



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

Appeal Number: PA/01759/2017

THE IMMIGRATION ACTS

Heard at Bradford UT

On 25th August 2017

**Decision & Reasons
Promulgated**

On 05th September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR Z.B.H.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Cole, Solicitor, Parker Rhodes Hickmotts Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity direction is made because, as a protection claim, it is appropriate to do so.

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born [] 1989. It is accepted that he is of Kurdish ethnicity from Mosul in the Nineveh governorate. He entered the UK illegally on 23rd July 2014 and made a claim for asylum the following day. The Respondent refused that application on 24th October 2014 and the Appellant's subsequent appeal to the First-tier Tribunal was heard on 13th February 2015 by FtTJ Devlin. The judge disbelieved the Appellant's core claim, which was that he feared a return to Iraq on account of a blood feud with his mother's family. His father and mother had eloped before he was born and his claim was that his mother's family were in some way looking to harm him and had been since 2013. The second strand of his claim was that he said he feared to return to Iraq because he would be forced to join ISIS (or be killed by them) or killed by the Shia militia.
2. Suffice to say that Judge Devlin found that the Appellant's claims were not credible and it is correct that those findings are not the subject of any challenge. They therefore stand.
3. Judge Devlin went on at the hearing on 13th February 2015 to assess risk on return to the Appellant and having done so found there to be no real risk. He dismissed the appeal on all counts.
4. Following Judge Devlin's decision however the country guidance cases of **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)** and **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC)** were published. Further submissions were lodged on behalf of the Appellant with the Respondent. Those submissions were refused and a JR application followed.
5. By consent, the JR decision was withdrawn on the basis that the Respondent would issue a further decision to the Appellant in the light of the CG cases. The further decision was issued on 2nd February 2017. Once again the Respondent refused the Appellant's claim, and once again the Appellant appealed the refusal to the FtT.
6. The appeal came before FtTJ E.M.M. Smith at Stoke. By this time the only issue before Judge Smith was whether the Appellant was entitled to humanitarian protection, on account of it being accepted by the Respondent that the Appellant could not return to his home area of Mosul. Therefore the judge had to decide in essence whether it was safe to return this Appellant to Baghdad or the KRG. In a decision promulgated on 6th April 2017, Judge Smith dismissed the appeal, stating:

“Having considered the findings of Judge Devlin and the authorities of **AA** and **BA** I am satisfied the appellant would not be at risk of persecution and could be returned to Baghdad and/or Erbil.” [34]

It is this dismissal which forms the basis of the instant appeal.

Onward Appeal

7. Permission to appeal the FtT's was granted by the Upper Tribunal following a refusal in the First-tier Tribunal. The grant of permission which is succinct in its terms reads as follows:

"It is arguable that the decision of the First-tier Tribunal Judge E M M Smith fails sufficiently to engage with or correctly apply the country guidance in **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)**, as argued in the grounds.

However, the Appellant's representatives must be prepared to deal with the findings that were made in the Appellant's appeal before First-tier Tribunal Judge Devlin on 13th February 2015."

Thus the matter comes before me to determine whether the decision of First-tier Tribunal Judge Smith discloses an error of law requiring it to be set aside and remade. No Rule 24 response was served by the Respondent.

Error of Law

8. The grounds advanced by Mr Cole for the Appellant state in general terms that the FtT failed to engage properly with and/or apply current Country Guidance in relation to Iraq. Further, inadequate or inconsistent findings of primary fact were made on:
- (i) whether it would be unreasonably harsh for the Appellant to relocate to Baghdad
 - (ii) the practicality of travel from Baghdad to the Independent Kurdish Region.
9. Mr Cole submitted that the judge, instead of looking at the risk on return to the Appellant afresh as he was tasked to do, fell into error by relying upon the findings made by Judge Devlin. This was even though Judge Smith acknowledged that Judge Devlin did not have the benefit of **AA** and **BA**. This error led Judge Smith to improperly adopt a **Devaseelan** principle to the facts found by Judge Devlin. It has been the case all along that the findings made by Judge Devlin, concerning risk on return, could not stand in the light of the guidance given in the current CG cases.
10. He said therefore that the decision of Judge Smith should be set aside in its entirety, with nothing preserved, for the decision to be remade.
11. Mrs Pettersen on behalf of the Respondent accepted that she could not defend the FtT's decision on the basis that the FtT's approach was unsafe in relation to the question of whether the Appellant could physically be returned to the KRG or relocate to Baghdad.

12. In the circumstances, as the Respondent accepts, the decision discloses a material error of law then I find that the decision must be set aside in its entirety for being unsustainable.
13. I canvassed with both parties whether to remit this matter once more to the First-tier Tribunal or whether the decision could be remade in the Upper Tribunal. Both parties were of the firm view that as it would appear that relevant evidence has not been properly considered by the First-tier Tribunal, the Appellant has been deprived of the opportunity for his case to be properly considered by that Tribunal. In addition the extent of the judicial fact-finding exercise is such that it is appropriate that the appeal should be remitted to that Tribunal. Mr Cole requested that the appeal be heard in Bradford rather than Stoke, on the basis that the Appellant lives in Sheffield.
14. I agree with the parties that remittal to the First-tier Tribunal is the appropriate course in this appeal.

Notice of Decision

15. The decision promulgated on 6th April 2017 involved the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First-tier Tribunal (not Judge E M M Smith) for that Tribunal to rehear the matter afresh.

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 his 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
2017

C E Roberts

Date

04

September

Deputy Upper Tribunal Judge Roberts