



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

Appeal Number: PA/09654/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 3 January 2018**

**Decision & Reasons
Promulgated
On 05 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**AOS
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr Moueety a Home Office Presenting Officer

For the Respondent: Mrs Marwaha of Counsel

DECISION AND REASONS

Background

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify AOS

or any of his family members. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to Contempt of Court proceedings. I do so in order to preserve the anonymity of AOS who, as will be seen, is a refugee.

2. For consistency with the decision in the First-tier Tribunal, I shall hereafter refer to AOS as the Appellant and the Secretary of State as the Respondent.
3. The Respondent refused the Appellant's application for asylum or ancillary protection on 16 August 2016. His appeal against this was allowed by First-tier Tribunal Judge Jones ("the Judge") following a hearing that concluded on 28 March 2017.

The grant of permission

4. Judge Chamberlain granted permission to appeal (7 September 2017) as it is arguable that the Judge materially erred in failing to;
 - (1) give reasons for finding the Appellant to be credible with regard to a land dispute,
 - (2) address why he could not seek state protection from the non-state agents he claimed to fear, and
 - (3) identify the risk factors to him in relocating to Baghdad.
5. Judge Chamberlain said there was less merit in relation to the feasibility of returning him due to his lack of documentation or ability to obtain a CSID, but she did not limit the grant of permission to appeal.

The Respondent's position

6. It was submitted in the grounds seeking permission to appeal that the Judge had;
 - (1) made no finding that the Appellant or his family members such as his brother have been subjected to any adverse attention from the other family,
 - (2) made no finding as to why the state is unable or unwilling to provide protection,
 - (3) not identified the factors that indicated the Appellant would be at risk in Baghdad, and
 - (4) made no finding as to the Appellant's inability to obtain documentation to enable him to return, or explained why he needed international protection if his return was not currently feasible.

7. It was submitted orally that the Judge materially erred in saying [41] that it was many months since the alleged problems occurred whereas the claim was that it was over 20 years. The Judge made no finding as to the power of the allegedly problematic family. The Appellant did not know who the family were. It was not clear how the family could track him down. The issue regarding the documentation was the risk arising from not having them and not the lack of the document itself.

Appellant's position

8. It was submitted in the rule 24 notice (9 October 2017) that;
 - (1)adequate reasons were given for finding in the Appellant's favour on the land dispute. He had been interviewed (11 May 2016) and filed a statement (17 March 2017). The Judge noted why the Appellant had little knowledge of the land dispute and was entitled to accept that [41] "It must be the case, since it was so long ago, that the Appellant who was not born then would be vague as regards the detail, these things have been handed down to him." The suggestion that there was no evidence of an ongoing interest in him or his family was not put to him at his interview, or in cross-examination. The Judge cannot have erred by not considering a point not challenged.
 - (2)the Judge was entitled to conclude that there had been no durable change in that part of Iraq where the Appellant came from and that it was still a "contested area". It would be unreasonable to require him to relocate to the Independent Kurdish Region (IKR) for the reasons given [41] namely the land dispute, difficulty in reaching there, the absence of documentation, the absence of a support network, the limited support services, and the issues with employment. The Judge made findings open to him on the evidence.
 - (3)as a Sunni Muslim, it would be unreasonable to require him to relocate to Baghdad (BA (Returns to Baghdad) Iraq CG UKUT 00018 (IAC) headnote (vi) and (vii)). The Judge set out the guidance in AA (Article 15 (c) Iraq CG [2015] UKUT 00544 (IAC) in full at [3] and plainly had this in mind when formulating his decision. The factors the Judge considered [16, 19, 36, 44, 46] included the Appellant's lack of Civil Status Identity Document (CSID) and ability to obtain one, his ethnicity, his lack of ability to speak Arabic, the lack of accommodation through family and or friends, the lack of a Sponsor to access a hotel or rent accommodation, his membership of a minority community, and his lack of support.
 - (4)the Respondent had conceded that there were difficulties with the CSID and this was noted by the Judge [45], the Appellant was not cross examined on this, and the Judge was accordingly entitled to make the findings he did.

9. It was submitted orally in addition that the Judge did not suggest that the land dispute was many months ago.

Discussion

10. In relation to ground 1, I am satisfied that the Judge gave adequate reasons for believing to the lower standard that there had been a land dispute. The Judge noted that the Appellant was vague regarding the details but made a finding open to him as to the reason why [41] namely it happened before he was born and the information had been handed down to him. The Appellant gave information in his interview and statement and was not challenged in cross-examination as to his account. The Judge did not have to make a finding that the Appellant or his family members such as his brother have been subjected to adverse attention from the other family. This was not raised in the refusal letter and he was not cross-examined about it. In any event, the evidence was clear that the events occurred in Sulaimaniya [9] and he was from Tuz Khoramato which is near Kirkuk [5].
11. In relation to ground 2, I am satisfied that the Judge gave adequate reasons for finding [42] that there had been no durable change in that part of Iraq where the Appellant came from and that it was still a "contested area". The Judge noted that the background evidence presented a mixed picture but was entitled to rely on the Respondent's own evidence from the 2017 Country Policy and Information Note that the situation has in fact declined in his home area since April 2015.
12. The Judge made findings open to him as to why it would be unreasonable to require him to relocate to the IKR [41] given the land dispute, difficulty in reaching there, the absence of documentation, the absence of a support network, the limited support services, and the issues with employment.
13. In relation to ground 3, the Judge made findings open to him [44, 46] as to why as a Sunni Muslim, it would be unreasonable to require him to relocate to Baghdad. The Judge considered and applied BA and AA and plainly had this in mind when formulating his decision. As stated above (see [8 (3)]), the Judge set out the multiple factors he considered.
14. In relation to ground 4, the Respondent had conceded that there were difficulties with the CSID and this was noted by the Judge [45]. The Appellant was not cross examined on this. I am satisfied that the Judge was accordingly entitled to make the findings he did.
15. The grounds amount to nothing more than a disagreement with findings the Judge was entitled to make on the evidence. I am not therefore satisfied that the Judge made any material error of law.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Deputy Upper Tribunal Judge Saffer
3 January 2018

A handwritten signature in black ink, appearing to read "Louise Saffer". The signature is written in a cursive style with a large initial 'L'.