



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/09472/2017

THE IMMIGRATION ACTS

Heard at Liverpool
On 10th July 2017

Decision & Reasons Promulgated
On 14th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR D. M.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss C Warren, Counsel

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

DECISION AND REASONS

1. The Appellant is a citizen of Iraq born on 10th December 1979. His immigration history is extensive in the extreme and is recited in detail in the Notice of Refusal. I have considered all the Appellant's previous history. The most recent appeal of the Appellant was lodged in December 2016 and within that claim he relies on the authority of *AA (Article 15(c)) Iraq CG [2015] UKUT 00554 (IAC)*. That application was refused by Notice of Refusal dated 7th September 2017.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Durance sitting at Manchester on 28th October 2017. In a decision and reasons promulgated on 16th April 2018 the Appellant's appeal was dismissed both under the Refugee Convention and on human rights grounds.
3. Grounds of Appeal were lodged on 3rd May 2018. Those grounds contended:-
 - (i) That the Judge erred in failing, properly or at all, to give reasons adequate to support his conclusions and/or in failing to consider relevant material
 - (ii) Failed to follow relevant country guidance
 - (iii) Failure to obtain a CSID in a reasonable time if returned.
4. On 14th May 2018 Judge of the First-tier Tribunal Blundell granted permission to appeal. The permission notes that the First-tier Tribunal arguably failed to consider expert and witness evidence and erred in going behind a concession made by the Respondent regarding relocation to Mosul. Further it contends that the judge arguably erred in leaving materials out of the count when he concluded that the Appellant could obtain a CSID in a reasonable time.
5. There is no Rule 24 response. It is on that basis that this appeal comes before me solely for the purpose of determining whether there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Miss Warren. Miss Warren is extremely familiar with this case. She appeared before the First-tier Tribunal and she is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates.

Submissions/Discussion

6. Miss Warren submits that there are three principal issues herein, namely:-
 - (i) That the First-tier Tribunal Judge has ignored the expert's report that was before the Tribunal
 - (ii) That he has failed to have regard to witnesses
 - (iii) That in reaching his conclusion he has failed to give due and proper consideration to material evidence.

Miss Warren reminds me that the Appellant's bundle before the First-tier Tribunal ran to 653 pages, and whilst that is referred to at paragraph 8 of the First-tier Tribunal Judge's decision, she submits that the judge has failed to consider the material therein that is of particular relevance, especially the expert report by Sheri Laizer and her conclusions. Further she submits there was a detailed expert report from Professor Nadjie Al Ali and refers in particular to the conclusions reached therein at paragraph 103. Further she comments that evidence was provided by a witness, Mr S R, dated 16th October 2017 and that his credibility was not questioned, nor was he cross-examined. However she submits that there is no reference made at all within the

decision to the evidence of Mr S R and this she submits is not only an error of law but one that is material.

7. Further she submits that the judge has rejected the Appellant's account that he has not been able to contact his family since the occupation of Mosul. She submits that the judge has erred in failing to have regard to material evidence in that he has had no regard to the conflict in Mosul and the violence against, and displacement of, the population of the city in concluding the Appellant is still in contact with his family, and he has given no reason why the evidence from the Red Cross is of only limited assistance to the Appellant. In particular she emphasises that it was accepted by the Tribunal previously and the Respondent that the Appellant was Kurdish and from Mosul and that the judge relies on his conclusion about the Appellant being in contact with his family to support his conclusion at paragraph 46 that he could return to Baghdad. She submits that there was simply no basis in the evidence to suggest that the Appellant's family were, or were reasonably likely, to be in Baghdad such that they could offer him assistance there.
8. She turns next to the second Ground of Appeal, namely the failure to follow the relevant country guidance of AA. She acknowledges that there has within the last days been a new country guidance case but submits to me that this actually is not relevant to the issue that is before me. She submits that there is no evidence to say that country guidance should be departed from and that at paragraph 49 where the judge indicates that he is going to depart from country guidance there is actually no evidence to support such a contention. She submits that the judge has materially erred in law in his approach to the country guidance authority.
9. Further she submits that the judge in failing to apply country guidance in considering whether the Appellant could internally relocate to the IKR has failed to consider the practicality of travel despite this being an issue raised by the Appellant in the Appellant's skeleton. She submits there was at least a requirement for the judge to give due and proper consideration to this.
10. She further contends that the judge fails to correctly apply the country guidance case of *BA(Returns to Baghdad Iraq CG) [2017] UKUT 18 (IAC)* and in particular the risk to the Appellant of kidnapping. She points out that the Appellant would be at particular risk in Baghdad as he is a Sunni from Mosul and has been in Europe for 15 years.
11. Finally, she turns to the issue of the failure to obtain a CSID in a reasonable time if returned, pointing out that the judge has erred in law and the fact that the Appellant previously had a CSID was some 15 years ago and that guidance is set out in the country guidance authorities and the judge has failed to give due or proper consideration to this guidance. Over all, she consequently contends there are material errors of law in the decision of the First-tier Tribunal Judge and she asked me to set aside the decision and to remit the matter back to the First-tier Tribunal for re-hearing.
12. In response, Mr Bates points out that the experts' reports pre-date country guidance and that the key issue was the country guidance authority and not the experts' reports.

Further he queries the materiality of witnesses, although he accepts the evidence given therein but contends that the principal point is the credibility of the Appellant's explanation of the documentation obtained by the witness evidence and that this is addressed at paragraph 44 of the decision. He submits that it all connects to the credibility of the Appellant's evidence and that the judge did not accept his explanation at paragraph 45. As the ID card had been lost the issue of the witness evidence does not add anything material to the appeal, and the issue of credibility is the one that the judge has had to address.

13. He submits that the judge has set out his findings in detail at paragraph 34 and made findings there has been previous deception and that the judge does not accept that the Appellant has lost his ID card. He is fit and healthy and has friends and family and the judge has found him not to be a credible witness. He submits that the issue turns on the credibility of the Appellant's testimony and that the position of the Appellant's family has been addressed. He accepts that the new country guidance authority is not of relevance. He further submits that the position relating to the Red Cross is addressed at paragraph 33 and supports the judge's view that the Red Cross have confirmed they cannot undertake a search in Mosul as being of limited assistance to the Appellant. He asked me to find there are no material errors of law and to dismiss the appeal.
14. In response, Miss Warren notes that the expert's reports originate pre country guidance but makes no comment beyond that and the judge has given no reason for not relying on them. She reminds me that the witness was found to be credible and that his testimony was not impugned at all, and it is important the judge hears evidence that has not been tainted, that he gives due consideration to this and he appears to have failed to have done so. Further she submits that so far as the issue of onward transit is concerned the judge is not addressing the issue. She submits that there is a total failure with regard to the evidence that was before the Tribunal being properly considered by the judge and reaffirms her request that the case be remitted for re-hearing.

The Law

15. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
16. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an

Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

17. If ever there was a case that required finality, this is it. The history of this matter is so extensive that a final adjudication is urgently required. However, it is also appropriate and proper that an Appellant's case is properly and fairly considered. It is the contention of Mr Bates that this case turns on an assessment of credibility and that the judge has made findings that he was entitled to. The proper approach to credibility will require an assessment of the evidence and of the general claim and relevant factors will be the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. There is little doubt that in this case as time has gone on the amount of documentation has grown and now approaches nearly 700 pages. The judge made negative credibility findings.
18. However, as Miss Warren has pointed out, those findings may be tempered by a full analysis of the evidence that was before the Tribunal. A detailed reading of the decision shows that the judge has failed to give consideration firstly to the report of Sheri Laizer and secondly to the report of Professor Nadjé Al Ali. Those reports may well have pre-dated the country guidance authority of AA but there is a requirement to give them due consideration. Secondly the judge has given the most scant consideration to the witness evidence that was before the court. If a witness does attend before a Tribunal and give evidence there is a requirement on the judge to at least make findings with regard to that evidence. Whether the omission to do so in this instance on its own is material is a matter of conjecture but I find that the combined failure to give due consideration to the expert evidence and to the witness evidence taints the decision to the extent that there is a material error of law and that the findings of the judge are consequently not sustainable. I emphasise however to the Appellant that this is not to say that on a re-hearing of this matter when full and proper consideration is given to these issues that a different judge would not come to exactly the same conclusion as that of the First-tier Tribunal Judge who heard this appeal.
19. Finally it is appropriate to address the issue with regard to return. The judge has of his own volition failed to follow country guidance. That is a bold step to take, and whilst the judge has attempted to give reasons the picture in Mosul is an ever-changing feast. I accept that ISIS has now been removed from Mosul but return is a matter of considerable debate including the ability to return and the position that the Appellant would find himself in as a Sunni Muslim arriving in Baghdad after 15 years' absence.

These issues have not been properly addressed, and as such there are material errors of law in the decision of the First-tier Tribunal Judge.

20. For all the above reasons, I find the decision of the First-tier Tribunal Judge to be unsafe, and I set aside the decision and remit the matter back to the First-tier Tribunal for re-hearing.
21. Normally I would set out directions leading to the re-hearing of this matter on the soonest available date. However, due to firstly the change of circumstances that have arisen since the Appellant first lodged his application, and secondly the horrendous history of this particular matter, I consider it appropriate that the matter be referred firstly to the designated Tribunal Judge sitting at Manchester to hear the matter at a CMC and to give directions for the re-hearing. I acknowledge to a certain extent any findings in this matter are at present of only limited value bearing in mind that the Secretary of State is not enforcing any returns to Iraq.

Decision and Directions

The decision of the First-tier Tribunal contains a material error of law and is set aside with none of the findings of fact to stand. Directions are given hereinafter to lead to the re-hearing of this matter.

1. On finding that there are material errors of law in the decision of the First-tier Tribunal Judge, the decision is set aside with none of the findings of fact to stand.
2. The matter is remitted to the First-tier Tribunal sitting at Manchester or Liverpool.
3. That due to:
 - (a) The history of this matter, and
 - (b) The change of circumstances in Iraq since the Appellant made his application

I direct that this matter be firstly referred to the Designated Immigration Judge sitting at Manchester with a view that the matter be listed for a CMC for directions for re-hearing and for consideration bearing in mind the substantial number of judges who have previously been involved in this matter that the matter be heard by a full-time Immigration Judge on the Designated Judge giving directions and an estimated length of hearing.

4. That at some stage in these proceedings the Appellant has been granted anonymity. Whilst I would not consider that it is necessary for the Appellant to have anonymity no application is made to vary that order and consequently the anonymity direction will remain in place.
5. That if the Appellant requires an interpreter at the restored hearing then it is for his instructed solicitors to notify the Tribunal prior to the hearing of any CMC or further directions being given.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris