



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002311

First-tier Tribunal Nos: PA/51363/2022
IA/03652/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

28th September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

NKK
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Chowdhury, counsel, instructed by Reiss Solicitors Ltd
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

Heard at Field House on 12 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the Appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, a national of Iraq, date of birth 20 March 1986, appealed against the Respondent's decision to refuse his asylum claim. That appeal came before First-tier Tribunal Judge K Henderson on 17 March 2023 and by a decision dated 27 March 2023 he allowed the appeal on asylum, protection and human rights grounds. In this decision the original parties retain the same nomenclature.
2. The Secretary of State was given leave to appeal by Upper Tribunal Judge Frances on 7 July 2023. There were two grounds associated with leave. The first related to case law attaching to the issuance of either a CSID or INID and by dint of the law changing Ms Isherwood accepted that that ground did not remain arguable.
3. The second basis of challenge related to the decision to allow the appeal on human rights grounds.
4. The Secretary of State appealed against the Judge's decision because he had allowed the appeal of potentially the Appellant, his wife and two children on human rights grounds. However, the position remained that the only proper consideration of human rights grounds related to an issue of Article 3 and risk on return to Iraq. The Appellant's wife and two children had made, but were as then undetermined, applications based on human rights particularly it seems Article 8 of the ECHR which have since the date of the Judge's decision been allowed by the Respondent and they have status to remain in the UK.
5. Therefore, on analysis of the second ground of challenge, said to be simply on human rights grounds without reference to a particular Article was not as wide as the Secretary of State thought the Judge had been approaching the matter. I indicated that I was construing the complaints about the Judge to the fact that he had strayed into an area where there was no evidence being advanced as acknowledged in paragraph 15 of the Judge's decision. Equally there were no linked appeals for the Appellant's wife and children and no submissions made relating to such documentation as was relied upon by the Appellant's wife in relation to herself or her children.
6. Accordingly on this basis I concluded that in relation to both grounds of appeal there was no material error of law by the Judge. The Original Tribunal decision stands in the sense that the appeal was dismissed on asylum grounds.

DECISION

7. The appeal of the Respondent is dismissed. The Original Tribunal decision stands to the extent that there represented a risk of a breach of Article 3 of the ECHR to the Appellant.



Judge of the Upper Tribunal
Immigration and Asylum Chamber