



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

Appeal Number: PA/12420/2018

THE IMMIGRATION ACTS

**Heard at Fox Court
On 12th February 2019**

**Decision & Reasons
Promulgated
On 7th March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**ALAN [A]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E S King instructed by Elder Rahimi Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Iraq, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 10th October 2018 to refuse his application for asylum, humanitarian protection or leave to remain on

human rights grounds. First-tier Tribunal Judge Swinnerton dismissed the appeal in a decision promulgated on 6th December 2018. The Appellant now appeals to this Tribunal with permission granted by First-tier Tribunal Judge Lever on 9th January 2019.

2. In granting permission First-tier Tribunal Judge Lever considered it arguable that, when assessing risk on return to Iraq, the judge needed to adapt a more structured approach, that he should firstly have considered return to the home area and reached a finding on that matter and should then have considered the issue of relocation to Baghdad or the IKR. It was considered arguable that there was an inadequate examination of the country material and case law such that an error of law occurred.
3. At the hearing before me Mr Duffy accepted that the errors complained of had been made out.
4. Ms King submitted that events have moved on in relation to the country guidance as regards the position of Iraqi Kurds and she submitted that this case was essentially based on Article 15(c) grounds. However, she submitted that the judge's findings in relation to the Appellant's contact with his family members were key to the issue of risk on return.
5. In my view the judge erred in his approach to risk on return as identified in the grounds of appeal and grant of permission to appeal. At paragraph 20 the judge considered the Appellant's evidence that he had not had contact with his mother since March 2015. The judge did not find it credible that the Appellant had not contacted the Red Cross to seek to trace his family members and rejected the Appellant's claim that he had lost contact with his family members. I accept Ms King's submission that in reaching this finding the judge failed to take account of the background evidence submitted in relation to the situation in the Appellant's home area. This is a key finding from which the whole assessment of risk on return at paragraph 21 is based. Given the importance of this finding in the subsequent assessment it had to be adequately reasoned. I find that it was not.
6. I accept Ms King's submission that the judge's assessment of risk on return was based on his finding as to the Appellant's claim that he had lost contact with his family members. This finding informed the judge's findings at paragraph 21 in relation to the feasibility of the Appellant's return to Iraq. I accept that the judge's findings on credibility are inextricably linked with the findings as to risk on return.
7. I take into account the grounds of appeal and Mr Duffy's concession and I find that the First-tier Tribunal Judge made a material error of law in his findings as to the Appellant's family in Iraq and his approach to the assessment of risk on return in light of the country guidance in **AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)**, **BA (Returns to Baghdad) Iraq CG [2017] UKUT 00018 (IAC)** and **AAH (Iraqi Kurds - internal relocation) Iraq CG UKUT 00212 (IAC)**.

8. For these reasons I agree with the proposal made by the parties that it is appropriate to remit the appeal to the First-tier Tribunal to be made again. In light of the Presidential Practice Statements the nature or extent of the judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008, it is appropriate to remit the asylum appeal to the First-tier Tribunal.
9. I preserve the findings of fact in relation to events in Iraq before the Appellant's departure as the grounds challenging the judge's findings as to the Appellant's credibility in relation to events before his departure have not been made out. These findings were adequately reasoned and were open to the judge on the evidence. The issues to be determined on the remitted appeal are for findings to be made as to the Appellant's family circumstances in Iraq and any risk on return in light of the background evidence and the case law.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and I set it aside preserving the findings in relation to events in Iraq before the Appellant's departure.

I remit the appeal to the First-tier Tribunal to be remade.

No anonymity direction is made.

Signed

Date: 5th March 2019

A Grimes

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT

FEE AWARD

No fee is payable therefore there is no fee award.

Signed

Date: 5th March 2019

A Grimes

Deputy Upper Tribunal Judge Grimes