



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10954/2017

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 9th August 2018

Decision & Reasons Promulgated
On 13th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR SAAO
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Madubuike (solicitor), Broudie Jackson & Canter
For the Respondent: Mrs R Pettersen (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Brookfield promulgated on 5th December 2017, following a hearing at Manchester on 27th November 2017. In the determination, the judge dismissed the appeal of the

Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 1st January 1993 and is therefore just over 24 years of age. He arrived as an unaccompanied minor to the UK on 23rd November 2015 and applied for asylum. He appealed against the decision of the Respondent dated 13th October 2017 refusing his application for asylum and for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The nature of the Appellant's claim was that he is of Kurdish ethnicity and a Sunni Muslim. He lived in Kirkuk province where he was a shepherd. ISIS came and destroyed his family village on 23rd August 2015 and killed his parents and the Appellant was at the time at his uncle's home outside Daquq. The Appellant's younger brothers went into hiding following the attack. The Peshmerga liberated the village around 11th September 2015. The Appellant's uncle then collected the Appellant's brother after it was liberated. The Appellant left Iraq on the day that ISIS attacked his village. The Appellant claims he is unable now to return to Iraq as he will be targeted and killed by ISIS or the Hashdal Shaabi militia because he is a Sunni Muslim. Also, because ISIS kills everybody and Hashdal Shaabi, which is part of the Iraqi government, has a problem with Sunni Arabs anyway.
4. At the Hearing below, the judge did not find the Appellant's claim to be credible. The judge also held that the Appellant could be returned because although he does not have a CSID card with him he would be able to elicit the help of his uncle on return to Iraq and procure a replacement CSID card from him because his uncle could approach the local government office in Kirkuk and send the CSID card to the Appellant in the UK (see paragraph 10(xvii)).
5. The appeal was dismissed.

The Grant of Permission

6. On 8th May 2018 permission to appeal was granted by the Upper Tribunal on the basis that the Appellant is an Iraqi Kurd from Kirkuk and the judge reached findings and conclusions that meant that he could not succeed in his asylum claim. However, the issue now was whether the Appellant's ability to return to a contested area, given the fact that he was a Sunni Muslim, had not been properly considered. The judge had found that the Appellant could go through the IKR even though he was not from that area.
7. On 12th July 2018, the Respondent Secretary of State agreed that she did not oppose the Appellant's application for permission to appeal and invited the Tribunal to determine the appeal with a fresh oral (continuance) hearing to consider whether the Appellant is able to exercise internal relocation to either Baghdad or the IKR.

Submissions

8. At the hearing before me on 9th August 2018 it was agreed that there should be a fresh oral (continuance) hearing. Mr Madubuike, appearing on behalf of the Appellant, however, submitted that there had by now been a spate of Country Guidance cases in relation to Iraq, and two of these were in 2017, such that it ought to be possible to have this matter determined through oral submissions before this Tribunal.
9. Mrs Pettersen, however, on her behalf, submitted that, given that the issue was internal relocation, it was important that the evidence was heard by the First-tier Tribunal, and even more important that the Appellant is not denied of a right of appeal thereafter to the Upper Tribunal, should matters not go in his favour. Accordingly, it was in his interest to have the continuation hearing heard at the First-tier Tribunal.
10. Mr Madubuike agreed that this would be the right course of action.
11. Accordingly, I allowed the appeal that it is remitted back to the First-tier Tribunal pursuant to practice statement 7.2(a) to be determined by a judge other than Judge Brookfield at the earliest opportunity so that the question can be decided as to whether he is able to exercise internal relocation to either Baghdad or the IKR.

Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Brookfield.

An anonymity order is made.

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

Date

Deputy Upper Tribunal Judge Juss

8th September 2018