



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05476/2016

THE IMMIGRATION ACTS

Heard at North Shields
On 5 April 2018

Decision & Reasons Promulgated
On 16 May 2018

Before

UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

DM (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Selway, of Brar & Co Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq of Kurdish ethnicity whose date of birth is recorded as 1 January 1997. He made application for international protection which application was rejected by the Secretary of State on 24 May 2016. He appealed. His appeal was heard on 23 January 2017 by Judge of the First-tier Tribunal Head-Rapson. The Appellant's case in summary was that he feared Da'esh who were interested in his

brother. He and his brother fled. Judge Head-Rapson dismissed the appeal on all grounds.

2. Not content with that decision, by Notice dated 19 June 2017, Solicitors then acting for the Appellant made application for permission to appeal to the Upper Tribunal. On 1 June 2017 Judge Robertson refused permission. There was then a renewed application made by the Appellant himself, dated 16 June 2017. Upper Tribunal Judge Plimmer considered those grounds, drafted in very general terms, but in the event granted permission. Thus, the matter comes before us.
3. It is not necessary for us to say very much in this matter because Mr Diwnycz quite properly, in our judgment, conceded that it was difficult, to say the least, to understand the basis upon which the Judge arrived at her decision. The findings such as they are, are set out at paragraph 44 of the decision. The Judge said:

“Based on the evidence before me, I do not accept that the Appellant is at risk in Iraq because his brother is accused by Da’esh of passing information to the Iraqi Army nor do I find that the Appellant has demonstrated a genuine objective fear on return to Iraq. I find that the Appellant’s subjective fear is not objectively well founded...”

We had some difficulty in understanding what the Judge meant when she spoke of the subjective fear in the context of the objective fear. It was, we found, somewhat muddled and unreasoned. Mr Diwnycz himself said that that “confuses everyone in the room”. We would not descent from that.

4. We further observe that what the Judge appears to have done, in not making sufficient findings of fact in this case, was to leap straight to the question of internal relocation, which we remind ourselves *only* arises if it is established, to the lower standard, that the Appellant was at risk in his home area. We are therefore satisfied as conceded that the Judge erred in law and we set aside her decision. With the agreement of the parties, given that findings will need to be made for the entirety of this case, and given pending Country Guidance come to the view that we are unable to remake the decision in the Upper Tribunal and consequently the matter is remitted to the First-tier Tribunal not to be heard before the “new” Country Guidance in relation to Iraq is promulgated by the Upper Tribunal.

Directions

1. This matter is remitted to the First-tier Tribunal.
2. The matter shall be heard afresh at North Shields by a Judge other than Judge of the First-tier Tribunal Head-Rapson.
3. A Kurdish Sorani interpreter shall be arranged for the benefit of the Tribunal.
4. The matter to be placed before the Acting Resident Judge at North Shields for further listing to ensure that the matter is not listed before the “new” Country Guidance is issued.

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: 14 May 2018



Deputy Upper Tribunal Judge Zucker