



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03579/2016**

THE IMMIGRATION ACTS

**Heard at Manchester
On February 26, 2018**

**Decision & Reasons
Promulgated
On March 01, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR HAREM KHALED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, Counsel, instructed by Broudie, Jackson & Canter

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity order.
2. The appellant is an Iraqi national. He entered the United Kingdom on October 21, 2015 and claimed asylum the same day. The respondent refused his protection claim on March 25, 2016 under paragraphs 336 and 339F HC 395.

3. The appellant lodged grounds of appeal on April 12, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Parker (hereinafter called “the Judge”) on April 5, 2017 and in a decision promulgated on April 24, 2017 the Judge refused the appeal on all grounds.
4. The appellant appealed this decision on May 8, 2017. Permission to appeal was initially refused by Judge of the First-tier Tribunal Dineen on August 30, 2017. The grounds of appeal were renewed and Upper Tribunal Judge Southern granted permission to appeal on October 6, 2017. He found it arguable (a) the Judge had failed to address the issue raised by counsel namely whether the appellant originates or is from the IKR and (b) the Judge did not explain how some of her findings were reached.
5. In a Rule 24 response dated November 17, 2017 the respondent opposed the application. This matter came before me on the above date. Following submissions, I reserved my decision.

SUBMISSIONS

6. Mr Holmes pursued two grounds of appeal. Firstly, he submitted the Judge had erred by failing to make clear findings and when findings were made they made no reference to the country evidence. It was unclear whether the Judge was reciting the arguments or making findings. Secondly, he argued that simply because he had been born (originated) in the IKR did not mean he was from the IKR. This was relevant to the issue of internal relocation.
7. Mr Bates responded to these submissions. Firstly, the Judge found the appellant’s account lacked credibility and accepted the submissions of the Presenting Officer and the decision letter. In rejecting the factual aspect of the claim, he gave reasons. Secondly, AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) dealt with documents and as he was born in the IKR and had family there he would be able to obtain those documents.

FINDINGS

8. The first ground concerned whether there was difference to “originated from” and “was from” the IKR. At Q10 of his interview the appellant stated he came from Darankdikhan. There is no dispute that this town is in the IKR. The appellant confirmed at Q12 and 13 of his interview that he had relatives throughout the IKR and that he remained in contact with his family.
9. The appellant claimed that he had left the IKR approximately 13 years ago and whilst it was accepted he had been born in (originated in) the IKR, Mr Holmes disputed that he came from that area for the simple reason that he had moved away.

10. Mr Holmes made this submission at the original hearing and argued there was a difference but the grounds of appeal argue the Judge failed to address the issue in her decision.
11. Permission to appeal had been given on this point. Mr Bates submitted that AA (Article 15(c)) Iraq CG did not distinguish between when a person left the IKR to determine whether they are “from” there or “originated” from there. The facts were the appellant was born there and had family living there and even if the Judge did not engage with Mr Holmes’ argument it did not amount to a material error because the only logical outcome was the fact that the words were the same.
12. The wording in the headnote at E17 of AA (Article 15(c)) Iraq CG states-
“The Respondent will only return P to the IKR if P originates from the IKR and P’s identity has been ‘pre-cleared’ with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.”
13. At paragraph 150 the wording used is-
“.... The Respondent also identified that she will only return a person to the IKR if that person is from the IKR and such person has been pre-cleared for return by the IKR authorities.”
14. Mr Holmes argued that there was a distinction and whilst I note permission to appeal was given I am satisfied that permission was given because the Judge did not deal with the point being made by Mr Holmes.
15. I am satisfied the appellant originated from the IKR because he was born there and I am also satisfied that the term “from”, in his case, means exactly the same.
16. A different approach could be taken where for instance a person was not born in the IKR but went to live there. That person could be said to have come from the IKR albeit he had not originated there. If that latter person had the right to live there, then he would be covered by what was stated in paragraph 150 of the decision.
17. However, in this appeal the appellant was born there and whilst he may not have been living there prior to coming to the United Kingdom he still had family there and was entitled to go back there and would be able, in theory, to obtain documents. I therefore do not find the omission by the Judge, on these facts, amounts to an error in law.
18. The second argument advanced by Mr Holmes centred on the Judge’s decision. Mr Holmes submitted it was unclear whether the Judge was making findings or was merely repeating what was being said by the advocates.
19. The Judge’s decision consisted of eight pages. At paragraph 9 the Judge summarised the reasons for refusal and at paragraph 11 he briefly

referred to points elicited in cross-examination but noted that a full record of the evidence was set out in her record of proceedings. The Judge did not set out any submissions but as with the evidence he stated both would “be referred to by me as and when necessary to support the reasons for my decision.”

20. The Judge’s style of writing does not amount to an error in law. At the beginning of her findings the Judge noted those matters which were not in dispute at paragraphs 14 and 15 respectively. He then recorded that the respondent did not accept the appellant’s father was a member of the Baath party but he also recorded that Mr Holmes submitted evidence to support his submission.
21. The Judge commented at paragraph 17 that the appellant demonstrated a limited knowledge of his father’s activities and at paragraph 18 he found that the lack of detail given by the appellant was understandable due to his age.
22. The Judge made clear that he would refer to aspects of the evidence where necessary to support his decision and the fact he recites points put forward by both parties does not invalidate his findings.
23. At paragraph 19 the Judge agreed with the respondent that the appellant’s story lacked credibility and whether he is reciting facts contained in the respondent’s decision letter or stating facts he has found the end result is the same as he preferred the respondent’s submissions to those advanced by the appellant.
24. At paragraph 20 the Judge noted the appellant’s inability to provide information about the people he claimed to fear and the Judge identified further inconsistencies. At paragraph 23 the Judge concluded that the appellant had failed to demonstrate that individuals were willing to harm him in any way. Whilst there are grammatical errors these do not detract from the findings made.
25. Mr Holmes submits that mixing findings and facts together amounted to an error in law. Whilst it is preferable to separate findings from facts sometimes there is an overlap and whilst the decision could have been written differently there is no doubting the findings and conclusions of the Judge. Almost without exception the Judge did not find the appellant credible. He concluded at paragraph 38 that as he was Kurdish and was from the IKR, having been born there, and continuing to have family there it would not be unreasonable, following AA, to expect him to live there.
26. There is a difference between a Kurd who comes from the IKR and a Kurd who lived outside the IKR who the respondent was seeking to return. The Judge’s finding was based on he was a Kurd who originated or came from the IKR and her finding that he could be returned was one that was open to her.

DECISION

27. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision.

Signed

Date 26/02/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as I have dismissed the appeal.

Signed

Date 26/02/2018



Deputy Upper Tribunal Judge Alis