



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02298/2018

THE IMMIGRATION ACTS

Heard at Bradford
On 21 December 2018

Decision and Reasons Promulgated
On 20 February 2019

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

YAHIA [A]

(ANONYMITY NOT DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Lemar (Counsel)
For the Respondent: Mr M Diwnycz (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal from a decision of the First-tier Tribunal ("the tribunal") which it sent to the parties on 15 August 2018; whereupon it dismissed his appeal from the Secretary of State's decision of 3 February 2018 refusing to grant him international protection.

2. The claimant, who was born on [~] 1978, is an Iraqi citizen of Kurdish ethnicity. He had entered the United Kingdom as a student in September 2011 and had claimed asylum on 5 September 2016. The basis of his claim to be entitled to international protection was that his father had been a high-ranking officer within the Ba'ath Party, had been involved in what was described as "the ethnic cleansing of Kurds" during the Anfal campaign. It was said that those activities had drawn the ire of the Kurdish community to the extent that they would seek to achieve revenge by harming the claimant himself.

3. The tribunal accepted what the claimant had had to say about his father's previous activities for the Ba'ath Party and accepted that if the claimant was to return to the part of Iraq under Kurdish administrative control ("the IKR") which was treated as being his home area, then he might encounter persons who would wish to harm him. However, the tribunal concluded that there would be available to him within the IKR a sufficiency of protection which would be provided by the authorities there. But it also accepted that if he were to be returned to Baghdad then he would be at risk. As to all of that it said this:

“ 43. I take judicial notice of the fact that direct flights to IKR have resumed since the decision in AAH. Having stated that AAH remains good law in relation to any potential removal is via Baghdad (sic) or to Baghdad as a final destination. In this appellant's circumstances, taking due account of the state of health of his children, it will not be appropriate for him to be removed anywhere other than the IKR and then only directly to the Region. Any attempt to remove to or via Baghdad would put the appellant and his family in significant danger.”

4. So, given that returns in recent times have only ever been to Baghdad or to the IKR, its conclusion on the appeal was dependent upon its apparent finding that return in his case would actually be to the IKR.

5. Mr Lemar, in his grounds of appeal, criticised the tribunal for taking "judicial notice" of the fact that direct flights from the UK to the IKR had resumed. He suggested, in his grounds of appeal to the Upper Tribunal, that it had not been appropriate for the tribunal to take judicial notice of the matter but that, rather, the point should have been put to the parties and an evidence based decision as to the likely point of return ought to have been taken. He also asserted that the tribunal had erred in failing to consider whether the claimant might benefit from the content of paragraph 276 ADE of the Immigration Rules.

6. I have not found it necessary to deal with Mr Lemar's second ground of appeal. As to the first, I rather suspect that the tribunal was, in fact, correct in saying that, at the time of the hearing before it, flights from the UK to the IKR had resumed. But I do not think that was quite the point. The question was not whether commercial flights between the UK and the IKR had resumed but, rather, where this particular claimant would be returned to. Mr Diwnycz agreed that that was the central issue and that returns, at the material time, had been to Baghdad and not to the IKR. Accordingly, the tribunal erred through failing to identify that that was the key issue for it to decide.

In these circumstances Mr Diwnycz did not argue that I should not set aside the tribunal's decision. I do set it aside.

7. My having done that, Mr Lemar urged me to remake the decision in favour of the claimant. As he points out, what the tribunal had to say at paragraph 43 demonstrates that it had concluded (and its conclusion as to this has not been challenged) that return to Baghdad would expose him to, as it put it "significant danger". Whilst it does not say so in terms, that clearly amounts to a finding that if he were to be returned to Baghdad he would suffer persecution or serious harm in consequence of his father's previous activities. I agree with Mr Lemar and I do remake the decision in favour of the claimant on that basis. I allow the appeal on asylum grounds because I conclude that the persecution the claimant will receive will be in consequence of a political opinion which will be imputed to him as a result of his father's activities.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside.

In remaking the decision I allow the claimant's appeal from the Secretary of State's decision of 3 February 2018. I do so on asylum grounds (imputed political opinion) and, on the basis of the same reasoning, on human rights grounds under Article 3 of the European Convention on Human Rights (ECHR).

Signed:

Date: 28 December 2018

Upper Tribunal Judge Hemingway

Anonymity

I do not grant anonymity in this case. The claimant was not granted anonymity by the First-tier Tribunal and nothing was said about the matter before me.

Signed:

Date: 28 December 2018

Upper Tribunal Judge Hemingway

TO THE RESPONDENT FEE AWARD

Since no fee is payable there can be no fee award.

Signed:

Date: 28 December 2018

Upper Tribunal Judge Hemingway