Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06871/2016**

THE IMMIGRATION ACTS

Heard at Stoke	**Decision & Reasons Promulgated**
On 26th October 2017	**On 08th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR I S M S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Martin (Counsel)
For the Respondent: Mr G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 1st October 1984. The Appellant claims to have left Iraq on 26th December 2015 and travelled illegally to Turkey and thereafter onwards by lorry to the UK which he entered on 18th January 2016 claiming asylum the following day. The Appellant's claim for asylum was based on a fear that if returned to Iraq he would face mistreatment due to his homosexual relationship with a man named R. That application was refused by Notice of Refusal dated 23rd June 2016.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge Birk sitting at Birmingham on 25th January 2017. In a decision and reasons promulgated on 2nd February 2017 that appeal was dismissed on all grounds.

3. Handwritten Grounds of Appeal were lodged to the Upper Tribunal. Typed grounds were lodged on 27th February 2017. On 9th June 2017 First-tier Tribunal Judge Ransley granted permission to appeal. Permission was only granted on one ground namely that the Appellant had submitted in the grounds that he did not understand the court interpreter who was not from Iraq. At the outset of the hearing the judge apparently asked the interpreter if he and the Appellant understood each other but the judge did not ask the Appellant whether he understood the interpreter. Judge Ransley notes that having perused the Record of Proceedings the judge recorded at the commencement of the hearing that he "checked interpreter". She notes that there is no reference to the judge checking with the Appellant whether he understood the court interpreter and it was therefore arguable that the Appellant did not have a fair hearing due to language barrier issues. Further she considered that it was arguable that the procedural unfairness amounted to an error of law that might have made a material difference to the outcome of the appeal.

4. On 27th June 2017 the Secretary of State responded to the Grounds of Appeal. It is on the above basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal. The Appellant appears by his instructed Counsel Mr Martin. The Secretary of State appears by her Home Office Presenting Officer Mr Harrison.

Submission/Discussion

5. Mr Martin takes me to the Secretary of State's Rule 24. He notes the Appellant raises issues in relation to both the Home Office interpreter used at his asylum interview and the court appointed interpreter before the First-tier Tribunal and that the Appellant signed the Home Office asylum interview to acknowledge he understood the interpreter and that the language was checked by the First-tier Tribunal Judge at the outset of the appeal. He accepts that that is the position maintained by the Secretary of State. However he refers me to the Appellant's additional witness statement dated 23rd October 2017 which has been translated and read back to him in Kurdish Bahdini. Mr Harrison does not object to my giving due consideration to this statement. The Appellant states therein

> "I did not understand the interpreter and this was clear from the outset of my appeal where I informed the interpreter on two separate occasions I could not understand him. Nonetheless he stated that when proceedings commenced he would explain my answers in more detail to the judge, which was not the case. This is because he wrongly interpreted my answers and I believe this is because he was not a native Iraqi Bahdini speaking interpreter. I understand the interpreter was educated in Turkey or Syria and for this reason we could not understand each other fully.
>
> Furthermore, the interpreter was asked to confirm if he could understand me to which he agreed. However it is my case that this

question was not put to me and if it had I would have stated the problems I had in understanding the interpreter."

6. Mr Harrison in brief response states that he feels that the Appellant cannot argue that he did not understand the interpreter at his asylum interview bearing in mind that he signed that interview off as having understood it. However he does acknowledge that he cannot be sure that the court interpreter was able or proficient to do his job and he acknowledges it may be, albeit he leaves it to me, that there has been a procedural unfairness that needs to be rectified.

The Law

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

9. This matter turns entirely on whether or not there has been a procedural unfairness to the Appellant through the possibility that he did not understand the interpreter. It may well be that the interpreter understood him but that does not mean that the Appellant necessarily understood the questions that were being put to him through the interpreter. To a certain extent the Appellant's case has not helped by arguing that he did not understand the interpreter at his asylum interview. If that is the case it does beg the question as to why he agreed to sign off that interview as being something that he had understood and that his statement was a true and complete record.

10. However I cannot be certain that what is being said in the witness statement of the Appellant is in fact not the truth and if that clearly is the

truth the Appellant would have suffered a procedural unfairness and it is possible (although I emphasise by no means certain) that the Tribunal Judge may have come to a different decision.

11. In such circumstances the correct approach is to find that there is a material error of law, to set aside the decision of the First-tier Tribunal and to remit the matter back for a complete rehearing before a freshly constituted First-tier Tribunal. Hopefully the correct interpreter namely an Iraqi Bahdini can be ensured to be in attendance at that hearing. It would be prudent of the judge rehearing the matter to get an absolute assurance in this case that the Appellant does understand his interpreter.

Decision and Directions

The decision of the First-tier Tribunal contains a material error of law and is set aside. Directions are given hereinafter for the rehearing of this matter.

(1) On the finding that the decision of the First-tier Tribunal discloses a material error of law in that there have been a procedural unfairness to the Appellant in his failure to understand the interpreter the decision is set aside with none of the findings of fact to stand.

(2) The appeal is remitted to the First-tier Tribunal sitting at Birmingham on the first available date 28 days hence with an ELH of three hours.

(3) That there be leave to either party to file and serve a bundle of such additional objective and/or subjective evidence upon which they intend to rely at least seven days prior to the restored hearing.

(4) That the restored hearing be before any First-tier Tribunal Judge other than Immigration Judge Birk.

(5) That an Iraqi Bahdini interpreter do attend the restored hearing.

The First-tier Tribunal Judge made an anonymity direction in this matter. No application is made to vary that order and the anonymity direction remains in place.

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 07 November 2017

Deputy Upper Tribunal Judge D N Harris
TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris