



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06127/2019

THE IMMIGRATION ACTS

Heard at: Bradford
On: 1 November 2019

Decision and Reasons Promulgated
On: 5 November 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

M M

(ANONYMITY DIRECTION MADE)

Respondent

Representation

For the Appellant: Mr Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr Holmes, Counsel

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

1. I make an anonymity order because this decision refers to the respondent's international protection claim.

Background

2. The respondent ('MM') is a citizen of Iraq, of Kurdish ethnicity who originates from Tuz Khumatu. These matters have always been accepted by the appellant ('the SSHD').
3. The SSHD has appealed against a decision of the First-tier Tribunal ('FTT') (Judge Mensah) sent on 8 August 2019, in which MM's appeal was allowed on asylum and human rights grounds, and dismissed on humanitarian protection ('HP') grounds. The FTT carefully considered MM's evidence together with the country background evidence and country guidance including AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 212 (IAC), and reached the following findings.
 - (i) MM's claim that ISIS attempted to recruit him in his home area of Tuz Khumatu is not credible.
 - (ii) MM has been displaced from his home area by, inter alia, the generalised violence there. Although the SSHD submitted that the security situation in Tuz Khumatu had improved, the FTT did not accept that there was sufficiently cogent evidence to depart from the country guidance to the effect that the appellant cannot safely return to his home area.
 - (iii) The FTT therefore went on to consider whether MM could internally relocate to Baghdad or the IKR and concluded that this would be unreasonable for a variety of reasons:
 - a) MM does not speak Arabic (Baghdad);
 - b) He does not have any family or connections in Baghdad or the IKR;
 - c) His family have been displaced from their home area and will be unable to provide financial support;
 - d) It is reasonably likely that MM's documentation has been destroyed or is not accessible given the fact that ISIS took control of Tuz and there has been no stable solution or recovery of infrastructure;
 - e) MM will struggle to obtain employment.

Appeal to the Upper Tribunal

4. The SSHD relied upon two written grounds of appeal and permission to appeal was granted on both. I deal with each ground below, together with the parties' submissions at the hearing before me.

Ground 1 - The FTT was not entitled to allow the appeal under the Refugee Convention

5. The FTT clearly accepted that MM would be at risk in his home area because of indiscriminate violence and he could not safely or reasonably internally relocate

for a variety of reasons. The FTT did not identify a Convention reason for the harm that the appellant would face. It is clear that the FTT considered MM would be at risk of indiscriminate violence in his home area and it would not be reasonable to expect him to relocate for a variety of reasons. In his rule 24 notice Mr Holmes faintly submitted that the harm the appellant would face would be perpetrated by a religious extremist organisation seeking to establish a theocratic state, and as such both religion and political opinion apply as possible Convention reasons. I invited Mr Holmes to expand on this but he merely relied upon the rule 24 notice. The situation facing civilians in many parts of Iraq is complex. The appellant's representatives did not make a meaningful effort to explain why a Convention reason was applicable by reference to the country background evidence or any structured legal argument. In these circumstances, the FTT was not entitled to allow the appeal on asylum grounds and should have allowed it on HP grounds. Mr Diwnycz agreed with this approach. Mr Holmes also agreed that if there was no Convention reason identified, the correct course would be to allow the SSHD's appeal on asylum grounds but remake the decision by allowing the appeal on HP and human rights grounds.

Ground 2 – The FTT failed to address the options available to MM in order to obtain a CSID

6. The head note in AAH includes the following:

“1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:

- i. Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;*
- ii. The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?*
- iii. Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.”*

7. AAH makes it clear at [100] that a critical part of the enquiry will be what documents the individual in question has or might be expected to get. The FTT judge clearly had the AAH country guidance and her own adverse factual findings in mind when she accepted that MM's documentation has either been destroyed or would be inaccessible. Notwithstanding the FTT's rejection of MM's claim that ISIS attempted to recruit him and he feared his uncle, the FTT found that MM's home area continued to be ravaged by its occupation by ISIS and his family members there would be unable to assist. The FTT was entitled to conclude that MM does not have a CSID and would not be able to engage the necessary support of any family members to get one.
8. Given these circumstances, when pressed, Mr Diwnycz agreed that ground two merely disagreed with the FTT's findings of fact. He was right to do so. Ground two is dismissed because it does not identify an error of law.

Decision

9. The FTT should not have allowed the appeal on asylum grounds but was entitled to make the findings of fact it did.
10. I remake the decision by allowing the appeal on humanitarian protection and human rights grounds only, and dismissing the appeal on asylum grounds.

Signed: *UTJ Plimmer*
Judge of the Upper Tribunal

Dated: 1 November 2019