



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

Appeal Number: PA/08895/2018

THE IMMIGRATION ACTS

Heard at Field House

On 7 January 2019

**Decision & Reasons
Promulgated
On 31 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR A M J A B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Nizami, counsel, instructed by D H Law Limited

For the Respondent: Mr S Whitwell, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Iraq, date of birth 10 January 1995 sought protection on or about 13 February 2018 which was refused by the Respondent on 3 July 2018. His appeal came before First-tier Tribunal Judge M R Oliver (the Judge) who on 25 October 2018 dismissed the appeal on asylum and Humanitarian Protection grounds.

2. Permission to appeal was given by First-tier Tribunal Judge Shimmin on 20 November 2018.
3. The grounds extensively challenge a variety of aspects of the decision of the Judge and highlight a number of issues which Miss Nizami who appeared before the Judge had raised in her extensive skeleton argument. That skeleton argument was a helpful guide of points which the Judge should have found useful in dealing with several aspects of the claim. That is not to say the arguments should have succeeded, so much as they were pointers or touchstones to address in order to secure an adequate and sufficiently reasoned decision. Of particular note was the absence of consideration in any direct sense by the Judge of the Humanitarian Protection basis of claim set out with particular reference to the case of BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018. It is clear that in that country guidance case for good or ill the point was raised about the potential risk from persons who on a return to Baghdad may face dangers because they are perceived to be rich, wealthy, westernised or exposed to a different life to that in Iraq.
4. Mr Whitwell courageously argued that other findings, if they had been made, by the Judge when pulled together are sufficient to show that the risk of serious harm, kidnapping, exploitation, whatever it may be particularly relied upon, would not occur. He particularly relied upon the fact that the Appellant is Iraqi, speaks Arabic, is young enough to find work, there are family connections of some sort and thus there was no real risk.
5. Mr Whitwell may be right. I would not seek to second guess that. It simply does not follow because the Appellant is single, healthy, 23 years of age that he can relocate back to Iraq and safely make a life for himself there or in parts of Baghdad without the need to consider the Humanitarian Protection issues or it followed internal relocation and sufficiency of protection. The matter was simply not fully and properly addressed by the

Judge. Given the rejection of other parts of the case, the claim needed to be looked at with great care. It was plain that the Judge became focused on the issue of the Refugee Convention claim and issues arising from it lately arising which diverted him from the wider issues which the skeleton argument had drawn to his attention.

6. The view the Judge took of the lateness of the claim and the application of Section 8 of the AIT (Treatment of Claimants, etc.) 2004 was an issue which was addressed: Whether it was correctly addressed is certainly open to some argument.
7. The fact was that the skeleton argument identified, by reference to the case law, the issues of risk on return, the factors in relation to the sufficiency of protection and the scope of it. I find that similarly the Judges' general approach to the claim really did not adequately address those matters.
8. Similarly the issue of the reasonableness of internal relocation as an option was again highlighted in some depth in the skeleton argument. Quite simply, even if the Judge was right to have reached the conclusion that he did, the adequacy of the reasons fell short of that to be expected.
9. Other grounds of challenge might be characterised as the counsel of perfection but it seemed to me that particularly the way in which the Judge addressed the evidence, provided in translation, with a statement explaining its paper trail relating to a report from a Brigadier General in the Iraqi police, was not adequately dismissed simply by describing it as 'self-serving'. No other reasoning was given by the Judge. Whilst one may understand what he says and why he says it, as the case law plainly directs it is not sufficient to dismiss a document as self-serving. There does at least need to be some, however brief, explanation of the reasons why it is self-serving. The need for some reason, however brief, has been repeated in the Upper Tribunal in the case of SS [2017] UKUT 00164.

10. For these reasons I am satisfied that the Original Tribunal failed to give sufficient and adequate reasons to address the issues raised and cannot stand. The appeal will have to be reheard in the First-tier Tribunal, no findings of fact to stand.

DIRECTIONS

- (1) List Hatton Cross, not before First-tier Tribunal Judge Oliver.
- (2) List for hearing one witness, two hours.
- (3) Any further evidence relied upon in support of the claim to be submitted not less than ten working days before the further hearing unless otherwise directed at a CMRH or PTR at Hatton Cross.
- (4) No interpreter required.
- (5) Anonymity order continued.

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 his 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 18 January 2019

Deputy Upper Tribunal Judge Davey