



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

Appeal Number: AA/08411/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport

Determination

On 20 January 2014

Promulgated

On 31 January 2014

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M A
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Hodgetts instructed by South West Law

For the Respondent: Mr I Richards, Home Office Presenting Officer

DECISION AND REMITTAL

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).
2. The appellant is a citizen of Iraq who was born on 1 January 1985. He arrived in the United Kingdom on 4 February 2011 and on 30 March 2011 made a claim for asylum. On 20 August 2013, the Secretary of State

refused the appellant's claim for asylum and humanitarian protection. On that date, the Secretary of State also made a decision to remove the appellant to Iraq as an illegal entrant by way of directions under paras 8 to 10A of Schedule 2 to the Immigration Act 1971.

3. The appellant appealed to the First-tier Tribunal. In a determination dated 6 October 2013, Judge A Cresswell dismissed the appellant's appeal on all grounds. The judge rejected the appellant's claim that he would be targeted on return to Iraq because his father had acted against the Kurds on behalf of the Ba'ath Party. In addition, the appellant relied on the fact that he had previously come to the UK and claimed asylum and in September 2010, following the dismissal of his appeal on 11 October 2005, he had been returned to Baghdad where he had been arrested at the airport and had been detained in a prison where he had been beaten and kicked by police who had shown him a picture of his father and questioned him about his father's whereabouts. He had subsequently escaped and had returned to the UK and again claimed asylum. Judge Cresswell did not accept the appellant's account which, the appellant claimed, was supported by a witness (called at the hearing) who had also been returned to Baghdad. Consequently, Judge Cresswell found that the appellant would not be at risk on return.
4. The appellant sought permission to appeal on a number of grounds including that the judge had failed to consider the appellant's application to adjourn the hearing as he was unrepresented; the judge had failed properly to record the evidence; the judge had wrongly rejected the evidence of the appellant's witness on the basis that he had not submitted a witness statement and the respondent had not had an opportunity to make checks upon him; the Judge had wrongly conducted post-hearing research on the witness and concluded that there was no evidence about him being returned to Baghdad; that the judge had unfairly considered evidence submitted by the respondent's representative but which had not been translated and shown to the appellant in order to give him an opportunity to respond; finally the judge had applied an inappropriate standard of proof in assessing the appellant's credibility by asking whether certain events were "likely" or "unlikely".
5. On 29 October 2013, the First-tier Tribunal (Judge Warren L Grant) granted the appellant permission to appeal to the Upper Tribunal on the following ground:
 - “3. It is of concern that the First-tier Judge carried out his own research on the internet after the hearing and then failed to give the parties the chance to make submissions on his findings. There is accordingly an arguable error of law. The First-tier Tribunal Judge has also erred in law in the assessment of the evidence of [the witness] and the fact that a sentence ends in mid-air (para 19) makes it impossible to know the extent to which the First-tier Tribunal Judge has assessed the evidence supplied by or on behalf of the appellant.”
6. Thus, the appeal came before me.

7. At the outset of the hearing, Mr Hodgetts who represented the appellant indicated that the interpreter present at the hearing was the same interpreter who had been present at the First-tier Tribunal hearing and, as there were factual matters concerning that hearing including potentially what had been interpreted, it was not appropriate for the same interpreter to act in this appeal. The factual matters are dealt with in the appellant's witness statement attached to the application for permission including his claim to have asked for an adjournment to obtain legal representation and that documents were given by the respondent's representative to the Judge but not to the appellant.
8. Following a discussion with the representatives, I granted a short adjournment so that the representatives could identify whether any factual issues arose in the light of the appellant's witness statement dealing with the First-tier Tribunal hearing.
9. Following the adjournment, Mr Richards on behalf of the respondent accepted that an accumulation of the points made in the grounds demonstrated a perception of unfairness to the appellant at the hearing at which he was unrepresented. Mr Richards indicated that he did not seek to resist the appeal being allowed and remitted to the First-tier Tribunal in order that the decision could be remade *de novo*.

Decision

10. Although I would not accept all of the grounds are made out, having carefully considered those grounds, and the grant of permission, I am satisfied that the decision of the First-tier Tribunal cannot stand.
11. The First-tier Tribunal's findings are set aside and the appeal is remitted to the First-tier Tribunal (to be heard by a judge other than Judge A Cresswell) in order to remake the decision *de novo*.

Signed

A Grubb
Judge of the Upper Tribunal