



IAC-AH-KRL-V1

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

Appeal Number: AA/02463/2015

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 8 March 2016**

**Decision & Reasons Promulgated
On 5 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MR ARYAN FOAD MOHAMED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Solicitor, Burton & Burton Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, an Iraqi national from Baghdad, appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Mather sitting at Bennett House on 11 August 2015) dismissing on asylum, humanitarian protection and human rights grounds his appeal against the decision of the respondent to refuse to recognise him

as a refugee and to make directions for his removal from the United Kingdom under Section 10 of the 1999 Act. The First-tier Tribunal did not make an anonymity direction, and I do not consider that the appellant requires anonymity for these proceedings in the Upper Tribunal.

The Reasons for the Grant of Permission to Appeal

2. On 2 November 2015 Upper Tribunal Judge Lindsley gave her reasons for granting the appellant permission to appeal on a renewed application to the Upper Tribunal:
 3. The grounds of appeal contend firstly that the First-tier Tribunal erred by failing to make proper findings on the evidence of the appellant regarding his father. It was unfair that the respondent was not required to confirm whether the documents were genuine or not as the documents emanated from her and thus she was uniquely in the best position to do this. Secondly the grounds contend that the First-tier Tribunal erred by failing to make findings as to whether return of the appellant would breach Article 15(c) of the Qualification Directive.
 4. It is arguable that the First-tier Tribunal has erred in law in relation to the consideration of the appellant's father's status in the UK as at paragraph 18 of the conclusions it states that the appellant's father was given exceptional leave to remain whereas at paragraph 24 it seems that the documents relating to the appellant's father are to be given no weight. If it was accepted that the appellant's father had been in the UK and granted exceptional leave following an asylum claim consideration ought to have been given as to whether this would give rise to any risk on return for the appellant even if the rest of his history were found not to be credible.
 5. It is also arguable that the decision that the appellant was not at risk by reason of indiscriminate violence in a situation of international or internal armed conflict is unlawful as no reasons are given at paragraph 28 of the decision.
 6. **The parties should be ready to remake the decision immediately if an error of law is found.**
 7. **In relation to an error of law based on Article 15(c) the parties should acquaint themselves with the decision in AA (15 (c)) CG [2015] UKUT 544 and be ready with instructions on all relevant matters. If further documentation or statements are required these should be filed with the Tribunal and served on the other party 10 days prior to the date of the error of law hearing.**
 8. **The respondent is directed to check her records and be ready to provide to the Upper Tribunal at the hearing on error of law any information held by her concerning whether the appellant's father was granted refugee status or exceptional leave, and if exceptional leave the basis for such a grant and the period of any grants of leave to remain relating to either status.**

The Hearing in the Upper Tribunal

3. At the hearing before me to determine whether an error of law was made out, I reviewed the judge's manuscript Record of Proceedings. I drew the parties' attention to the fact that Counsel who appeared on behalf of the appellant had not advanced a case that the appellant qualified for humanitarian protection or subsidiary protection under Article 15(c) of the Qualification Directive. He had

submitted to the judge that the appeal turned on the appellant's credibility. If the appellant was credible, the appellant could not internally relocate. The only issues arising under the protection claim were the appellant's credibility and the viability of internal relocation.

4. Mr Mohzam acknowledged that the country guidance case cited by Upper Tribunal Judge Lindsley had not been promulgated until 30 October 2015, which was after Judge Mather had promulgated his decision. Nonetheless, he submitted that the judge had not given adequate reasons for finding at paragraph [28] that the appellant had not discharged the burden of proof on him to show that on return he would face a real risk of suffering serious harm by reference to paragraph 339C of the Immigration Rules. Among other things, the new country guidance case drew a distinction between Baghdad city, where the degree of armed conflict was not such as to give rise to indiscriminate violence such as to engage Article 15(c), and certain parts of the "Baghdad belts" (the urban environs around Baghdad city) where the degree of armed conflict was of an intensity which gave rise to a generalised Article 15(c) risk.

Discussion

5. The appellant's asylum claim was primarily based on the proposition that his life was in danger from the current Iraqi Government and also from Kurdish political parties on account of his father being a member of the Baath Party, who was arrested and detained in 2002, and had then fled to the UK in order to claim asylum. The appellant claimed that his father had been granted refugee status in the UK; and as a consequence of that grant, he had sought to bring his mother and sister to the UK in November 2007, but the application was unsuccessful. The appellant said he had not been included in the application because he was over the age of 18.
6. By way of supporting evidence for this aspect of his claim, the appellant submitted a bundle of papers which were said to relate to the November 2007 application. In oral evidence, the appellant said he had recently made contact with a friend who had e-mailed these documents from Iraq, having obtained them from his mother. No originals were available. At paragraph [15], Judge Mather said that the documents comprised correspondence said to be between the appellant's claimed father and his MP. It also included copies of incomplete application forms, as well as refusal notices which did not contain the first page. The judge observed that, as the documents are copied, there was no way of ascertaining whether the documents had been tampered with.
7. At paragraph [18], the judge found that it was not the case that the appellant's father had been granted asylum. The true position was that he was given exceptional leave to remain for four years.
8. At paragraph [24] the judge returned to the bundle of papers which the appellant said he had recently received by e-mail from a friend in Iraq. As they were not originals, he placed little weight on them. Taken at their highest, he found the documents related to the unsuccessful visa application made by the appellant's

mother and sister to come to the United Kingdom as the spouse and child of the appellant's claimed father. He was not prepared to accept the validity of these documents, and he did not discount the possibility that they might have been changed or tampered with in their reproduction.

9. The first arguable error identified by Upper Tribunal Judge Lindsley is that there is an inconsistency between what the judge said at paragraph [18] and what the judge said at paragraph [24]; and that, since the father had been granted exceptional leave following an asylum claim, consideration ought to have been given as to whether this would give rise to any risk on return for the appellant, even if the rest of his history was not found to be credible.
10. I find that the error of law challenge does not stand up to scrutiny. It is apparent from the judge's Record of Proceedings that the grant of exceptional leave to remain was confirmed to the judge by the Presenting Officer, who had checked the Home Office database.
11. The appellant's claimed father would not have been granted exceptional leave to remain for four years if his asylum claim had been accepted. It was implicit in the grant of exceptional leave to remain that the then Secretary of State had not accepted that the appellant's father had a well-founded fear of persecution on return to Iraq on account of his connection to the Baath Party.
12. In the course of his conclusions, the judge identified a number of inconsistencies in the appellant's evidence, and he concluded at paragraph [27] that the events which were said to have befallen the appellant in Iraq had not occurred. He did not accept the appellant had been persecuted in Iraq in the past on any basis, or that he would face persecution on return.
13. The judge thereby rejected the appellant's claim that his father was a member of the Baath Party, thus creating problems for the appellant after he left the country.
14. Since there was incontrovertible evidence that the father had not been recognised as a refugee, the evidential status of the documents relating to the family reunion application of November 2007 was, and is, of only tangential relevance. The appellant relied on the documents as showing by inference that his father had refugee status. But as he had not been granted refugee status, as the Presenting Officer confirmed, the documents were not capable of fulfilling their intended purpose. In any event, there was no procedural unfairness in the judge attaching little weight to the documents for the reasons which he gave in paragraph [24].
15. The documents produced by Mr McVeety before me, pursuant to the direction of Upper Tribunal Judge Lindsley, confirm that Fuad Mohamed Rasheed (date of birth 4 May 1954) was refused asylum on 7 September 2002, and was granted exceptional leave to remain instead. The claim advanced by Mr Rasheed is not consistent with that advanced by the appellant. Mr Rasheed claimed to fear persecution in Iraq from Government Authorities on account of his suspected involvement with an opposition party. He claimed that security forces came to his shop, searched it and arrested him

after finding opposition party leaflets. This runs counter to the appellant's claim that his father was a member of the Baath Party, which was the governing party in 2002. Accordingly, the information in the Reasons for Refusal Letter directed to Mr Rasheed does not retrospectively cast doubt on the judge's adverse credibility finding.

16. The other arguable error identified by Upper Tribunal Judge Lindsley was that the judge had given no reasons in paragraph [28] for finding that the appellant was not at risk by reason of indiscriminate violence in a situation of international or internal armed conflict.
17. It is not the case that the judge did not give any reasons for finding that the appellant did not qualify for humanitarian protection. The judge gave his reasons at the beginning of paragraph [28]. In view of "the facts found in this appeal", the appellant did not make out a case under paragraph 339C. The judge's reasoning was sufficient in the circumstances. The appellant did not rely on any additional facts in support of an alternative claim for humanitarian protection. Since the the factual basis for his asylum claim was not made out, it necessarily followed that the factual basis for a humanitarian protection claim also fell away.
18. As previously noted, it was not part of the case advanced before the First-tier Tribunal that the appellant might qualify for subsidiary protection under Article 15(c) of the Qualification Directive. It is also not shown that any objective evidence was placed before the judge that ought to have caused him to address the issue of his own motion.
19. On the evidence that was before the First-tier Tribunal, it appears that the appellant had been habitually residing in Baghdad city since the age of 2. There is no suggestion that he lived in the Baghdad belt. Alternatively, the appellant originates from Sulaymaniyah, which is in the Iraqi Kurdish region ("IKR"). At paragraph [112] of AA, the Tribunal noted Dr Fatah's expert opinion that the IKR was virtually violence free. One of the reasons for refusing the asylum claim of Mr Rasheed was that internal relocation to the Kurdish Autonomous Region of Iraq was a reasonable and not unduly harsh option for him.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Monson