Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08134/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On: 22 January 2020	**On 27 January 2020**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DMA (AKA AM)
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms S Cunha, Senior Home Office Presenting Officer
For the Respondent: Ms J Heybroek, counsel instructed by Wimbledon Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Samimi, promulgated on 9 October 2019. Permission to appeal was granted by Resident Judge of the First-tier Tribunal Zucker on 12 December 2019

Anonymity

2. Such a direction was made previously and is reiterated below because this is a protection matter and there is evidence of the respondent suffering from a mental health condition.

Background

3. The respondent arrived in the United Kingdom from Iraq on 2 October 2008, aged 16 and applied for asylum on that date. This claim was refused on 8 February 2010 and his appeal against that decision was dismissed following an appeal in a decision promulgated on 28 July 2010 (AA/02814/2010). The respondent returned voluntarily to Iraq on 20 March 2012. He returned to the UK, entering illegally on 19 December 2017. The respondent made further submissions on 26 October 2018. It is the refusal of those submissions, in a decision dated 20 May 2019, which is the subject of this appeal.

4. The respondent's previous claim was based on him being from Kirkuk, that his brother was killed in an explosion and that he was at risk of being killed in retribution for his father reporting to the police that weapons had been hidden by terrorists on their family farmland. His current claim is focused on the respondent being divorced and becoming a victim of an "honour" crime and that he was a part of a police brigade to protect Iraqi oil facilities and natural resources but abandoned his post and faced punishment as a deserter.

5. In refusing those further submissions, the Secretary of State took the findings of the judge who considered his previous appeal as the starting point, it being noted that the respondent's claims were found to lack credibility. The Secretary of State also referred to the latest Country Guidance, concluding that there was no Article 15(c) risk in Iraq and that the respondent could obtain a CSID with the assistance of his family members who remained in Iraq. It was noted that he had provided his marriage and divorce certificates and had lived in Iraq between 2012 and 2017, which indicated that he was able to obtain the appropriate documentation to allow his residency and travel. There was said to be no evidence that the respondent's divorce would subject him to a crime, his departure from duty was a matter of prosecution rather than persecution and there was no evidence of him having any political involvement.

The decision of the First-tier Tribunal

6. The First-tier Tribunal dismissed the protection claim primarily on credibility grounds, but allowed the appeal "under the Immigration Rules", with reference to paragraph 276ADE (vi). The judge found that the respondent's mental health condition (PTSD)constituted very significant obstacles to his integration in Iraq. She further found that the respondent was at risk of prosecution and that he was "*at risk of harm on account of being a deserter*" from the police brigade.

The grounds of appeal

7. There was one ground of appeal, namely that there had been a failure by the judge to give adequate reasons on a material matter. That matter being her conclusion that the respondent met the requirements of paragraph 276ADE (vi) of the Rules. It was argued that the judge gave no clear findings as to what mental health difficulties the respondent was facing and how they might be exacerbated if he faced punishment in Iraq.

8. The grounds also stated that there was a dearth of findings as to what the likely punishment for desertion might be or why it was likely to constitute very significant obstacles to integration and that there was a failure to consider whether medical treatment was available or the prognosis of his condition. It was said that the judge failed to take into account the findings from the previous appeal, applying *Devaseelan*.

9. Resident First-tier Tribunal Judge Zucker was initially of the view that this was a decision which ought to be set aside under Rule 35 of the First-tier Tribunal Procedure Rules 2014 and remitted to that Tribunal because it appeared that there was an error of law. The judge set out additional issues with the decision and reasons which related mainly to the psychiatric evidence. He therefore invited representations from the parties in a notice dated 26 November 2019. The respondent objected to the proposed set aside and remittal in representations dated 9 December 2019.

10. Permission to appeal was granted on all grounds by Judge Zucker who said the following:

> *"It is arguable the judge erred in failing (to) adequately consider the previous findings, the psychiatric evidence, or the evidence of the availability of treatment, likely punishment, or prison conditions in Iraq."*

11. The respondent's Rule 24 response, received on 9 January 2020, argued that there were no errors of law and that the only objection raised to the psychiatric evidence by the Secretary of State's representative at the hearing was that there was no assessment of how the appellant would cope if he were returned to Iraq.

The hearing

12. Ms Cunha made the following points. The respondent was not treated as a vulnerable witness; the judge did not give reasons why his health condition would amount to very significant obstacle to his integration. That error was material as this was the only basis on which the appeal was allowed. The judge's findings at [22] were not what Dr Hajioff had said in his report. There was no evidence of the respondent being prescribed medication despite Dr Hajioff recommending antidepressants. The judge failed to explain why the PTSD diagnosis was linked to the punishment for desertion or how it would amount to a very significant obstacle to

integration. The judge failed to address the flaws within the expert report, that it was based on what the appellant says he was exposed to. This was raised in the hearing, but not addressed by the judge and therefore there was a failure to resolve conflicts of facts. There was no exploration as to whether the symptoms of PTSD might be negated by medication on return to Iraq. The Secretary of State did not know why the appeal was allowed.

13. In response Ms Heybroek said the following. The respondent was assessed by Dr Hajioff on 16 September 2019, which post-dated the last entry from the GP records and therefore it was no surprising that there was no reference to medication in those records. The psychiatrist had full knowledge of the respondent's previous decision and the reason for refusal letter. As an expert, he was entitled to form the opinion he did. Dr Hajioff did not accord a cause to the PTSD, so the Secretary of State cannot go behind it. While careful not to stray into giving evidence, Ms Heybroek reiterated that there was no challenge to the diagnosis during the First-tier hearing, only to the lack of reference to prognosis.

14. Ms Heybroek summarised the respondent's case thus. The respondent deserted his post and his details will be on a database. Upon applying for a CSID, his desertion would be drawn to the attention of authorities and it is likely that he would be interrogated or imprisoned and it is at that point that the respondent would not be able to integrate into life in the IKR. Any punishment imposed (up to 3 years' imprisonment) would amount to a very significant obstacle. Ms Heybroek conceded that the psychiatric report said nothing about what the consequences for the respondent's mental health would be in these circumstances.

15. Ms Cunha added that there was a lack of exploration by the judge regarding the issue of desertion. Furthermore, the psychiatric report did not say that the respondent could not be questioned, in fact he was cross-examined during his hearing and the report did not address how his current state of mind would have an impact on his ability to answer questions in Iraq.

16. At the end of the hearing, I concluded that the judge made a material error of law in failing to give adequate reasons for finding that the appellant would face very significant obstacles to reintegration in Iraq.

Decision on error of law

17. The First-tier Tribunal rejected the majority of the respondent's claims and did not depart from the findings of the judge who previously heard his appeal. What was accepted, apparently without reasons, was that the respondent had joined the police and that he had abandoned his post. At [22] the judge found that the respondent's "mental health issues" in the context of punishment for desertion constituted very significant obstacles to his integration. There is a complete absence of reasons provided for these findings. Again, at [28] the judge finds that chronic PTSD "*is a factor that will mean any punishment will cause an insurmountable obstacle to*

his integration" and also that he is "*at risk of harm on account of being a deserter*." There is no analysis of the medical evidence which includes Dr Hajioff's report. Nor is any reasoning provided to support these findings. Dr Hajioff's report is silent on the consequences for the respondent's mental health on return to Iraq in circumstances where he is said to face potential arrest and imprisonment for desertion, or in general. The report recommends medication and talking therapy, yet the judge did not consider whether this medical treatment would be available to the respondent in Iraq. The preceding matters amount a material error of law and a different conclusion might have been reached without such an error.

18. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that there has yet to have been an adequate consideration of this appeal at the First-tier Tribunal and it would be unfair to deprive the parties of such consideration. This appeal is therefore remitted to the First-tier Tribunal to be heard afresh, with none of Judge Samimi's findings preserved.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Samimi.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed: Date: 22 January 2020

Upper Tribunal Judge Kamara