



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

Appeal Number: AA/08498/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 10 June 2015**

**Decision & Reasons
Promulgated
On 23 June 2015**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ENGAS
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr D Mills, Home Office Presenting Officer
For the Respondent: Mr C Simmonds of Duncan Lewis & Co Solicitors

REMITTAL AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both

the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

3. The appellant is a citizen of Iraq who was born on 16 November 1992. The appellant arrived in the UK on 17 January 2013 and was granted six months' leave as a family visitor. On 6 August 2013, he claimed asylum. On 26 September 2014, the Secretary of State refused his claim for asylum, for humanitarian protection and under Art 8 of the ECHR. On that same date, the Secretary of State made a decision to remove the appellant by way of directions under s.10 of the Immigration and Asylum Acts 1999 to Iraq.

4. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 24 February 2015, Judge J Lebaschi allowed the appellant's appeal on asylum grounds. Judge Lebaschi accepted, as did the respondent, that the appellant could not be returned to his home area of Mosul because it was currently occupied by ISIS. Further, Judge Lebaschi found that the appellant could not be reasonably expected to relocate to the KRI. None of those findings are challenged. Finally, Judge Lebaschi found that the appellant could not reasonably be expected to relocate to Baghdad for the reasons set out in para 40 of her determination as follows:

"40. Taking into account the:

40.1 Fact that the appellant has been the victim of kidnapping and serious injury.

40.2 Risk that if the appellant were to return to Baghdad he would be linked to his mother and therefore, there is a real risk that he would become a target for the reasons that he had identified.

40.3. Increasing civil unrest and segregation across Iraq.

40.4 Break down of law and order making it unlikely that the state would be able to provide effective protection for the appellant.

40.5 Acceptance that it would not be reasonable to expect the appellant's mother to relocate to Baghdad.

40.6 Absence of any established family links with Baghdad

I find that Baghdad is not a reasonable relocation alternative for the appellant."

5. On 26 March 2015, the First-tier Tribunal (Judge Grant-Hutchison) granted the Secretary of State permission to appeal to the Upper Tribunal on the following basis:

"2. It is arguable that the judge failed to consider and make findings on

- (a) why, if the appellant's father is living in Baghdad, his links to his wife would not become known and the appellant's links as her son would;
 - (b) by finding that although there is an increasing civil unrest across Iraq why the appellant could not return specifically to Baghdad and
 - (c) while the judge finds that it may not be reasonable for the appellant's mother to relocate to Baghdad, as the appellant is an independent adult, he could return. His father is in Baghdad. No consideration has been given to this. Although the judge sets out the appellant's claim that his father is seeking to leave for Jordan (para 33 of the Decision and signed Reasons) there are no findings on why this is the case."
6. The appellant filed a Rule 24 response arguing that the judge's decision should be upheld and that she had given adequate reasons for finding in the appellant's favour.
7. The appeal came before me on 10 June 2015.

Discussion

8. The appellant's claim before Judge Lebaschi was that he would be at risk in Baghdad because he would be targeted as his mother's son. She was a lawyer and politician who had stood in the local parliamentary election in Mosul. The appellant was targeted by Kurds because of his mother, an attempt was made to kidnap him when he suffered knife wounds to his arm necessitating two operations and 46 stitches. After the kidnapping, he had to move between houses in Mosul because he was afraid. The appellant claimed that because of his mother's problem, which had led to his ill-treatment, he would also be targeted in Baghdad.
9. Both Mr Mills, who represented the Secretary of State, and Mr Simmonds, who represented the appellant, informed me that the separate appeal of the appellant's mother had been successful in that her application to remain in the UK had been referred back to the Secretary of State. Mr Mills told me that it had yet to be decided whether she could return to Baghdad.
10. Mr Mills submitted that the judge's reasoning in para 40 was inadequate. The judge had failed to provide adequate reasons why the appellant, given that his father was in Baghdad, would be targeted because of his mother when there was no evidence that his father had been targeted. Mr Mills also submitted that the judge had been wrong to take into account that the appellant's mother could not relocate to Baghdad because, first that had not yet been decided as the matter was outstanding for the Secretary of State and further the risk to her was at least, in part, because she was an ethnic Shabak. The appellant was not. He was of Arab ethnicity and a Sunni Muslim. Mr Mills submitted, therefore, the judge had failed to provide adequate reasons why the Home Office Country Information and Guidance for Iraq report at para 1.3.75 should be departed from namely that:

“in general Arab Sunnis ... will be able to relocate to Baghdad, where it is noted that there is a sizeable Arab Sunni IDP population.”

11. Mr Mills acknowledged that the judge was entitled to disagree with that statement but she had not given any reasons for doing so.
12. Mr Simmonds relied upon Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) that it was not necessary to give extensive reasons for a decision providing that a brief explanation of the conclusions on the central issues in the appeal had been given by the judge. Mr Simmonds submitted that the judge had done that in para 40 and even if she was not entitled to take into account at para 40.5 that the appellant’s mother could not reasonably relocate to Baghdad, that was not material and the remaining reasons were adequate.
13. The judge’s reasons are very brief. Even if, as Mr Simmonds submitted, by accepting the appellant’s evidence the judge accepted that the appellant’s father was only temporarily in Baghdad, it still remains the case that the appellant’s father has remained in Baghdad, albeit temporarily, without any evidence that he has been targeted because of the political activities or otherwise of the appellant’s mother. In para 40.2, the judge states that there is a “real risk” that the appellant would be targeted as he would be identified and linked with his mother. The judge provides no reasons for finding that that linkage would be made. Further, it was not open to the judge simply to assert, as a relevant factor, that the appellant’s mother could not reasonably be expected to relocate to Baghdad without considering the basis on which she could not be expected to do that given that, at least in part, any such conclusion would be based upon a characteristic (namely her Shabak ethnicity) which had no application to the appellant.
14. In my judgment, the reasons (such that they are) given by the judge at para 40 of her determination do not provide a clear and adequate basis for her conclusion, in effect, that the appellant would be identified as his mother’s son and would be at risk because of her in Baghdad.
15. In addition, without adequate reasons, the judge simply offers no basis upon which to depart from the opinion stated in para 1.3.75 of the Home Office report that in general Arab Sunnis (which includes the appellant) can relocate to Baghdad and further, in para 1.3.7 of that report, that it is not essential that an individual has “established family links” within Baghdad.
16. For all these reasons, I am satisfied that the judge erred in law in allowing the appellant’s appeal on asylum grounds on the basis that he could internally relocate to Baghdad.

Decision

17. For the above reasons, the decision of the First-tier Tribunal to allow the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.
18. The appeal is remitted to the First-tier Tribunal for the decision to be remade. The only issue will be whether the appellant can internally relocate to Baghdad. The findings that he would be at risk in Mosul and cannot internally relocate to the KRI are not affected by the error of law and are preserved.
19. Subject to that, the appeal is remitted to the First-tier Tribunal to be heard by a judge other than Judge Lebaschi.

Signed

A Grubb
Judge of the Upper Tribunal