Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08757/2014

THE IMMIGRATION ACTS

Heard at North Shields **Decision and Reasons Promulgated**
On 13 May 2015 **On 2 June 2015**
Prepared on 14 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

B. K.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Rasoul, Counsel, instructed by Halliday Reeves Law Firm
For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Iraq, born on 26 January 1977, entered the United Kingdom clandestinely and claimed asylum on 2 March 2001. The Respondent refused that claim on 26 May 2001 and in consequence she made a decision of the same date to remove him to Iraq as an illegal entrant.

2. An appeal against that removal decision was heard and dismissed by an Adjudicator, Mr Ward, in a Determination promulgated on 7 February 2002. The Adjudicator accepted that the Appellant was a Kurd who came from Halabja, as claimed, and that he was married, although he rejected as untrue the Appellant's account of why he had felt obliged to leave Iraq, and his claim to be at risk of harm from members of the IMIK party, a Kurdish Islamic group. The Appellant's appeal rights were exhausted in early 2002.
3. On 19 August 2008, 10 September 2009 and 30 June 2010 the Appellant made further representations to the Respondent as to why he should not be removed to Iraq. Written requests by the Respondent for further information in 2008 and 2009 to support these representations were ignored. The representations made in June 2010 finally prompted a further decision by the Respondent to remove him to Iraq on 22 September 2010.
4. The Appellant pursued an appeal to the First Tier Tribunal against this decision on Article 8 grounds alone. His case was that he was in a long term relationship akin to marriage with Ms K R, an Iraqi citizen who had also been granted British citizenship. That appeal was heard and dismissed by Immigration Judge Zucker in a Determination promulgated on 17 November 2010.
5. Permission to appeal was sought in relation to the dismissal of the Article 8 appeal. That application was granted by Senior Immigration Judge Spencer on 9 December 2010 on the basis that it was arguable that in deciding that the Appellant and Ms K R could pursue their family life together in Iraq the Judge had failed to ask himself whether or not it was reasonable to expect them to do so. The appeal was however dismissed by the Upper Tribunal on the basis there was no material error of law by way of a decision promulgated on 23 May 2012. Ms K R had never been recognised by the Respondent as a refugee from Iraq, and she held dual Iraqi and British citizenship, having acquired the latter as a result of naturalisation. The First Tier Tribunal was perfectly entitled on the evidence before it to reach the conclusions that it had in dismissing the Article 8 appeal.
6. For whatever reason, despite the exhaustion of the Appellant's appeal rights, no step was taken by the Respondent to remove him to Iraq. Instead on 10 October 2014 the Respondent made a further removal decision in relation to the Appellant. As a result he appealed once again. Notwithstanding the previous findings of the Tribunal the Appellant pursued this appeal on asylum, humanitarian protection, and human rights grounds once more. His appeal was heard and dismissed by a panel of First Tier Tribunal Judges Fisher and Bannerman in a

decision promulgated on 23 February 2015. The Tribunal rejected once again the Appellant's account of why he had left Iraq as a fabrication.

7. The Appellant applied to the First Tier Tribunal for permission to appeal relying upon only one complaint, concerning the approach taken to the humanitarian protection claim. That application was granted by Judge Brunnen on 19 March 2015 because he considered it arguable that the Tribunal had failed to consider adequately the humanitarian protection ground of appeal, having failed to consider whether the available evidence was sufficient to justify differing from the country guidance given by the Upper Tribunal in HM (Iraq) [2012] UKUT 409.
8. The Respondent filed a Rule 24 Notice on 27 March 2015 and argued that the Judge had directed himself appropriately, and that the decision in DSG & Others (Afghan Sikhs: departure from CG) Afghanistan [2013] UKUT 148 set out the proper approach to country guidance decisions, which approach it was said the Tribunal had followed.
9. Thus the matter comes before me.

The Upper Tribunal decision of 23 May 2012

10. I was a member of the panel of the Upper Tribunal that dismissed by way of decision of 23 May 2012 the Appellant's appeal against the decision of the First Tier Tribunal of 17 November 2010. The Appellant confirmed through Ms Rasoul that nothing turn upon that, and that it was not suggested that I should recuse myself from hearing this appeal. For my own part, I agree. I can see no proper basis upon which an application to recuse myself could be made, and I decline to do so of my own motion.

Grounds

11. The grounds, which were not drafted by Ms Rasoul, raise no complaint about the Tribunal's treatment of either the asylum, Article 3, or Article 8 appeals. Those decisions must on any view stand.
12. The draftsman of the grounds focuses exclusively upon the approach taken to the humanitarian protection appeal. The complaint is a simple one. It is asserted that the Tribunal was not entitled to take the approach to the humanitarian protection appeal that it did, because it had failed to engage with the evidence before it adequately, or at all, and thus the Tribunal's approach was flawed.
13. Since the decision records the fact that the Tribunal had considered all of the evidence placed before it Ms Rasoul accepted that she did not suggest it had been overlooked and that the decision was flawed through procedural error. She accepted that the complaint she sought to pursue was

that the Tribunal had failed to give adequate reasons for the decision it had reached.

14. It is fair to say that the Tribunal dealt with the humanitarian protection briefly, but that alone does not disclose any error of law, and to be fair to her, Ms Rasoul did not suggest that it did. The relevant part of the Tribunal's decision was as follows;

> *Beyond referring us generally to the background evidence in the Appellant's bundle at pages 144 onwards, Ms McCrae made no specific submissions on humanitarian protection. Whilst we accept that there has been a spate of attacks which terrorised civilians in Iraq we are still bound by the decision in HM and others (Article 15(c)) Iraq CG [2012] UKUT 409. The degree of indiscriminate violence characterising the armed conflict taking place in Iraq was not at such a high level that substantial grounds had been shown for believing that any civilian returned there, would, solely on account of his presence, face a real risk of being subject to that threat. If there were certain areas where the violence in Iraq reached levels sufficient to engage Article 15 (c) the Tribunal considered it likely that internal relocation would achieve safety and would not be unduly harsh in all the circumstances. In all of the circumstances, and taking into account our factual conclusions, the Appellant does not qualify for humanitarian protection.*

15. Ms Rasoul accepted that there was no suggestion that the Tribunal had recorded inaccurately the manner in which this ground of appeal had been pursued by Counsel on behalf of the Appellant at the hearing. She accepted that the humanitarian protection appeal had been raised in only general terms in the skeleton argument prepared by the Appellant's counsel for the hearing, and that this had not been the focus of the way in which the appeal had been argued.

16. Whilst Ms Rasoul asserted that the evidence before the Tribunal recorded civilian deaths as occurring within Iraq every day, she also accepted that the Appellant had always claimed to originate from the KAZ, and not from one of the areas in which there had been violence resulting from the actions of ISIS forces, or as a result of acts of terrorism by others. Her argument was nonetheless that a full consideration of the evidence placed before the Tribunal might have led to a different outcome.

17. The Upper Tribunal considered at length in October 2012 the evidence concerning the situation that then existed within Iraq, and the approach that should be taken to claims for humanitarian protection in HM. The conclusion was that the evidence did not then establish that the

degree of indiscriminate violence characterising the current armed conflict taking place in the five central governates in Iraq, namely Baghdad, Diyala, Kirkuk, Ninewah, Salah al-Din was at such a high level that substantial grounds had been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat. The approach taken by the Upper Tribunal to both the evidence concerning what was taking place in those governates, and, to the test for a successful claim to humanitarian protection, was upheld by the Court of Appeal in HF & Others (Iraq) [2013] EWCA Civ 1276.

18. Neither the grounds, the evidence produced to the First Tier Tribunal, nor the submissions made on the Appellant's behalf by Counsel, sought to focus specifically upon the position within the Appellant's home area within the KAZ, or, his ability to travel there in safety by internal flight from Baghdad if he were returned by the Respondent to that city, rather than directly by air from the UK to the KAZ.
19. The draftsman of the grounds has proceeded upon the somewhat simplistic approach that since there has been a lot of violence in Iraq since 2012, the conclusions reached in HM must necessarily be no longer valid. That approach is flawed; DSG.
20. I am satisfied, and Ms Rasoul did not seek to suggest otherwise, that the Tribunal did apply the correct legal test for a humanitarian protection claim, as approved in HF. [23]
21. Neither Counsel who represented the Appellant before the Tribunal, nor the (different) Counsel who drafted the grounds, nor Ms Rasoul (who was neither of those) have sought to identify evidence that had been placed before the Tribunal and would necessarily lead to the conclusion that the position within the governate of Baghdad, or the KAZ, had changed to such a degree since October 2012 that the test in HF was met. Indeed there has been a lamentable failure to focus upon the detail of the decision in HM and the evidence which was relied upon to show that the position in those areas had deteriorated to any significant degree, as opposed to simply continuing. Thus, even if it was possible to argue that by the date of the hearing the test in HF was met in relation to the governates of Diyala, Kirkuk, Ninewah, Salah al-Din, there appears to have been no proper basis for the assertion that it was met in relation to Baghdad or the KAZ.
22. I am satisfied that the Tribunal gave entirely adequate reasons for its findings on the humanitarian protection appeal, and that the Appellant's criticisms of them are in reality no more than a disagreement with them.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 26 February 2015 therefore contained no error of law in the dismissal of the Appellant's humanitarian protection appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

Signed
Deputy Upper Tribunal Judge JM Holmes
Dated 14 May 2015

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Signed

Deputy Upper Tribunal Judge JM Holmes

Dated 14 May 2015