



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04984/2017

THE IMMIGRATION ACTS

Heard at Newport  
On 10 May 2018

Decision and Reasons Promulgated  
On 22 May 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

Mr H A  
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Profumo instructed by Migrant Legal Project  
For the Respondent: Mrs Eboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq born on 21 January 2000. He appealed against a decision of the Secretary of State dated 28 April 2017 refusing his asylum, humanitarian and human rights claim. The appellant claimed asylum on the basis parents had split up and he had suffered domestic abuse from his father. He feared being returned Iraq. The respondent accepted the appellant was of Kurdish ethnicity. The respondent also accepted because of possible abuse and the nature of the reception arrangements could not be established, that return would only take place when he was an adult. The letter also, however, identified as curious by the First-tier Tribunal Judge Page, that it was reasonable to return the

appellant to the IKR namely Erbil. This was on the basis of the appellant previously lived in the IKR with his family.

2. At the hearing before Judge Page, the appellant declined to give evidence and was therefore not cross-examined on his account. The judge acknowledged that the appellant was in the care of Devon County Council social services and that he was nervous of giving evidence. The judge accepted that it was plausible that the appellant left home because he had been abused by his father and had nowhere to go when he left. The judge was unable to make a finding as to whether the appellant's asylum claim met the low standard of proof in the absence of evidence from the appellant. The judge nonetheless proceeded on the basis the appellant was an unaccompanied child and that there were no known reception facilities available. The judge also, in reliance on the report Dr Ghaderi, accepted that Iraq was "one of the most dangerous places for children".
3. The judge at paragraph 22, however, stated  
*"I am unable to reach a conclusion as to whether the lower standard of proof has been met on the basis of the core of the appellant's asylum claim, which I find to be plausible on its face and possibly true. But a serious possibility? I am unable to make that finding the absence of his claim being scrutinised in cross examination. For this reason, I find the low standard of proof is not met stop standard of proof may be low, but it is still there to be met, and cannot be met in circumstances where an appellant's claim possibly be true, but the appellant does not want to give evidence to contest the refusal of his claim by the Home Office"*.
4. The judge did accept that the appellant was at risk and return as an unaccompanied child returning to Iraqi Kurdistan with no adequate reception facilities. Miss Profumo submitted that an unaccompanied child in Iraq constituted a particular social group the purposes of the refugee convention. The judge found that nowhere in the respondent's decision had she considered the appellant being returned as a child and the child specific risks. If the appellant had no known support network or relatives he would have to relocate on his own. The appellant had no skills or qualifications and would struggle to find job as a child of 17. The respondent had suggested that he could relocate to Baghdad, but this too had not been developed with any further reasoned argument.
5. Judge Page allowed the appeal under Article 3 and under Article 15 (b) and noted they would be very significant obstacles to the appellant's return. The judge specifically accepted at paragraph 30 and that he would not be facing risk of persecution for a refugee Convention reason.

#### **Application for Permission to Appeal**

6. The application for permission made stated that the determination contained material errors of law specifically that the judge failed to make a finding in respect of the asylum claim. The appellant had alleged risk to

domestic violence from his father on return but also and secondly claimed asylum because he was facing return as an unaccompanied child. As a second ground of appeal was submitted that the judge had made a material misdirection as to the evidence and mistakenly conflated the evidential basis to asylum claims. The issue of the credibility related to his first claim that of domestic violence. Having correctly apprised the objective evidence within the country report, the judge mistakenly transposed the evidential findings from the first asylum claim to the second. The refusal of the asylum claim was devoid of any cogent or relevant evidential basis.

7. Permission to appeal was granted by Judge Hollingworth on the basis that it was arguable that a sufficient basis existed in relation to the second limb of the appellant's claim for asylum and that the judge had erred in stating he was unable to make finding on the basis asylum.

### **The Hearing**

8. At the hearing, Miss Profumo accepted that the error in relation to the asylum claim was now in effect academic. She argued that albeit that being a child was an immutable characteristic there was no bright line and the applicant could still be considered a child with those attendant risks on return. When she settled the grounds, the appellant was still a child but she accepted that he was no longer and would not be for the purpose of any further hearing. She was particularly concerned that the findings in relation to humanitarian protection and article 3 were not disturbed
9. Mrs Eboni submitted that the fact that the appellant was no longer a child and had been granted humanitarian protection made the hearing irrelevant. That he was still at risk was reflected in the finding in relation to article 15 (b).

### **Conclusions**

10. At the hearing Miss Profumo was clear that her challenge to the findings of the First-tier Tribunal Judge were specifically in relation to the second limb for claiming asylum, that is, that the appellant was a minor and this caused him to be covered by a 'Convention' reason as held by **LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005**.
11. At the date of the hearing before Judge Page, the appellant was 17 years old. The hearing date was 25 August 2017. Nearly a year on the appellant is now 18 ½ years old. Any revisiting of the claim for asylum as a child would have to be on the basis that the appellant has reached maturity. I accept that there is no bright line in terms of the appellant's vulnerability and return to Iraq, but I do not accept that, now he is an adult, he would be deemed as a child for the purposes of the refugee convention.

12. As **LQ** held at paragraph 6

*'At the date when the appellant's status has to be assessed he is a child and although, assuming he survives, he will in due course cease to be a child, he is immutably a child at the time of assessment. (That is not, of course, to say that he would be entitled indefinitely to refugee status acquired while, and because of, his minority. He would be a refugee only whilst the risk to him as a child remained.)'*

13. As Mrs Eboni submitted, the appellant's vulnerability owing to his age and individual circumstances were reflected in allowing of the appeal under article 15(b). There was no challenge to those findings by the Secretary of State. Miss Profumo was rightly concerned that those findings should not be exposed to further challenge, which setting aside the decision of Judge Page and remaking the decision might involve. Indeed, the challenge by the appellant's representatives was only in relation to the judge's finding on the second limb of the appellant claim, that is in relation to his age. Bearing in mind the passage of time, I find that challenge has now been rendered academic and therefore I am not persuaded that there is any material error of law in the judge's decision.
14. For the reasons given I find there is no material error of law in the judge's decision which incorporated adequately reasoned findings for allowing the appellant's claim. The First-Tier Tribunal decision will stand.

**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

*Helen Rimington*

Date 15<sup>th</sup> May 2018

Upper Tribunal Judge Rimington