



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

Appeal Number: LP/00003/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
Remotely via Teams  
On 15 July 2021**

**Decision & Reasons Promulgated**

**On 28 July 2021**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**RO  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Bednarek

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Iraq who was born in 1995. He appealed to the First-tier Tribunal against a decision of the Secretary of State made on 24 July 2019 refusing his claim for international protection. The First-tier Tribunal, in a decision promulgated on 10 March 2020, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal is flawed by legal error such that it should be set aside. I have reached that decision for the following reasons.
3. First, the First-tier Tribunal failed to make any findings on the evidence which was provided by the appellant's two witnesses, HOI and HWQ. The Tribunal acknowledged the participation in the appeal of these witnesses at [30-32], summarising (very briefly) the main points in their evidence; in HWQ's case, that the appellant had worked for him at a private hospital in Iraq and, in the case, of HOI that a patient treated by the appellant (as a nurse) had died at the hospital following an allergic reaction to medication. It was this death which the appellant claimed had led to him becoming the subject of a blood feud instigated by the deceased's family. In its analysis of the evidence at [67] *et seq*, the Tribunal gives a number of reasons for finding that the account provided by the appellant was not credible (although it does not so find in terms). Those findings do not include any assessment of the evidence of the witnesses HOI and HWQ. In my opinion, that omission constitutes a serious error of law. The appellant, the unsuccessful party in the appeal, was entitled to know why the evidence of witnesses, who supported his account of past events which the Tribunal has found to be unreliable, had been rejected or accorded little or no weight.
4. Secondly, I agree with Mr Bednarek, who appeared as advocate for the appellant before the First-tier Tribunal and Upper Tribunal, that such reasons which the Tribunal has given for rejecting the appellant's account of the patient's death are, at least in part, unsound. Whilst a lack of detail in the appellant's evidence concerning the patient's cause of death may legitimately have led the Tribunal to doubt the veracity of that evidence, I can identify no basis for the Tribunal's finding at [73] that 'it [was] not credible that tests would not already have been carried out to see whether or not the appellant was allergic to a medication that was being prescribed.' The Tribunal had no reason to speculate as to treatment or testing practices at this particular hospital nor is it clear what 'tests' the Tribunal (comprising lay individuals with no medical training) had in mind. In my opinion, the Tribunal has here strayed into an area beyond its knowledge and expertise and has rejected the appellant's account on the basis of speculation rather than evidence.
5. In the circumstances, I find that the decision of the First-tier Tribunal must be set aside for errors of law which go to the core of the credibility assessment. Accordingly, there will need to be a fresh fact-finding exercise which I find will be better conducted in the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision following a hearing *de novo*.

**Listing Directions: first available date at Manchester; not Judges McClure or Hollings-Tennant; 2 hours; Kurdish Sorani interpreter; First-tier Tribunal to determine if remote or face to face.**

Signed

Date 15 July 2021

Upper Tribunal Judge Lane

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

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