



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

Appeal Number: AA/07918/2015

THE IMMIGRATION ACTS

Heard at North Shields

**Decision & Reasons
Promulgated**

On 16 March 2016

On 12 April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**B O H
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss R Pickering, Counsel, instructed by Switalski Solicitors
For the Respondent: Mr C Dewison, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Duff (the judge), promulgated on 16 October 2015, in which he dismissed the Appellant's appeal. That appeal was against the Respondent's decision of 30 April 2015, refusing a protection claim made on or about 11 November 2014.

2. The Appellant claimed to be an Iraqi national from the Jalwala area of that country. He also initially claimed to have been born in 1997. Both of these assertions were doubted by the Respondent. In any event, the RFRL stated that even if he could not return to his home area, there was an internal relocation option available to him in the KRG/IKR (if not elsewhere).

The judge's decision

3. It is clear from the decision that the age issue was not pursued by Miss Pickering (who appeared below). At paragraph 19 the judge notes the concession that the Appellant could not succeed on refugee grounds, and that only Humanitarian Protection grounds were being argued (in particular, Article 15(c) of the Qualification Directive).
4. At paragraph 24 the judge states that he accepted the expert report from Professor Yaron Matras. In paragraphs 25 and 26, however, criticisms are made of that report. Paragraph 27 contains certain discreet adverse credibility findings relating to the Appellant's evidence on his age and identity documentation. In paragraph 28 the judge finds that the Appellant's family were wealthy, and that he maintained contact with them from the United Kingdom.
5. Paragraph 29 is important. The judge finds that the Appellant is an Iraqi Kurd whose family circumstances were as described in the preceding paragraph. He goes on to state:

“It is not clear to me from where in Iraq the appellant originates. On the basis of his clear ethnicity and Professor Matras' report I consider it most likely that he originates from somewhere in the IKR, but I do not come to any firm conclusion in relation to that... were he to choose to do so this appellant would be able to obtain documentation demonstrating who is he and where he genuinely comes from. There are a number of possibilities as to where the appellant originates. Even if this appellant does not originate from within the IKR it would be possible, as he is a Kurd, to go to Baghdad and then - with the assistance of his wealthy father - travel to the IKR...”

6. The judge then concludes at paragraph 30 that much of what he has set out previously may not be relevant in any event because the Appellant lacked certain documentation which in turn rendered return to Iraq unlikely.
7. The appeal was dismissed on all grounds.

The grounds of appeal and grant of permission

8. Miss Pickering's admirably concise grounds raised two points; first, the judge erred in his consideration of the expert report; second, the judge failed to adequately apply the country guidance decision in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC).
9. Permission to appeal was granted only on the second ground by First-tier Tribunal Judge Heynes on 13 November 2015.

The hearing before me

10. At the outset I raised the issue of whether the judge had in reality dealt with the appeal only on the limited basis of the non-feasibility of return, given what he said in paragraph 30. Miss Pickering submitted that the judge had clearly dealt with substantive matters going beyond this narrow point. Mr Dewison did not seek to argue to the contrary.
11. Miss Pickering confirmed that she was relying solely on ground two. She submitted that the judge had failed to make clear findings on where the Appellant actually came from, where his family were, which of the various relocation matters applied to the Appellant, and how he might travel from Baghdad to the IKR. In short, she submitted that the judge had failed to properly engage with what was required under AA.
12. Mr Dewison submitted that the judge had done his best in light of the problematic evidence before him. There were no findings on certain matters, but there was nothing the judge could have done.

Decision on error of law

13. Whilst I have a deal of sympathy for the judge, there are material errors of law in his decision.
14. I have considered the judge's decision on the basis that he was not restricting himself to dealing with the feasibility of return only. That is not how the Respondent put her case, either in the RFRL or in the Presenting Officer's submissions (see paragraph 20). Before me, Mr Dewison did not seek to suggest otherwise. It is clear enough from the decision that the judge did in fact deal with numerous matters lying beyond the narrow ambit of the feasibility of return issue, as described in AA itself and HF (Iraq) and Others [2013] EWCA Civ 1276.
15. The errors of law all relate to the need for detailed findings of fact and assessment thereof in light of AA. As we know, and without having to set out relevant passages here, the guidance in AA is relatively lengthy and precise. In short terms, the judge has, I find, failed to make clear findings of fact on the following matters, all of which are material to the application of AA:

- i. Where the Appellant in fact originated from (there is actually no expressly finding that he did not come from Jalwala). This issue goes to the question of CSID documentation and potential relocation;
- ii. Where his family resided in Iraq (this goes to the issue of potential relocation);
- iii. A number of the relocation factors set out in paragraph 15 of the headnote in AA;
- iv. How the Appellant would be able to travel to the IKR and reside there (paragraphs 19-20 of the AA headnote).

16. I appreciate that the judge found the Appellant's father to be wealthy and that there was contact between the two. However, this alone does not adequately address the various matters required to be considered by AA.

17. For the above reasons, the judge's decision is set aside.

Disposal

18. Having regard to paragraph 7 of the Practice Statements, I am remitting this appeal to the First-tier Tribunal. There are a number of matters upon which findings of fact need to be made. As the various factual elements are essentially all intertwined, the only findings of the judge that can properly be preserved are those in paragraph 27 of his decision. The refugee claim was conceded before the judge and there has been no attempt to resurrect it before me.

Anonymity

19. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellant from serious harm, having regard to the interests of justice and the principle of proportionality.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the parties:

- 1. The remitted appeal is concerned only with the Humanitarian Protection claim, in particular Article 15(c) of the Qualification Directive and the application of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC);**
- 2. The finding of First-tier Tribunal Judge Duff that the Appellant is an Iraqi Kurd and his findings at paragraph 27 of his decision are preserved. No other findings of the judge are preserved;**
- 3. The expert report of Professor Matras is unchallenged in terms of its contents;**
- 4. Any further evidence relied upon by either party must be filed with the First-tier Tribunal and served upon the other side no later than 10 days before the remitted hearing;**
- 5. Both parties shall comply with any further directions from the First-tier Tribunal.**

Directions to Administration:

- 1. The appeal is remitted to the First-tier Tribunal;**
- 2. The remitted appeal shall be heard at the North Shields hearing centre on a date to be fixed by that centre;**
- 3. The remitted hearing shall not be heard by First-tier Tribunal Judge Duff;**
- 4. A Kurdish Sorani interpreter is required for the remitted hearing;**
- 5. There is a 3-hour time estimate for the remitted hearing.**

Signed

Date: 31 March 2016

H B Norton-Taylor

Deputy Judge of the Upper Tribunal