. If I conclude that it does, I then have to decide whether to set aside the Decision in consequence of those errors. If I do so, I then have to decide whether to re-make the decision or remit the appeal to the First-tier Tribunal to do so.

8. I had before me a bundle of documents lodged by the Appellant which included the Appellant's bundle before the First-tier Tribunal and the Respondent's bundle also before that Tribunal. I do not need to refer to any of those documents save as set out below.

9. At the outset of the hearing, Mr Walker conceded that there was an error in relation to ground two. He very fairly directed my attention to the Respondent's review which reads as follows:

"[5(a)] **Treat the A as a vulnerable witness**

The Respondent notes the comments in the ASA at para 17. The Respondent recognises the potentially fragile nature of witnesses with diagnosed mental health conditions and agrees that the Appellant be treated as a vulnerable witness and that any cross examination would be carried out in a sensitive and respectful fashion, with a focus on only the relevant issues and key areas of dispute."

10. Of course, since the Respondent did not attend the First-tier Tribunal hearing, there was no cross-examination. The Appellant did however give evidence and, as noted in the grant of permission, it is not clear whether adjustments were made for him when he did so. Moreover, the issue of vulnerability due to age and mental health problems was not

confined to the procedure at the hearing but extended also to the Judge's assessment of credibility when reaching his findings and was also relevant to the Appellant's human rights claim under Article 8 ECHR.

11. At [8] of the Decision, Judge Simpson said this:

“Miss Kiai submitted that given the state of the appellant's mental health he was a vulnerable witness and was entitled to the protection under the relevant presidential guidance. I noted the submission and explained that I would reserve judgement as to his credibility as a witness.”

12. As Ms Kiai pointed out, that envisaged that the Judge would later take into account the Appellant's vulnerabilities when making credibility and other findings. However, there is no indication that the Judge took those vulnerabilities into account in that regard. Nor were they taken into account when assessing whether there were very significant obstacles to integration.

13. Mr Walker very fairly conceded that there was an error established by the Appellant's ground two for those reasons. He also accepted (as noted in the grant of permission) that as this disclosed procedural unfairness, the Decision should be set aside in its entirety. He also accepted for that reason that the appeal should be remitted. I accepted that concession and agreed with what was proposed by way of relief. Ms Kiai accepted that, given the nature and extent of the concession, I did not need to deal with the Appellant's other grounds.

CONCLUSION

14. An error of law is disclosed by the Appellant's ground two as conceded by the Respondent. As that is a ground alleging procedural unfairness and as the Respondent has conceded that the hearing before Judge Simpson was procedurally unfair, it is appropriate to set aside the Decision in its entirety and remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Simpson.

NOTICE OF DECISION

The decision of Judge Simpson dated 25 October 2023 contains errors of law which are material. I set that decision aside in its entirety and remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than First-tier Tribunal Judge Simpson.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 March 2024