



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

Appeal Number: PA/02297/2019

THE IMMIGRATION ACTS

Heard at Birmingham CJC

Decision & Reasons

On 3 December 2019

Promulgated

On 13 December 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR OH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Smith, Counsel, Direct Access

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

Details of the Appellant

1. The appellant is a citizen of Iraq born on 1 March 1991 who appealed to the First-tier Tribunal against the decision of the respondent dated 28 February 2019 to refuse the appellant protection. In a decision and reasons promulgated on 10 July 2019, Judge of the First-tier Tribunal Broe dismissed the appellant's appeal on all grounds. The appellant appeals with permission on the grounds that:

- (1) It is arguable that the judge's findings and credibility were based primarily on assessments of Section 8 of the 2004 Act including with reference to the appellant's contact with his uncle and failed to have sufficiency of regard to the evidence before the First-tier Tribunal. The judge focused on such matters to the exclusion of any consideration of the credibility of the substance of the appellant's account which was that ISIS had come to his home area, that his brother's shop was targeted by ISIS and that he left in fear of ISIS and militia operating in the area;
- (2) It was argued that the judge's assessment of the evidence concerning his uncle was flawed including that the appellant had made an attempt to amend his interview which had been sent to the respondent. Even if that had not been accepted, the judge took a point which was not raised by the respondent and it was incumbent on the judge to give the appellant an opportunity to clarify this prior to reaching an adverse credibility finding. The judge also failed to give adequate reasons for finding that the appellant's uncle did not have a phone and further made reference to the appellant's friends who knew of ISIS sleeper cells in Hawija (in the context of questioning why these friends could not have been used to contact his uncle) when in fact these were friends living in the UK as the judge had himself had recorded (at [17]). The judge also failed to have consideration to the appellant's evidence, including at paragraph 8 of his witness statement in relation to further displacement in Iraq;
- (3) Risk in Hawija: the judge found that the appellant was not at risk but failed to apply the applicable country guidance including in **AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC)** where the Kirkuk Governorate (where Hawija is located) was found to be a contested area and there were substantial grounds therefore for believing that if the appellant was returned there he would face a risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive. The judge arguably failed to apply **SG (Iraq) [2012] EWCA Civ 940** in that very strong grounds, supported by cogent evidence, were needed to depart from country guidance and the judge failed to make such an assessment. In addition the judge failed to consider the reasonableness of internal relocation;
- (4) It was argued that the judge failed to apply the relevant country guidance including **AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC)** in the consideration of whether the appellant could obtain a CSID.

Error of Law

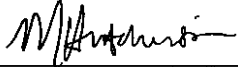
2. Miss Smith made detailed submissions expanding and highlighting the grounds of appeal summarised above. Having heard these submissions, Mrs Aboni quite properly conceded that it was difficult for the respondent

to move beyond the first ground, as it was accepted that there was a failure by the First-tier Tribunal to adequately, or indeed at all, consider the substantive reasons the appellant had given for claiming asylum.

3. Considered cumulatively with the errors in relation to the consideration of the Section 8 matters it was accepted by the respondent that the decision contained an error of law such that it could not stand and should be set aside. As I was satisfied that an error of law was made out, under ground 1, I need not consider the additional grounds.
4. Neither party required a reasoned decision in light of their agreement, a course open to the Tribunal pursuant to rule 40(3)(a) and (b) of the Tribunal Procedure (Upper Tribunal) Rules 2008.
5. Given that the First-tier Tribunal failed to adequately consider the core of the appellant's claim, the nature and extent of the fact-finding required is such that the appeal should be remitted to the First-tier Tribunal, other than before Judge Broe for a fresh hearing.

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 

Dated: 12 December 2019

Deputy Upper Tribunal Judge Hutchinson

**TO THE RESPONDENT
FEE AWARD**

As no fee was paid no fee award is applicable.

Signed 

Dated: 12 December 2019

Deputy Upper Tribunal Judge Hutchinson