



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

Appeal Number: AA/06625/2009

THE IMMIGRATION ACTS

**Heard at Field House
On 12 June 2013**

**Determination Sent
On 15 July 2013**

Before

UPPER TRIBUNAL JUDGE STOREY

Between

MR MAKOK ASWAD MAMAND

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms H Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

1. Despite being sent notice of today's hearing, the appellant made no appearance nor had he contacted the Tribunal to explain his absence. In these circumstances I exercise my discretion to proceed with the hearing in the absence of one of the parties.

2. The appellant is a national of Iraq. His appeal has been remitted to the Upper Tribunal by way of a consent order from the Court of Appeal on 13 June 2012. The statement of reasons set out that:
 - (i) his asylum claim was refused by the respondent on 25 June 2009;
 - (ii) his asylum appeal was dismissed by Immigration Judge B H Foster OBE on 11 August 2009;
 - (iii) on 12 February 2010, Mr Justice Wilkie ordered a reconsideration of his appeal on article 15(c) of the Qualification Directive grounds only;
 - (iv) on 9 May 2011 Upper Tribunal Judge Grubb dismissed his appeal.
3. The statement of reasons concluded:

“The respondent accepts that this appeal should be remitted to the Upper Tribunal for reconsideration under article 15(c) of the Qualification Directive only. The Upper Tribunal may wish to consider whether this appeal should be stayed pending the outcome of the reconsideration of in [HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC)].
4. Since these words were written, HM (Iraq) has been found by the Court of Appeal in HM (Iraq) [2011] EWCA Civ 1536 to be vitiated by legal error and the Court remitted it to be heard by the Upper Tribunal. The latter subsequently reheard the case and issued fresh country guidance, HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409(IAC). However, that determination has in turn been appealed to the Court of Appeal. Permission has been granted and a hearing is due to take place later this summer.
5. The first question that arises is whether I should adjourn the appellant’s case to await the outcome of the latest HM appeal to the Court of Appeal. My answer is that the fact that permission to appeal to the Court of Appeal has been granted is not a reason to continue to apply existing country guidance: see SG (Iraq) [2012] EWCA Civ 940. Further, I deem it contrary to the interests of justice that a case should be kept out of the lists for such a period given the tortuous history of litigation relating to the applicability of article 15(c) in the context of Iraq so far – especially given that to date none of the Court of Appeal decisions has commented adversely on the substance of the country guidance given.
6. Turning to the appellant’s appeal, I observe that the terms of the remittal to the Upper Tribunal confine its scope to the general Article 15(c) issue. Permission to appeal has not been granted to challenge the primary findings of fact made by the Immigration Judge. Consequently the appellant is someone whose asylum account has been found not credible.

The only two characteristics which are accepted about him are that he is from Kirkuk and that he is Kurdish.

7. I observe that no fresh evidence as to the situation in Iraq has been adduced by either of the parties. I must rely therefore on the state of the evidence such as it was before the Upper Tribunal in HM (Iraq), mindful that more recent background country reports do not disclose any major changes.
8. Applying HM (Iraq), I am satisfied that the appellant cannot succeed on Article 15(c) grounds. The evidence does not demonstrate that he would be at risk merely by virtue of being a civilian or a civilian who is from Kirkuk and who is Kurdish.
9. For the above reasons, the Immigration Judge erred in law.
10. The decision I re-make is to dismiss the appellant's appeal.

Signed

Date

Upper Tribunal Judge Storey