



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

Appeal Number: PA/08325/2016

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 9 August 2017**

**Decision & Reasons Promulgated  
On 10 August 2017**

**Before**

**UPPER TRIBUNAL JUDGE PLIMMER**

**Between**

**NA  
ANONYMITY DIRECTION MADE**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr Brown, Counsel

For the respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication*

*thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.*

1. I have anonymised the appellant's name because this decision refers to her asylum claim and the circumstances of her child.

#### *Summary of asylum claim*

2. The appellant is a citizen of Iraq. She contends that she has a well-founded fear of persecution in Iraq because her family consider that she has dishonoured them by having a relationship and a child with a man (referred to in the First-tier Tribunal decision as 'H'), whom they disapproved of.

#### *Procedural history*

3. In a decision dated 21 February 2017 First-tier Tribunal Judge Sharkett dismissed the appellant's appeal. The First-tier Tribunal considered the main issue in the appeal to relate to the appellant's credibility [64]. Although the First-tier Tribunal accepted that the appellant may have been subjected to a level of abuse by her father and may have lived in a refugee camp before leaving Iraq [66], the First-tier Tribunal did not accept the appellant to be a 'witness of truth' more generally, and identified inconsistencies in her evidence from [67].
4. In brief handwritten grounds the appellant applied for permission to appeal. These grounds appear to have been drafted by the appellant herself, although at the time she had solicitors acting on her behalf.
5. In a decision dated 20 March 2017 First-tier Tribunal Judge Adio granted permission to appeal observing inter alia that it is arguable that the First-tier Tribunal erred in law in applying a higher standard of proof. This was not identified as a ground of appeal by the appellant.
6. The respondent submitted a rule 24 notice dated 30 March 2017 in which she submitted that the First-tier Tribunal's references to the balance of probabilities are not fatal to the overall findings and the issue was not in any event raised in the grounds of appeal.

#### *Hearing*

7. At the beginning of the hearing Mr McVeety accepted that the appeal was unopposed and the decision needs to be remade in its entirety. He was entirely correct to do so for the reasons set out below.
8. Both representatives agreed that the error of law is such that the decision needs to be remade completely. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the

nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

*Error of law discussion*

9. The First-tier Tribunal did not direct itself to the correct standard of proof when determining asylum claims at the point in the decision in which the legal framework is set out (see [15] to [21]) or when directing itself to the correct approach to credibility (see [62] to [67]).
10. The First-tier Tribunal undoubtedly made wide-ranging adverse credibility findings at [68] to [89] but there are numerous findings that have been made on the balance of probabilities - see [69], [71], [85] and [88]. In the conclusion at [90] the First-tier Tribunal correctly referred to the lower standard of proof. This simply comes too late and does not remedy the earlier misdirections in law.
11. The correct application of the standard of proof is a fundamental requirement in the determination of an asylum appeal. In my judgment, the respondent was entirely correct to concede that the First-tier Tribunal has erred in law in applying the incorrect and higher balance of probabilities standard.
12. Although this issue was not raised in the grounds of appeal, Mr McVeety accepted that it is an 'obvious' error of law in the sense described in Robinson v SSHD [1997] Imm AR 568, CA.

*Disposal*

13. It follows, as agreed by both representatives, that the conclusion on credibility is vitiated by error of laws and unsafe. The decision must be remade entirely and de novo.

*Decision*

14. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
15. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:

Ms M. Plimmer  
Judge of the Upper Tribunal

Date:  
9 August 2017

