



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/12138/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 28 February 2018

**Decision & Reasons
Promulgated
On 09 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, counsel instructed by DH Law Ltd

For the Respondent: Ms J Isherwood, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iraq, date of birth [] 1980, appealed against the Respondent's decision of 16 October 2016 to refuse an asylum and Humanitarian Protection based claim to remain in the UK. His claim also included Articles 2 and 3 of the ECHR together with a claim based around his private life.

2. The appeal came before First-tier Tribunal Judge I Burnett who, on 4 July 2017 dismissed the appeal on Refugee Convention grounds and the generality of the protection claims otherwise raised. It does not seem that there was particular argument raised over and above the Refugee Convention ground but it may well be that it was dealt with as of one. Ultimately the Judge made a decision in which he dismissed the generality of the claims to need protection.
3. Grounds seeking permission to appeal was settled by Mr Burrett who did not appear before the Judge and who has been careful not to criticise the Judge with reference to evidence before the Judge which was not taken into account or matters which were taken into account that should not have been. Essentially, the principal line of attack is that the Judge did not, despite referring to the case of AA (Article 15(c)) Iraq CG [2015] UKUT 544 properly consider the issues of return and in particular return to the IKR or Kurdish areas of Iraq.
4. The basis of the Appellant's claim was that he was at risk of honour killing due to his membership of a particular social group as a result of his marriage to his wife and dependant, [KO], who was from a wealthy and powerful family. It was asserted that her family were well connected with the government and police in Iraq, and particularly Peshmerga armed forces, such that on a return to the home area or elsewhere he faced a real risk of death at the hands of her family who wished that serious harm should befall him as much as his own family, it seems, who wished him to divorce his wife. It was said essentially that there was not adequate protection to which he could have recourse either from the Appellant's brother-in-law or his wife's family members connected with Peshmerga armed forces. He could not find state protection. Internal relocation was for that reason said not to be an option and internal relocation within the IKR was not a viable option either. Thus, on return, he faced a real risk of physical and mental ill-treatment.
5. So far as the Appellant's wife was concerned, the issue was raised before the Judge that she had her own mental health problems associated with

severe depression and that that was a further consideration, at least in terms of her vulnerability in giving evidence. It seems it is difficult to tell if it was specifically raised as a ground of appeal before the Judge but in a side wind to other submissions Mr Burrett has pointed me to the evidence that was before the Judge relating to the health of the Appellant's wife.

6. As a result of permission being granted by First-tier Tribunal Judge M Davies on 2 October 2017 the Respondent wrote a Rule 24 response on 8 November 2017 in which the Respondent generally opposed the appeal and stated this:

“3. The Judge of the First-tier Tribunal considered all the evidence and gave adequate reasons for finding that the Appellant and his wife were not credible witnesses and that their claims were not credible.

4. However, the Respondent accepts that the Judge of the First-tier Tribunal failed to give adequate consideration to the issue of relocation to Baghdad or the IKR in line with country guidance (i.e. AA).

5. The Tribunal is invited to preserve the adverse credibility findings in the determination of Judge Burnett and to determine the appeal with a fresh oral (continuance) hearing to consider the issues of documentation and internal relocation in line with Country Guidance...”.

In other words, with reference to AA (Iraq) CG which I note in passing is presently the subject of further hearing in the Upper Tribunal in connection with risk on return to Iraq but I proceed on the basis that AA is, and remains, good law at the present.

7. In the light of the Rule 24 response, Mr Burrett has argued that by reference to the Judge's decision and accepting as he does the adverse credibility findings that were made, that nevertheless in order to do the exercise of considering this matter by reference to AA (Iraq), the exercise would be significantly fettered in its effectiveness by the adverse findings

that were made and therefore, on the remaking of this matter, the findings should not stand.

8. Mr Burrett pointed to the submissions which he drafted in the grounds of appeal. Essentially, attacking criticisms the Judge made of expert evidence of Dr S Laizer and the lack of adequate reasoning why the Judge was rejecting the credibility of the Appellant and his wife's evidence concerning what she did or did not know about her family circumstances as well as the reservations the Judge had, in the light of the findings about the assessment of risk on return for the Appellant and his wife.
9. For my part it seemed to me that the realities for a First-tier Judge looking at the matter of AA (Iraq) and assessing the extent of risk is to a degree almost inevitably dependent upon the findings of fact and the credibility findings that had been made. In order to do that job properly it seemed to me it would not be helpful for a Judge to be constrained by those findings, not least when there is a measure of arguability about some of the points, which had been raised by Mr Burrett, over the depth to which the Judge was either addressed or dealt with the criticisms that were made by the Respondent in the Reasons for Refusal Letter and in the advocacy before the Judge when hearing the case.
10. For those reasons, reluctant as I am to set aside findings which appear on their face to be cogent, the fact is that remaking this case is the important issue in fairness to the Appellant. I find that the Respondent's position is preserved to the extent that it is open to the Respondent to raise criticisms previously raised as well as further criticisms developed as a result of the matter being looked at again. Therefore the extent to which there is a measure of prejudice or disadvantage to the Respondent seemed to me to be sufficiently protected by the likely competence of a Presenting Officer to properly pursue and address those matters. Accordingly, I find the Original Tribunal's decision does not stand and the matter should be remade in the First-tier Tribunal in Birmingham.

Notice of Decision

11. The appeal is allowed to the extent the matter is to be remade in the FtT in accordance with the law.

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 28 March 2018

Deputy Upper Tribunal Judge Davey