



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00449/2015

THE IMMIGRATION ACTS

Heard at Field House
On 2 May 2019

Decision & Reasons Promulgated
On 16 May 2019

Before

UPPER TRIBUNAL JUDGE FINCH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-and-

SA

(ANONYMITY ORDER MAINTAINED)

Respondent

Representation

For the Appellant:

Mr. T. Lindsey, Home Office Presenting Officer

For the Respondent:

Mrs E. Stuart King of counsel, instructed by J D Spicer Zeb
Solicitors

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Respondent is a national of Iraq, who is also Kurdish and who was born in the Kurdish Region of Iraq. He first entered the United Kingdom on 20 July 2001 and applied for asylum. His application was refused and his subsequent appeal was dismissed on 4 September 2001, after he did not attend his appeal hearing.
2. Between 31 May 2002 and 1 March 2007, the Respondent was convicted for a number of offences and on 21 August 2007 a deportation order was signed in relation to him. He made a voluntary return to Erbil in the KRG on 6 December 2007 on an EU letter. It is his case that he then remained in hiding with an aunt in Halabja until he left Iraq in 2008.
3. The Respondent re-entered the United Kingdom on 25 January 2009 in breach of his deportation order and in March 2010 representations were made on his behalf, seeking to have his deportation order revoked on asylum grounds. The Secretary of State refused this application on 24 January 2014. This decision was subsequently withdrawn and the application to revoke his deportation order was referred back to the Secretary of State for the Home Department.
4. The Secretary of State made a further decision to refuse to revoke the Respondent's deportation order on 25 June 2015. On 1 July 2016 the Respondent was sentenced to 20 years in prison for conspiracy to supply a Class A drug, namely heroin, and also 12 years in prison for possession of a Class A drug, also heroin, with intent to supply, to run concurrently. The Secretary of State then maintained his decision to refuse to revoke the Respondent's deportation order on 7 July 2017. He appealed and in a decision promulgated on 31 January 2019, First-tier Tribunal Judge Callow dismissed the appeal on Refugee Convention and Humanitarian Protection grounds but allowed it on the basis that his deportation would amount to a breach of Article 3 of the European Convention on Human Rights.
5. The Secretary of State appealed the Article 3 decision and First-tier Tribunal Judge Grimmett granted him permission to appeal on 26 February 2019. On 18 April 2019 the Respondent filed his Rule 24 Reply and sought to "cross-appeal" on the basis that he was entitled to Humanitarian Protection. However, no grounds of appeal were attached to the Rule 24 Reply.

ERROR OF LAW HEARING

6. At the start of the hearing it became clear that neither the Secretary of State or the Upper Tribunal had been served with the document entitled “Grounds of Appeal” drafted by the Respondent’s counsel and dated 17 April 2019. It was copied and I gave the Home Office Presenting Officer fifteen minutes to consider these grounds and whether they should be admitted.

PRELIMINARY POINT ONE

7. Counsel for the Respondent sought permission to appeal out of time against the decision by First-tier Tribunal Judge Callow in so far as he found in paragraph 42 of his decision that:

“... [a decision in relation to the Respondent’s entitlement to Humanitarian Protection] does not first require a decision to be made by [the Secretary of State] and a consideration by him of whether the appellant is excluded from HP because *‘there are serious reasons for considering that they have committed a serious crime’*’.

8. She submitted that this amounted to an error of law as nowhere in his decision letter had the Secretary of State found that the Respondent was not entitled to Humanitarian Protection.

9. She relied on the fact that paragraph 339D of the Immigration Rules states:

“A person is excluded from a grant of humanitarian protection under paragraph 339C(iv) where the Secretary of State is satisfied that:

(i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes”.

10. Therefore, she submitted that the First-tier Tribunal Judge did not have the jurisdiction to find that the Respondent was not entitled to Humanitarian Protection in the absence of a prior finding by the Secretary of State that he was satisfied that the Respondent had committed a serious crime.

11. I note that this was not the argument which was relied upon by counsel at the hearing before First-tier Tribunal Judge Callow as the skeleton argument relied upon by counsel at that hearing clearly stated at paragraph 8 “as the [Secretary of State had] made no decision to exclude the [Respondent] from Humanitarian Protection, and has made no consideration of whether he should be so excluded, the Tribunal can and should consider his entitlement under this provision”. Paragraph 40 of the decision also indicates that counsel asked First-tier Tribunal Judge Callow to reach a decision on the Respondent’s entitlement to Humanitarian Protection.
11. Counsel is now seeking to argue that First-tier Tribunal Judge Callow erred in following her interpretation of the law at the hearing before him.
12. It would be possible for me to find that there was a *Robinson* obvious error in the manner in which the Judge approached his consideration of the Respondent’s entitlement to Humanitarian Protection. Paragraph 339D of the Immigration Rules clearly states:

“A person is excluded from a grant of humanitarian protection for the purposes of paragraph 339C(iv) where the Secretary of State is satisfied that:
(iv) there are serious reasons for considering that they have committed a serious crime”.
13. It is also the case that in the decision letter the Secretary of State had not stated that he was satisfied that there were serious reasons for considered that the Respondent had committed a serious crime.
14. However, as First-tier Tribunal Judge Callow noted in paragraph 38 of his decision, counsel, who still represents the Respondent, had not attempted to argue that the Respondent had not been convicted of particularly serious crimes. Therefore, any mistake made by First-tier Tribunal Judge Callow in his approach to this issue cannot be said to have been material to his final decision.
15. Furthermore, First-tier Tribunal Judge Callow’s decision was promulgated on 31 January 2019 and both parties then had 14 days from the date on which they were provided with written reasons for his decision to appeal. The Respondent did not appeal within this time scale and did not provide the Upper Tribunal or the Secretary of State with any grounds of

appeal until the date of the hearing. This clearly put both the Secretary of State and the Upper Tribunal at a disadvantage, even though they had a short period of time to read the grounds on the day of the hearing.

16. It was submitted in the grounds of appeal that, as the appeal had been allowed on Article 3 grounds, there was no material advantage to the Respondent of initially appealing in relation to Humanitarian Protection. It was only when the Appellant appealed against the decision to grant him leave on Article 3 grounds that it became material to “cross appeal”. However, no reasons were given for the further delay from 5 March 2019 (the date on which the Respondent’s solicitors would have been on notice that the Secretary of State had been granted permission to appeal) to the date of the hearing to formulate any “cross-appeal”.
17. I find that due to this delay and the fact that there was no material error of law, it is not in the interest of justice to extend time for the Respondent to make any such “cross-appeal”.
18. Counsel for the Respondent had also submitted that I should have allowed the Respondent to raise this point as it was one of general importance. However, in *AZ (error of law; jurisdiction; PTA practice) Iran* [2018] 00245 (IAC) the Upper Tribunal found that:

“(3) Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:

- (a) the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success:
 - (i) for the original appellant; or
 - (ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom’s international Treaty obligations; or
- (b) (possibly) the ground relates to an issue of general importance, which the Upper Tribunal needs to address”.

19. For the reasons given above, I did not find that the Respondent’s prospects of success were strong and paragraph (3)(a)(ii) was not relied upon. Furthermore, there was no material basis upon which I could find that it was an issue of general importance. I had no knowledge of cases in which a First-tier Tribunal Judge had made a similar error and the wording of the

Immigration Rule were not ambiguous. Therefore, there was no basis on which I could grant permission to the Respondent to “cross appeal” on the basis that the grounds related to an issue of general importance.

PRELIMINARY POINT TWO

20. The Home Office Presenting Officer noted that in paragraph 8 of the Rules 24 Reply the Respondent submitted that permission to appeal had only been granted on two narrow points:

(1) That First-tier Tribunal Judge Callow erred in law when he found that the Respondent could not be able to obtain the necessary identity documents to enable him to make a voluntary return to Iraq.

(2) That he also erred in law when he found that he would be at risk of destitution if removed to Iraq when there was no risk to the Respondent in his home area.

21. This is correct but in *Ferrer (limited appeal grounds; Alvi)* [2012] UKUT 00304 (IAC) the Upper Tribunal found that:

“Where the First-tier Tribunal judge nevertheless intends to grant permission only in respect of certain of the applicant’s grounds, the judge should make this abundantly plain...”

22. First-tier Tribunal Judge Grimmett did not do so. In any event, the Secretary of State’s first ground of appeal was capable of being summarised in the manner in which it was by the Judge. Therefore, I permitted that Home Office Presenting Officer to proceed as outlined in the grounds of appeal.

ERROR OF LAW DECISION

23. In the Rule 24 Response the Respondent submitted that there was no material error in the decision reached by First-tier Tribunal Judge Callow in relation to his entitlement to protection under Article 3 of the European Convention on Human Rights.

24. However, the first basis upon which First-tier Tribunal Judge Grimmett granted the Secretary of State permission to appeal was that it was arguable that First-tier Tribunal Judge Callow

erred in law when he found that the Respondent would not be able to obtain identity documents in order to apply for a voluntary return to Iraq.

25. First-tier Tribunal Judge Callow was correct to refer himself to *AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC)*, in which the Upper Tribunal found that:

“Section C of Country Guidance annexed to the Court of Appeal’s decision in *AA (Iraq) v Secretary of State for the Home Department* [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:

“1. Whilst it remains possible for an Iraqi national returned (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:

- i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in ‘tracing back’ to the family record and are confiscated upon arrival at Baghdad;
- ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?
- iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father’s side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual’s mother, and from there the trail would need to be followed to the place that her records were transferred upon

marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all”.

26. But, when considering this Guidance, in paragraph 45 of his decision, First-tier Tribunal Judge Callow merely stated:

“in addressing this guidance I am mindful of the appellant’s profile as at the last date of hearing his appeal. He is a Sunni Muslim Kurd from the KRG who has no documents of identification and has no known male member of his family who can assist him to located family records in the KRG. He has no connections (family and/or friends) in Baghdad”.

27. He also used this as the basis to find in paragraph 48 of his decision that “as the [Respondent] is unable to obtain the necessary identity documents to make a voluntary return to Iraq he would have to be returned to Baghdad and would have to make his own arrangements thereafter”.
28. However, he did not provide any reasons for finding that the Respondent had no male family members to assist him to contact a civil registry. Given that he had found in paragraph 44 of his decision that “in giving evidence and making his protection claim the [Respondent] was an unreliable witness”, it was necessary for him to explain why he was willing to rely on the Respondent’s own evidence in relation to this aspect of his case. This was particularly so when in paragraph 50 of Immigration Judge Hanson’s earlier decision he had also found that the Respondent was not a credible witness.
29. This amounted to a basic error of law in so far as it was a failure to give adequate reasons for a key finding in his decision.
30. In addition, there was no evidence to show that the Respondent had taken any steps to obtain an identity document, passport or CSID from his embassy or through an agent, in the absence

of any family member. In the context of the previous adverse credibility findings, this would clearly have been relevant. (See *TK (Burundi) v Secretary of State for the Home Department* [2009] EWCA Civ 40 at paragraph 21.)

31. It is also the case that the evidence now available does not support the finding in Section E of Country Guidance annexed to the Court of Appeal's decision in *AA (Iraq) v Secretary of State for the Home Department* [2017] Imm AR 1440; [2017] EWCA Civ 944 that there "are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad".
32. First-tier Tribunal Judge Callow accepted that this was the case but he then relied on his unreasoned conclusion that, as the Respondent had no identity documents and no known male relatives in Iraq who could assist him to obtain a CSID, he would not be able to make a voluntary return.
33. He also failed to take into account that paragraph 2.7.14 of the CPIN *Iraq: Internal relocation, civil documentation and returns*, dated 17 October 2018, also states that:

"Iraqi Foreign National Offenders who have served time in the United Kingdom can be issued with a laissez-passer when enrolled onto an interview and documentation scheme run by the Home Office in conjunction with the Iraqi Embassy".
34. In addition, he also did not remind himself that in *AAH (Iraqi Kurds) CG*, the Upper Tribunal found that:

"Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds".
35. These omissions also amounted to errors of law.
36. The second basis upon which First-tier Tribunal Judge Grimmett granted the Secretary of State permission to appeal was that it was arguable that First-tier Callow erred in law when he

found that the Respondent would be at risk of destitution even though he would not be at risk in the KRG.

37. The Upper Tribunal found in *AAH (Iraqi Kurd)* that “If P has family member living in the IKR cultural norms would require that family to accommodate P”. Therefore, it was necessary for First-tier Tribunal Judge Callow to make reasoned findings as to the presence of any of the Respondent’s relatives in the IKR before he could find that he would be destitute in Iraq.
38. For all of these reasons there were errors of law in First-tier Tribunal Judge Callow’s decision.

Decision

- (1) The Secretary of State’s appeal is allowed.
- (2) The decision of First-tier Tribunal Judge Callow is set aside.
- (3) The appeal is remitted to the First-tier Tribunal to be heard *de novo* by a First-tier Tribunal Judge other than First-tier Tribunal Judge Callow or Grimmett.

Nadine Finch

Signed

Date 16 May 2019

Upper Tribunal Judge Finch