



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05314/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 17 April 2018

Decision &

Promulgated

On 11 May 2018

Reasons

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR SHIRWAN KARIM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W McCready, Counsel

For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Iraq, has permission to challenge the decision of Judge Sharkett of the First-tier Tribunal (FtT) sent on 17 July 2017 dismissing his appeal against the decision of the respondent dated 23 May 2017 refusing his protection claim.
2. The appellant's written grounds contend that the judge erred firstly by making a finding without any evidential basis that the appellant had lived in the IKR (either in Makhmour or in Jastan). Compounding this error, it was argued that the judge did not raise this issue with the appellant or his representative to afford them the opportunity to submit or give evidence in the matter. The appellant's second ground alleges that the judge failed

to make findings of fact as to the genuineness or otherwise of the two identity documents produced by the appellant to the respondent (and which the respondent concluded were counterfeit). Ground 3 focuses on the judge's finding that the appellant originates from Gwer which the respondent accepts is in the Ninewah province of Iraq, i.e. Central Iraq, not the IKR. It was submitted that the appellant could not be returned to Erbil. The judge was also said to have failed to have proper regard to and/or to follow the country guidance of **AA (Iraq) [2015] UKUT 00544 (IAC)**. Further, it was submitted that (in the alternative to ground 3) the judge failed to make a proper assessment of the reasonableness of relocation to the IKR or the practicality of travel from Baghdad to Erbil.

3. I am grateful to Mr McCready and Mr McVeety for their submissions.
4. In addressing the grounds, I would first of all observe that the appellant was cross-examined both about where he was born and where he had lived and both representatives were afforded the opportunity to make submissions on both these matters. I am quite satisfied that there was no procedural unfairness on the part of the judge in dealing with this issue.
5. The second observation is that both parties agree that the judge made at least one incorrect factual finding, in particular the judge was incorrect to find that Jastan was in the Erbil governorate (para 55). Jastan as a matter of fact is not in the Erbil governorate or anywhere in the IKR.
6. The next important matter is that the appellant's grounds of appeal are somewhat equivocal about the appellant's position as regards whether the two identity documents he had produced when he claimed asylum were genuine. At para 9 they contend that if the judge found these documents reliable, then

"This was a matter in the Appellant's favour in assessing his credibility in the round, and ought to have been taken into account when determining if his account of events leading to him to leave Iraq was reasonably likely to be true".

7. At para 65 the judge records the submissions of the appellant's representative that "the Appellant seeks to wholly rely on the identity documents he has submitted as genuine, despite they having been found not to be so by the Respondent". However, ground 10 goes on to say that if on the other hand the documents were not reliable, that could be said to assist the appellant's return to Iraq.
8. Having considered the competing submissions, I am persuaded that the judge materially erred in law.
9. I concur with the grounds that the judge failed to make clear findings on the identity documents. These documents stated that the appellant was born in Erbil. In his witness statement and oral evidence he denied this and the respondent for her part did not resile from considering that these

documents were counterfeit. Instead of making a finding on the issue the judge held at 66 that:

“The documents provided show the Appellant and his parents to have been born in Erbil. It is the Appellant’s evidence that this is for political reasons only because he comes from a disputed area. However, this does not detract from the fact that Kurdistan have registered the Appellant and his family as having been born in Erbil so even if Iraq do not accept that Gwer belongs to Kurdistan, the Kurdistan government clearly considers that it does. If that is the case and the Appellant’s nationality can be confirmed then according to objective evidence he will be able to return to Erbil airport.”

10. The difficulty with that reasoning is that it assumed without any apparent evidential basis that the documents would be treated as genuine by the Kurdistan authorities. The respondent’s contention was that these documents were counterfeit. If they were, then it is a real possibility that the Kurdistan authorities would know this.
11. The matter of the reliability of these documents is really quite central to the case. If (as the appellant claimed in his SEF and his representative contended at the hearing before the FtT) they are genuine, then his asylum appeal looks tenuous because he will be able to return directly to Erbil and any issues of possible risks in Central Iraq will be irrelevant. The appellant may have great difficulty establishing that return to Erbil would be either unsafe or unreasonable. If he originates from Erbil, he will not need a sponsor. If, on the other hand, the appellant is to be considered as originating in an area outside the IKR, then any judge deciding the appeal would have to assess the case by reference to the country guidance set out in **AA** – something Judge Sharkett clearly did not do.
12. In such circumstances, I see no alternative to the case being remitted to the First-tier Tribunal (not before Judge Sharkett). No findings of fact can be preserved.
13. Because the next Tribunal will be having to assess the appellant’s appeal ex nunc in the light of the latest country guidance and country information, it would be inappropriate to set strict directions. However, the following suggestions may or may not assist.
14. I suggest that the next Tribunal judge first makes a decision, based on all the evidence, as to whether the appellant originated from Erbil (as stated in the two identity documents and as submitted by the appellant’s representative at the hearing before Judge Sharkett). Erbil is in the IKR.
15. If the judge finds the appellant does originate from Erbil, then the judge should go on to decide whether return to Erbil would be either unsafe or unduly harsh for the appellant. If the judge were to find that return to Erbil would be both safe and reasonable, the appellant’s appeal should be dismissed.

16. If, however the judge finds that the appellant did not originate from Erbil or anywhere else in the IKR, then the judge will need to make findings on where the appellant's home area is. Although it will be a matter for the next judge, it may be that in this context Judge Sharkett's finding that he "lived" [not the same as where he originated from] in Gwer is capable of being adopted with the agreement of both parties. For the avoidance of doubt, both parties agree that Gwer (and indeed Makhmour and Jastan) is not in the IKR. On the basis of the next judge's finding on where the appellant's home area is, he or she will first need to establish whether that area is still a contested unsafe area or one that would give rise to a real risk of serious harm if the appellant were to return there.
17. If the judge concludes that the appellant's home area is still a contested/unsafe area, then the judge will need to go on to assess whether he would have available a viable option of internal relocation either to Baghdad or to the IKR - and should do so applying Tribunal country guidance in place at the date of hearing.

Notice of Decision

18. For the above reasons:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Sharkett). No findings of fact are preserved.

No anonymity direction is made.

Signed

Date: 3 May 2018



Dr H H Storey
Judge of the Upper Tribunal