



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05351/2017

THE IMMIGRATION ACTS

Heard at North Shields
On 3rd April 2018

Decision & Reasons Promulgated
On 23rd May 2018

Before

DEPUTY JUDGE FARRELLY OF THE UPPER TRIBUNAL

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MR. R H I
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Boyle of Halliday Reeves Law Firm.

For the Respondent: Mr McVeety, Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. Although it is the Secretary of State for the Home Department who is the appellant in these proceedings for convenience I will continue to refer to the parties hereinafter as they were in the First Tier Tribunal.
2. The appellant is a Kurdish national of Iraq. He is a Sunni Muslim. He said he lived in a town in Mosul. He said that in 2011 his father killed the brother of a government Minister for assaulting his daughter. The appellant believes the Minister MSQ wanted to take revenge on his father. In 2014 their hometown B was taken over by ISIS, who executed his father. Following from this the appellant claims he is now at risk from MSQ in place of his father.

3. When ISIS controlled his village he had some protection from MSQ because of their presence. However, they left in May 2016. He and his family moved to a camp in Erbil. He recounts an incident after this when shots were fired in his direction when he was in the market place. He decided to leave Iraq and arrived in the United Kingdom in November 2016, claiming protection immediately.
4. The respondent did not accept he was at risk from MSQ , pointing out on his claim his father killed his brother in 2011 and Isis were not in the area until 2014 and left in 2016. There had been no incidents in the interval. The respondent concluded there was sufficiency of protection for him.
5. The respondent recorded that he was from the Ninewah region and it was accepted that article 15C applied there. However, it was felt he could relocate to a safer area. The appellant spoke Kurdish Sorani and Arabic and he could relocate.
6. He claimed to have no documentation. However, the respondent took the view that is so he could go to the IKR.

The First tier Tribunal

7. First tier Judge Head-Rapson accepted the account and that he did not have documentation. The judge concluded he would be at risk upon return. Consequently, the appeal was allowed.

The Upper Tribunal

8. The respondent sought permission to appeal this decision on the basis of the appellant's credibility was an issue and there was no credibility assessment by the judge. The decision does not consider what difficulties the appellant would face without documentation or of him living in the IKR. Permission was granted on the basis the decision was arguably devoid of reasons for supporting any of the findings.
9. Mr Boyle, acknowledging that the judge did not grapple with the credibility issues. However, the judge did consider the alternative of 15 C protection and this was not challenged.

Consideration

10. Both parties are in agreement that the judge did not deal adequately with the credibility issues raised in the refusal letter in respect of the appellant's claim that he was at risk from his late father's enemies. As the grounds indicate, the judge recites basic details of the claim and then makes findings adopting

these. No reasoning is advanced for doing this. Consequently, the conclusion that the appellant is therefore at risk on this basis cannot stand.

11. The judge considered in the alternative the question of humanitarian protection. The decisions of AA article 15(c) Iraq CG [2015] UKUT 544 and AA Iraq [2017] are referred to. The judge recites extracts and concluded that the appellant lacked documentation and therefore would be at risk upon return. Again, there is absence of reasoning.
12. Although it has been found that the appellant is entitled to 15 C protection given the ever-changing situation in Iraq it is my conclusion the matter should be remitted for de novo hearing on all issues.

Decision

The decision of First tier Judge Head-Rapson materially errs in law and is set aside. The matter is remitted to the First-tier Tribunal for a de novo hearing.

Deputy Upper Tribunal Judge Farrelly

Directions

1. Request for a de novo hearing in the First-tier Tribunal excluding First-tier Judge Head-Rapson.
2. A Kurdish Sorani interpreter will be required.
3. The appellant's representatives are to prepare an up-to-date appeal bundle to be lodged no later than two weeks before the appeal date
4. It is anticipated the hearing should take no longer than 2 ½.

Deputy Upper Tribunal Judge Farrelly