



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

Appeal Number: PA/08444/2016

THE IMMIGRATION ACTS

Heard at Liverpool

On 23rd February 2018

**Decision & Reasons
Promulgated**

On 28th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**SABAH [H]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss N Patel, Solicitor, Lei Dat & Baig Solicitors

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

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on [] 1990. The Appellant left Iraq in October 2015 claiming to arrive in the UK on 1st December 2015 and claiming asylum on the same date. The Appellant's claim for asylum is based on a fear that if returned to Iraq he would be killed by Kurds seeking to avenge his father's actions or as a result of the general situation there by ISIS or militias. The Appellant's application was refused by Notice of Refusal dated 9th July 2016.

2. The Appellant appealed and the appeal came before me Judge of the First-tier Tribunal Austin sitting at Manchester on 16th March 2017. In a decision and reasons promulgated on 15th May 2017 the Appellant's appeal was dismissed on all grounds.
3. On 25th May 2017 Grounds of Appeal were lodged to the Upper Tribunal. Permission to appeal was refused by Judge Boyes on 11th September 2017.
4. On 26th September 2017 renewed Grounds of Appeal were lodged. On 20th October 2017 Upper Tribunal Judge Rintoul granted permission to appeal concluding that it was arguable that the First-tier Tribunal Judge had failed to give proper reasons for concluding that the applicant was vague and inconsistent and that it was arguable that the judge failed to properly apply the guidance given by *AA (Iraq) CG [2015] UKUT 544* as amended by *AA (Iraq) [2017] EWCA Civ 944*, reaching arguably unsustainable findings of fact.
5. I note there is no Rule 24 response. It is on the above basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed solicitor Miss Patel. Miss Patel is extremely familiar with this matter having appeared before the First-tier Tribunal and is, I believe, the author of the Grounds of Appeal. The Respondent appears by her Home Office Presenting Officer Mr Diwnycz.

The Relevant Case Law

6. The relevant case law is to be found in two authorities. Firstly, *AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)*. There is an extensive headnote to this country guidance authority. The relevant section to the headnote is to be found at section E where paragraphs 17 to 21 state:
 - "17. The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.
 18. The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.
 19. A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.
 20. Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K's securing

employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.

21. As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR.”
7. Thereafter the position was revisited in *AA (Iraq) v the Secretary of State for the Home Department [2017] EWCA Civ 944*. That is a decision of the Court of Appeal and whilst they made revisions particularly to section C to the headnote in *AA* where the heading now simply reads the CSID and paragraphs within section C have been removed from the headnote, *AA [2015]* still stands as current the country guidance in relation to humanitarian protection claims from Iraqi Claimants.

Submission/Discussion

8. Miss Patel takes me to her Grounds of Appeal. Firstly, she contends that whilst at paragraph 39 of the determination the judge has stated that:

“The Appellant has been vague and inconsistent throughout and I cannot accept the Appellant’s argument that he has been open, consistent and non-evasive.”

In making this finding the Immigration Judge has failed, she submits, to give adequate reasons for making such findings. He has not indicated what element of the evidence was vague and inconsistent and consequently falls into error. She submits that the credibility assessment is important and the judge having not made reference to the evidence, it is indicative that unfortunately he has not looked at the evidence thoroughly nor drawn conclusions.

9. Secondly, she points out that the judge has stated at paragraph 43 that the Appellant is capable of relocating to the IKR in Baghdad and that this would be reasonable because the Appellant can speak Kurdish, he has some education and work experience and he speaks of being wealthy. Whilst the judge states that he has had regard to *AA [2015]* he has, she submits, failed to have regard to material evidence which was critical in the assessment of internal relocation and in particular, failed to give due consideration to paragraphs E17 and E19 of the headnote of *AA (Iraq) [2015]* (recited above). She submits that the Appellant produced evidence of the poor economy and saturated job market in the IKR and that it was noted that the Appellant originated from a contested region, which was conceded and that the judge found he could return to the Kurdish region but failed to engage with the background material.
10. Mr Diwnycz concedes that the judge has failed to consider the authority of *AA [2017]* and has given no consideration in the decision relating to the evidence that would be appropriate on the Appellant’s return to Baghdad. In such circumstances he concedes that there is a material error of law.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

13. I am considerably assisted in this matter by the approach of Mr Diwnycz on behalf of the Secretary of State. He concedes that there are material errors of law in the decision of the First-tier Tribunal Judge. So far as the failure of the judge to give due consideration to *AA [2017]* no criticism whatsoever can be made of the judge because of course this decision was not published prior to the First-tier Tribunal's decision being handed down. In any event *AA [2017]* only tweaks the country guidance authority which was given due consideration.
14. What the judge has however failed to do is to give due and proper consideration to the issue relating to the return of the Appellant via Baghdad making no findings thereon. Further, the judge has not given reasons for his findings on credibility. Whilst he has concluded that the Appellant has been "vague and inconsistent" he has not given reasons for reaching such conclusions. It is well-established that a proper approach to credibility will require an assessment of the evidence and of the general claim and that relevant factors will consist of the internal consistency of the claim, its inherent plausibility and consistency with external factors of the sort typically found in country guidance. In this case, whilst the judge may ultimately be justified in coming to the conclusions he has on credibility he has to give his reasons and findings and he has failed to do so.

15. All these factors, supported by the Secretary of State's representative, show that there are material errors of law in the decision of the First-tier Tribunal Judge. The correct approach is to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing.

Decision and Directions

16. The decision of the First-tier Tribunal Judge contains material errors of law and is set aside. Directions are given below for the rehearing of this matter.

- (1) On concluding that the decision of the First-tier Tribunal Judge contains a material error of law the decision is set aside and remitted back to the First-tier Tribunal sitting at Manchester on the first available date 28 days hence with none of the findings of fact to stand.
- (2) That the length of hearing of the remitted appeal will be three hours.
- (3) The hearing is to be before any Judge of the First-tier Tribunal other than Immigration Judge Austin.
- (4) That there be leave to either party to file/serve at the Tribunal and on the opposing party an up-to-date bundle of such further objective and/or subjective evidence upon which they seek to rely at least seven days prior to the restored hearing date.
- (5) That an Arabic (Middle Eastern) interpreter do attend the hearing as per the notice of hearing before the Upper Tribunal. In the event that the Appellant requires a different language interpreter then it is the responsibility of his instructed solicitors to notify the Tribunal within seven days of receipt of this determination.

17. No anonymity direction is made.

Signed

Date 26 March 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 26 March 2018

Deputy Upper Tribunal Judge D N Harris