Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04961/2016

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 12 December 2017	**On 21 December 2017**
Prepared on 12 December 2017	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

N. M.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq who entered the UK unlawfully, and then claimed asylum on 27 November 2015. That claim was refused on 3 May 2016. The

appeal against the decision to refuse him protection status was then dismissed on asylum, humanitarian protection and human rights grounds but allowed under the Immigration Rules by decision of First tier Tribunal Judge Caskie, promulgated on 7 June 2017.

2. The Respondent was granted permission to appeal to the Upper Tribunal by decision of First tier Tribunal Judge Osbrone of 27 September 2017 on the basis the Judge had arguably failed to accurately apply paragraph 276ADE(1)(vi) and the guidance thereon to be found in Treebhawon (compelling circumstances test) [2017] UKUT 13.

3. Thus the matter comes before me.

Error of law?

4. The Appellant was handicapped in answering the Respondent's case because he was without legal representation. He told me that he has a lawyer, but they have never come on record as acting for him, and he accepted that they had refused to represent him at the hearing before me. In the circumstances I ensured that the Appellant could say all that he wished to say, and then considered the Respondent's arguments for myself.

5. It is clear, when read as a whole, that this is a confused decision. The Judge begins by accepting the Appellant's evidence and stating baldly that his appeal must therefore be allowed [17]. However, as he then analysed the Appellant's case, and the evidence relied upon, he found in terms that the Appellant was never at risk from the Ba'ath Party, and had never been targeted personally for harm by anyone in Iraq in the past, and that he faced no real risk of being targeted for a Convention reason in the future [27]. Thus the asylum appeal fell to be dismissed.

6. The Judge also concluded that the Appellant no longer faced any general risk of harm in his home area from either the state, or from non state agents, because the circumstances prevailing in that area had changed dramatically. He found that there was no internal armed conflict in the Appellant's home area. Thus he also concluded that the Appellant could not succeed in either his Article 3, or humanitarian protection grounds of appeal.

7. There is no cross appeal from the Appellant against those conclusions.

8. The Judge also dismissed in terms the Article 8 appeal, but allowed the appeal on the basis of his conclusion that the Appellant satisfied the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules, reasoning that notwithstanding the failure of the Article 8 appeal the appeal could nevertheless be allowed under the Immigration Rules because the terms of paragraph 276ADE(1)(vi) were more generous than a traditional assessment of Article 8 would allow [29]. He offered no jurisprudence to support this approach, or that reasoning.

9. It is clear that the decision contains no finding that Article 8 was engaged by the Appellant's circumstances. Indeed it could reasonably be inferred from the way in which the decision is phrased that the Judge accepted that Article 8 was not engaged. Having considered the matter for myself, I am satisfied that this was indeed in reality the only conclusion that was open to the Judge. There was no evidence before the Judge that would have allowed him to conclude that the Appellant had formed a "family life" in the UK with any individual. There was no evidence before him that would have allowed him to conclude that the Appellant had formed a "private life" whose nature and quality were such as to engage Article 8. In this case the Appellant relied upon no more than his mere presence in the UK illegally for eighteen months. He had offered no evidence to explain how his lifestyle and friendships meant that he had established a "private life" whose nature and quality would be sufficient to engage Article 8.

10. As rehearsed in Treebhawon, and earlier jurisprudence, the first step for the Judge to take in deciding an Article 8 appeal, was to consider whether Article 8 was engaged on the evidence. Only in the event that he did so, and concluded that it was, could he go on to consider both the provisions of s117A-D of the 2002 Act, and the ability of the individual to meet the requirements of the Immigration Rules, as the context within which he was required to undertake the assessment of proportionality.

11. However, even if the Judge did reach this stage of the consideration of the Article 8 appeal, then he still needed to bear in mind the guidance to be found in Treebhawon and Hesham Ali [2016] UKSC 60, and

Kamara [2016] EWCA Civ 813 upon the true nature of the two limbs of the test set out in paragraph 276ADE(1)(vi); of "*integration*" and "*very significant obstacles*".

12. In this case it is extremely difficult to see how the Judge came to the conclusion that the Appellant would be unable to "*integrate"* himself in Iraq, having left that country so recently, especially when the Judge had concluded that it would be possible for him to return to his home area of Iraq in safety.

13. Within that home area, it was the Appellant's own case that he had left his mother, and his three married sisters (each in their own households), and the paternal uncle who had paid for his journey to the UK. Whilst he denied any contact with them since he had left Iraq, the prospect clearly remained of his being reunited with them upon his return. The Judge made no finding upon this prospect one way or the other.

14. Moreover the elevated threshold of "*very significant obstacles"* to integration required far more than mere hardship, difficulty or upheaval and inconvenience; the test is instead comparable to (albeit not identical to) the "*unduly harsh*" test. If, indeed, the Appellant could return to his home area in safety, as was the Judge's finding, then it is extremely difficult to see why his position should be equated to one who found himself in an unknown area as an internally displaced person, as the Judge did [22]. The mere fact that he had no work experience in either Iraq, or the UK, would not be enough of itself to permit such a conclusion.

15. In the circumstances I am satisfied that the Judge fell into material error, and that his decision to allow the appeal under the Immigration Rules must be set aside and remade. Even making all due allowance for the low threshold of engagement, the Appellant did not establish that his circumstances engaged Article 8. Nor, did he establish that his circumstances demonstrated a compelling case to displace the public interest in his removal; he did not establish that there would be very significant obstacles to his integration in Iraq if removed from the UK.

16. Accordingly the Judge's decision to dismiss the appeal on asylum, and humanitarian protection grounds, and human rights grounds is confirmed. I set aside the decision to allow the appeal under the Immigration

Rules, and remake that decision so as to dismiss the appeal on all grounds.

DECISION

The Decision of the First Tier Tribunal which was promulgated on 7 June 2017 did involve the making of an error of law that requires the decision to allow the appeal under the Immigration Rules to be set aside and remade, so as to dismiss the appeal on all grounds.

Deputy Upper Tribunal Judge JM Holmes
Dated 12 December 2017

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 12 December 2017