



IAC-AH-DN-V1

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

Appeal Number: AA/00533/2015

THE IMMIGRATION ACTS

**Heard at Bradford (Upper Decision & Reasons Promulgated
Tribunal)
On 11 August 2015** **On 9 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ABASS AHMADI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer

For the Respondent: Mr Hussain, Lei Dat & Baig, Solicitors

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal).
2. The appellant was born on 25 April 1975 and is a male citizen of Iraq. He is of Kurdish ethnicity. After his asylum appeal was refused in 2002, he was given exceptional leave to remain until 2006. He made an in-time application for indefinite leave to remain upon which no decision was made by the respondent until 19 December 2014 when his application was

refused. He appealed to the First-tier Tribunal (Judge Myers) which, in a decision promulgated on 6 March 2015 allowed the appeal on humanitarian protection and Article 8 ECHR grounds. The respondent now appeals to the Upper Tribunal.

3. The first ground of appeal is that the judge failed to give adequate reasons for finding that the appellant, who is of Kurdish ethnicity, originates from outside the Kurdish region of Iraq and who would be returned to Baghdad, would be unable to relocate within the Kurdish area of Iraq because he did not have a sponsor. The grounds assert that,

“Such persons [as the appellant] would either not require a sponsor because they would not be perceived as a security risk or would likely know someone who could act as a sponsor based on family or tribal links. The appellant has provided no evidence that he would be unable to follow this process.”

4. At [23] the judge concluded that it would be,

“... extremely difficult for the appellant who has been out of the country since 2001 and unable to return to his home area to obtain the transfer of his civil documentation or to obtain copies of his civil status records and there would therefore be a real risk that he would be unable to replace his documentation.”

She also found that,

“... the [appellant] would be unable to relocate within the Kurdish area because he does not have a sponsor and as an Iraqi Kurd there is a danger he may be targeted in the Arab dominated areas of Iraq and accused of being involved with ISIS.”

It was on that basis that the judge found that the appellant was entitled to a grant of humanitarian protection.

5. It appears that the respondent’s Country Information Guidance on Iraq (Internal Relocation and Technical Obstacles) dated 24 December 2014 was before the First-tier Tribunal. The Guidance notes that “persons from contested areas will be able to re-acquire their civil status ID card, national certificate and other civil documentation by approaching relevant agencies found in Baghdad and Najaf.” It should also be possible to obtain the necessary documentation from the Iraqi Embassy in London. I find that I agree with the respondent that the judge has placed too heavy an emphasis in this instance upon the length of the appellant’s residence in the United Kingdom (and his consequent absence from Iraq) and has placed insufficient evidence upon the various procedures which the appellant might follow while still in the United Kingdom to obtain documentation for which he could reasonably be expected to pursue upon return to Baghdad. The appellant’s long absence from Iraq might be a factor determining the speed at which he may be able to obtain the necessary documents but the judge’s findings are too generalised and her failure to consider the various procedures available to the appellant renders her reasoning on this important point inadequate.

6. The other ground of appeal concerns the judge's allowing of the appeal on Article 8 grounds. It is asserted that this part of the decision is also inadequately reasoned; there was no reason why the appellant's private life could not be conducted in Iraq and the judge has failed to have proper regard to Section 117 of the 2002 Act, despite the fact that she did mention that provision in her decision.
7. It was clear from reading the decision of Judge Myers that she believed that the appellant had a strong ground for remaining in the United Kingdom on the basis of his Article 8 private life rights. She quite properly records [32] those factors weighing against the appellant in the proportionality assessment (that he used a false identity in his claim for asylum; that he was subsequently granted ELR on the basis of a false identity and therefore has not had valid leave to remain in the United Kingdom throughout his time here; that he was found to lack credibility in his asylum claim). She appears to excuse the appellant [33] for having used a false identity whilst in the United Kingdom on account of "the dire situation in Iraq." However, foremost in the judge's analysis is the fact that the appellant had applied for indefinite leave to remain in 2006 but had to initiate judicial review proceedings in order to compel the respondent to make a decision which was eventually issued eight years later. The judge found [34],

"... in my judgement there is unreasonable delay on the part of the respondent which has a bearing on the proportionality of the decision (*EB Kosovo* [2008] UKHL 41). Taking all these factors into consideration I find the decision disproportionate and a breach of Article 8."
8. Where necessary, the Tribunal should be able to attach weight to the respondent's delay in making a decision and the delay in this particular instance (eight years) in respect of an application properly made in time by the appellant is severe by any standards. It is a factor which clearly counted heavily in favour of the appellant in the assessment although the judge also correctly detailed those factors which weighed against the appellant. Judge Myers reached a decision on Article 8 which, whilst another judge may have made a wholly different decision on the same facts, was available to her. It is not for the Upper Tribunal to tinker with decisions of the First-tier Tribunal, including those in relation to Article 8 ECHR, where a decision has been reached by a proper evaluation of the evidence, the even-handed weighing up of factors for and against an appellant and a proper consideration of the public interest concerned with an appellant's removal. As I say, another judicial decision-maker may have reached a different decision but that is not the point. After careful consideration, I am satisfied that the judge's decision should not be the subject of interference by the Upper Tribunal. Therefore, whilst I find that the judge did err in law in her assessment of humanitarian protection the judge's decision on Article 8 should not be reversed. I therefore exercise my discretion not to set aside the decision of the First-tier Tribunal and the appeal of the Secretary of State is dismissed accordingly.

Notice of Decision

This appeal is dismissed.

No anonymity direction is made.

Signed

Date 10 November 2015

Upper Tribunal Judge Clive Lane