Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01040/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 16 December 2015	**On 6 January 2016**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

HM
ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr Selway, Lawrence Lupin Solicitors
For the SSHD: Ms Parkinson, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

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 because this decision refers to his asylum claim.

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Summary of asylum claim

2. The appellant is a citizen of Iraq who claimed asylum on arrival in the United Kingdom ('UK') on 18 January 2014. The appellant contends that he has a well-founded fear of persecution in Iraq on account of anti-Islamic views imputed to him on account of his online / electronic and other activities. The SSHD refused the claim for asylum and the appellant appealed to the First-tier Tribunal (FTT) against a decision to remove him.

Procedural history

3. In a decision dated 17 July 2015 FTT Judge Jones QC dismissed the appellant's appeal. The judge did not accept that the country expert was suitably qualified and comprehensively rejected the entire credibility of the appellant's asylum claim.

4. In a decision dated 27 January 2015 FTT Judge Osborne granted permission to appeal observing inter alia that the judge's approach to the expert report was arguably flawed and that he failed to take into account relevant evidence regarding the appellant's online activity.

5. The SSHD has submitted a rule 24 notice dated 7 February 2015 in which it was accepted that the decision is *"a little unorthodox in style"* but that the FTT was entitled to reach the credibility findings for the reasons provided.

Hearing

6. At the beginning of the hearing Mr Selway properly indicated that although the FTT had committed an error of law in its treatment of the expert, that evidence was only relevant to plausibility and as the FTT found that *"it is plausible that somebody who upsets religious fanatics in Iraq might be the object of threats and/or fatwah"* [22] the error of law may not be material. He therefore focussed his attention on the FTT's credibility findings and argued that a number of these were unsustainable.

7. Mr Parkinson relied on the rule 24 notice and invited me to find that the FTT was entitled to make the factual findings for the reasons provided.

8. After hearing submissions I reserved my decision, which I now provide with reasons.

9. Both representatives agreed that should I find the FTT committed the alleged errors of law the most appropriate approach is for the findings to be remade completely and that given the nature and extent of those findings, this should be done in the FTT.

Discussion

10. The decision under appeal comprehensively rejects the credibility of the appellant's account. The bundle prepared on behalf of the appellant contained a number of texts, blogs and electronic communications said to be written by the appellant, which were capable of an anti-Islamic interpretation and various angry responses to these. Such documentation supported the appellant's account if found to be genuine and required careful scrutiny. Unfortunately the FTT considered itself hampered by the failure to refer to these documents during the course of the hearing and considered the evidence itself [23(i)]. Having done so the FTT found that *"the various pages prove nothing. The translated text could have been written by anybody whomsoever and can be entirely self-serving."* [23(ii)] It is difficult to see how the various pages "prove nothing" if they reflect genuine online and electronic activity. Further all evidence tendered to support a claim of asylum can be described as *"self-serving"*. That is not a reason of itself to attach no weight to it. The FTT repeats its error at [23(iii)] where it describes the appellant's page 213 as the product of *"someone intent upon putting in place self-serving evidence"*.

11. In addition to this, a lack of good faith or genuine political belief (or as in this case religious views), of course, does not preclude a claimant from international protection; see Danian v SSHD [2002] Imm AR 96, YB (Eritrea) v SSHD [2008] EWCA Civ 360, BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36 (IAC). The malign profile of some regimes allows for adverse interest even where *sur place* activities are conducted in bad faith. Similarly the malign profile of "religious fanatics" (as the FTT put it) is such that even a small indiscretion articulated in bad faith may be sufficient to arouse adverse interest. At no point in the decision does the FTT address this issue, when seemingly much of its concerns were predicated on material and views that had been espoused in a public arena in a self-serving manner or in bad faith.

12. The FTT regarded the appellant's claim to have *"espoused atheism in the very recent past to be little more than a clumsy attempt to bolster his asylum claim on the basis that once he has renounced Islam he would be at even greater risks from the religious fanatics in Iraq"* [23(x)]. Such reasons imply a clumsy and ill-considered very recent departure from previously held beliefs, which has been manufactured. This is a serious adverse finding against the appellant yet the FTT has provided very little reasoning for it. The FTT has not engaged with the appellant's detailed witness statement dated 10 November 2014, which over the course of paragraphs 3 to 28 explains and explores his espoused atheism. At that time the appellant was 24 and had spent time living in the UK as a student. It is clear from his various statements that he has been on a process of exploration of his religious beliefs for some time but this has been a fluid process. The FTT has failed to give adequate reasons for rejecting this aspect of the appellant's claim in light of the detailed

evidence before it in support of the appellant's claim.

13. I acknowledge that the FTT has provided other reasons for rejecting the appellant's credibility. I am not confident that the decision would have been the same on the basis of the other reasons. The errors I have focussed upon go to the heart of the appellant's claim and lead me to the view that the conclusion on credibility is vitiated by errors of law and unsafe.

14. The FTT went on to find that even if it accepted the appellant's claim he could internally relocate [24]. In so doing the FTT has not considered whether or not the appellant would be reasonably likely to espouse similar views at the place of relocation thereupon placing him at risk. This is an error of law and renders the errors of law I have identified regarding the credibility findings to be material.

Remittal

15. The decision must be remade entirely and *de novo*. I have had regard to paragraph 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 FTT. Both representatives also agreed to the directions set out below.

Decision

1. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside.

2. The appeal shall be remade by FTT *de novo*.

Directions

(1) The appeal shall be reheard de novo by the First-tier Tribunal sitting in North Shields (TE: 2.5hrs) on the first date available.

(2) 14 days before the hearing date the appellant shall file and serve:

(i) a witness statement which condenses his claim in chronological order into one document, and which cross-references to the relevant documents (online postings/threats, etc) in a comprehensive bundle. Such references should be particularised and refer to page numbers within the comprehensive bundle;

(ii) an indexed and paginated bundle (to replace all previous bundles) containing only those documents relevant to the rehearing that are not contained in the SSHD's bundle.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:

18 December 2015