



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

SYR (PTA; electronic materials) Iraq [2021] UKUT 00064 (IAC)

THE IMMIGRATION ACTS

Heard at Field House via Skype

Decision & Reasons Promulgated

On 10 February 2021

Decision given orally at hearing

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Before

THE HON. MR JUSTICE LANE, PRESIDENT

MR C M G OCKELTON, VICE PRESIDENT

Between

SYR

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the appellant: Mr Galliver-Andrew, instructed by

Migrant Legal Project (Cardiff)

For the respondent: Mr Lindsay, Senior Home Presenting Officer

As paper is increasingly replaced by electronic forms of communication, it is particularly important that judges engaged in the permission to appeal process, whether at First-tier or Upper Tribunal level, satisfy themselves that they have the requisite materials before them in order to make a proper decision on permission. Accordingly, a judge should not grant permission to appeal on the basis that the requisite documentation is not before him or her.

DECISION AND REASONS

1.

The appellant appeals with permission granted by the First-tier Tribunal against the decision of First-tier Tribunal Judge Lever who, following a hearing at Newport on 2 September 2020, dismissed the

appellant's protection and human rights appeals. The grounds of challenge take issue with a number of credibility findings made by First-tier Tribunal Judge Lever against the appellant. Before us today, Mr Lindsay has accepted that there are indeed errors, as articulated in at least some of the grounds of challenge, which together mean that the decision of First-tier Tribunal Judge Lever cannot stand and that the decision needs to be re-made. We agree with what Mr Lindsay has said in that regard. In those circumstances, it is unnecessary to go into the nature of the errors in any more detail.

2.

There was discussion between the Tribunal and the representatives as to whether the appropriate course would be to remit the matter to the First-tier Tribunal or retain it in the Upper Tribunal for the necessary fact-finding exercise to be undertaken. Mr Lindsay urged upon us the latter course, on the basis that the appellant's appeal has already now been dealt with twice in the First-tier Tribunal and on both occasions that Tribunal's decisions had to be set aside for errors of law.

3.

Whilst we understand that submission, we have concluded - in agreement with Mr Galliver -Andrew - that the appropriate course is to remit. As a result of the errors, none of the judge's findings of fact can remain. Having regard to the nature and extent of the fact-finding exercise, which is total, we consider in all the circumstances that the appropriate course is for this matter to be remitted.

4.

We will assume that those responsible for the management of the case in the First-tier Tribunal will take note of its history in assigning a judge for the hearing of the remitted appeal.

5.

The matter to which we must finally turn concerns an observation in paragraph 3 of the grant of permission to appeal by the First-tier Tribunal. In that paragraph, First-tier Tribunal Judge Parkes stated that there was an issue about the nature of a letter, which was said to have emanated from Iraq, having been written on the appellant's behalf by a lawyer in that country. First-tier Tribunal Judge Parkes said that there were clear discrepancies in the appellant's account regarding that letter; but then he said: "However it is arguable that the Judge did not properly deal with the contents of the lawyer's letter (this FTPA is digital and the complete file is not available) ...".

6.

We enquired of Mr Galliver -Andrew, who appeared on behalf of the appellant in the First-tier Tribunal, whether to his recollection the appeal was dealt with by means of the Core Case Data (CCD) process, which had recently been introduced in the First-tier Tribunal and which places documents in that Tribunal's records in electronic as opposed to hard-copy form. Mr Galliver -Andrew's response was that so far as he could recall the matter may have been dealt with in that way. On the other hand, it may have been dealt with digitally in some other form since, as the Vice President remarked during the hearing, by that time in 2020 the Covid-19 pandemic was in progress. That had led to very different systems being adopted by the First-tier Tribunal in various jurisdictions, including the taking of material from parties by digital as opposed to hard-copy means.

7.

Whichever is the situation in this case matters not. What is important, however, is that First-tier Tribunal Judge Parkes should not have granted permission on the basis that he did not have the requisite documentation before him. One can easily see how that could lead to improper grants of permission, with the resulting waste of time and resources on the part of the parties and the Upper Tribunal. The fact that, for the reasons that we have given, the First-tier Tribunal Judge's decision

did contain errors of law should not be taken to condone the approach which the First-tier Tribunal permission judge adopted in relation to the lawyer's letter .

8.

As we move to a world in which paper is increasingly replaced by electronic forms of communication , it is particularly important that judges engaged in the permission process , whether it be at the First-tier or the Upper Tribunal level , satisfy themselves that they have the requisite materials before them in order to make a proper decision on permission. No doubt this will be taken up by those responsible for such matters in the First-tier Tribunal.

9.

The appellant's appeal is accordingly allowed. We set aside the decision of the First-tier Tribunal and remit the matter de novo for a fresh hearing in the First-tier Tribunal on all issues.

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 Mr Justice Lane

18 February 2021

The Hon. Mr Justice Lane

President of the Upper Tribunal

Immigration and Asylum Chamber