



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

Appeal Number: PA/00708/2018

**THE IMMIGRATION ACTS**

**Heard at Newport  
On 9<sup>th</sup> October 2018**

**Decision & Reasons  
Promulgated  
On 8<sup>th</sup> November 2018**

**Before**

**UPPER TRIBUNAL JUDGE GRUBB  
DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**MR M A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Fitzsimmons

For the Respondent: Mr Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 25<sup>th</sup> September 1998 is a citizen of Iraq. The Appellant was represented by Ms Fitzsimmons. The Respondent was represented by Mr Howells a senior Presenting Officer.

### **Substantive Issues under Appeal**

2. The Appellant had arrived in the United Kingdom on 6<sup>th</sup> January 2009 and claimed asylum the same day. His application had been refused and he had become appeal rights exhausted in October 2010. Thereafter there were further submissions and applications for judicial review and on 30<sup>th</sup> November 2017 the Respondent again refused the Appellant's application for asylum. The Appellant had appealed that decision and his appeal had been heard by Judge of the First-tier Tribunal Mathews sitting at Newport on 13<sup>th</sup> February 2018. The judge had dismissed the appeal on all grounds.
3. The Appellant had made application for permission to appeal and permission to appeal was granted on 18<sup>th</sup> June 2018. The judge had found that arguably the judge had made inconsistent findings in respect of the Appellant's father and took the view that that finding infected the entire judgment and permission was granted on all grounds. Directions were issued firstly for the Upper Tribunal to decide whether an error of law had been made and the matter came before us in accordance with those directions.

### **Submissions on Behalf of the Appellant**

4. Ms Fitzsimmons referred to the Grounds of Appeal. Firstly, it was said that the judge had erred in respect of his approach to humanitarian protection given the Appellant was from Kirkuk and it was submitted that the judge should have looked at the Appellant's evidence indicating why Kirkuk was an area that still fell within the terms of Article 15(c).
5. Secondly, we were referred to the inconsistencies in the findings in relation to the Appellant's father. Thirdly it was said that there were errors of law in respect of the examination of internal relocation.

### **Submissions on Behalf of the Respondent**

6. It was conceded that there was merit in the grounds which had been raised in respect of the approach to the issue of humanitarian protection and thereafter internal relocation. It was accepted that the judge did not appear to have the relevant Respondent's CPIN and only appeared to have applied that which was contained within the refusal letter which was the Respondent's country policy rather than the relevant CPIN. It was further conceded that when looking at internal relocation in respect of either Baghdad or the IKR there had been little or no reference to country guidance or indeed the expert report within the Appellant's bundle. It was conceded that there were errors of law in this case.
7. We now provide our decision in respect of this matter.

## **Decision and Reasons**

8. The judge noted at paragraph 18 that it was accepted the Appellant was from Kirkuk in Iraq and Kurdish. It was submitted by Ms Fitzsimmons that the judge had erred in his consideration of return to the home area of Kirkuk, in that the judge had departed from the country guidance case of **AA [2015]** which found Kirkuk to be an area where return would bring about a need for humanitarian protection under Article 15(c) and had not provided reasons why he departed from that case nor had he considered the material available as a whole to show whether there were good reasons and cogent evidence to depart from that country guidance case was appropriate. At paragraph 50 the judge found no adequate evidential basis that the Appellant would face a risk and that the Appellant was therefore not entitled to humanitarian protection. At paragraph 51 the judge specifically found the Appellant was excluded from humanitarian protection.
9. Mr Howells conceded there was merit in the submission that the judge had erred in his assessment of humanitarian protection. It seems clear that at paragraph 33 when the judge referred to country guidance he was referring to the Respondent's country guidance as contained within the refusal letter rather than the case law of **AA [2015]**. Mr Howells accepted that the judge in fact did not have a copy of the Home Office CPIN in the evidence before him and that the only such evidence available to the judge was an extract quoted within the Home Office refusal letter and referred to by the judge and that that quotation was from the CPIN dealing with country policy rather than that which dealt with internal relocation which was the relevant one. It is also the case that the judge did not identify **AA [2015]** as disclosing Kirkuk was an area where humanitarian protection would apply if removal to that area was envisaged. Further he did not appear to adequately consider material within the Appellant's bundle that dealt with the current situation in Iraq and therefore had not properly considered that which was available in terms of whether or not a return to the home area of Kirkuk was possible or would invoke Article 15(c). The assertion therefore that the Appellant was excluded from humanitarian protection (paragraph 51) was not based on an adequate assessment of either the case law or the available country material and was an error in law.
10. The judge had looked at return to either Baghdad or the IKR. In relation to relocation to the IKR the judge at paragraph 44 had again noted the expert report saying the Appellant would be unable to enter the IKR but concluded that provided insufficient evidence to subvert the country information and guidance set out by the Respondent. Again, this is a reference to the quotation from the CPIN found in the refusal letter and is tainted with the same difficulty referred to above. Further, the judge had not adequately looked at all the available material including a proper assessment of the expert report to demonstrate why that quotation within the refusal letter from a CPIN provided more persuasive and cogent

evidence. There is further no reference to the case of **AAH [2018]** when considering relocation to the IKR.

11. The same problems arise in respect of the judge's assessment of internal relocation to Baghdad in that there is no reference in respect to the country guidance case of BA (Baghdad) nor an adequate assessment of the totality of the country material available to the judge and potentially an over reliance on the quotation from the wrong CPIN contained within the Home Office refusal letter.
12. Whilst it is clear the judge had considered evidence in his assessment of risk on return and had made a number of findings set out within the decision, it was unfortunately a process that was tainted by a reliance upon a quotation from the wrong CPIN within the refusal letter and a less than adequate consideration of the totality of the country material provided within the Appellant's bundle. Those were matters that were of significance in this case such that a material error of law was made.

### **Notice of Decision**

13. A material error of law was made by the judge in this case and we set aside the decision of the First-tier Tribunal. The appeal is remitted to the First Tier Tribunal for a de novo hearing before a judge other than Judge Mathews.

### **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 their 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

Date 30/10/18

Deputy Upper Tribunal Judge Lever