Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10794/2018

THE IMMIGRATION ACTS

Heard at North Shields (Kings Court)	**Decision & Reasons Promulgated**
On 26th April 2019	**On 20th May 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

S. A.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Cleghorn, Counsel, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Ms Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision promulgated 22 November 2018 First-tier Tribunal Hillis dismissed the appeal by the appellant, a national of Iraq born in 1980, against the Secretary of State's decision refusing his protection claim on

24 July 2018, although it was accepted that he was ethnically a Kurd originating from Kirkuk.

2. The appellant had arrived in the United Kingdom clandestinely in 2008. He claimed asylum which was refused on 22 December 2009 and his appeal against that decision was dismissed on 13 April 2010 by decision of First-tier Tribunal Judge Cope. The appellant unsuccessfully applied for permission to appeal that decision. He then lodged further submissions with the Secretary of State in October 2010 which were refused the following month. He more recently lodged further submissions on 15 July 2014 which led to the respondent's decision to accept a fresh protection claim, and to refuse it, and thus to the present appeal.

3. According to the respondent's decision letter the claim made in 2008 was based on a fear from a terrorist group in Iraq that had kidnapped and tortured him. The credibility of his claim was rejected by the First-tier Tribunal Judge in 2010. The claim made in 2014 was also based on a fear from terrorist groups and was accompanied by medical evidence. The appellant also contended that the current unstable security and humanitarian conditions in Iraq would result in a breach of his absolute rights under the Human Rights Convention and he contended also that Article 15(c) of the Qualification Directive applied. The respondent contended the appellant had failed to demonstrate he would be unable to obtain a CSID and it was possible he could do so [RFR 22]. The appellant who was from Kirkuk could be returned to Baghdad and it would then be possible for him to travel to Erbil on an internal flight by way of internal relocation.

4. Judge Hillis made reference to findings by Judge Cope. In particular he referred to the way in which Judge Cope had dealt with allegations regarding the reliability of two documents which the appellant had relied on to establish his identity being an Iraqi identity card and a certificate of Iraqi citizenship. According to two "document examination reports" those documents were counterfeit. The appellant had not accepted this. Judge Cope did not consider these documents took the appellant's case any further. Judge Hillis set out his conclusions between [42] and [45]:

> "42. It is the Appellant's account that those documents were genuine and that he did not seek in any way to deceive the Home Office as to his nationality and residence in Kirkuk. I remind myself that the current situation in Iraq is very different to that considered by Judge Cope in 2010 which pre-dates both the authorities of **AA (Iraq) in 2015 and 2017** and the 2018 authority of **AAH**. Had the country situation before Judge Cope been that which is before me today, in my judgment, he would not have reached the conclusion that the authenticity of those documents did not take the Appellant's case any further.
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> 43. There was no dispute before me that the Appellant comes from Kirkuk and he was certainly not cross-examined on that basis at the appeal hearing before me. I, therefore, conclude that the Appellant is from Kirkuk and accept that the Appellant has shown,

to the low standard of proof, on the guidance in the authority of **Tanveer Ahmed**, namely, the evidence taken as a whole, that those documents were genuine Iraqi documents.

44. I accept Ms. Hashmi's submission that the Appellant has given credible evidence on that aspect of his case. In reaching this conclusion I have borne in mind the circumstances set out in Judge Cope Determination with particular reference to the non-disclosure of further details about those documents which may have caused the Respondent difficulties in maintaining the allegation of forgery which appears to have resurfaced in the appeal before me without any evidential basis being put forward on the documents before me.

45. The Appellant has failed to show, to the low standard required, that he faces a risk of death, persecution and/or ill-treatment on removal to the IKR area of Iraq for a reason recognised by the Refugee Convention and, in particular, an imputed political opinion. In reaching this conclusion I have taken into account that it is now nine years since the Appellant's claimed difficulties in his home area of Kirkuk due to working for the then Iraqi State doing earthworks with his digger."

5. As to relocation to Baghdad City the judge found:

> "47. I accept that the Appellant is a Sunni Muslim who has no family or connection in Baghdad and who does not speak Arabic. I, therefore, conclude that he cannot remain safely in Baghdad City (**BA** headnote at paragraph vii) and that he would face destitution there."

The judge thereafter concluded with reference to *AAH (Iraqi Kurds – Internal relocation) Iraq CG* [2018] UKUT 00212 (IAC) that Kirkuk remains a contested area of Iraq and the appellant could not be returned there. There are no findings of fact as to whether the appellant had ever previously lived in the IKR.

6. The judge then turned to the enquiry whether the appellant would be able to travel safely from Baghdad Airport to the IKR and concluded at [55] and [56]:

> "55. I have accepted the submissions of Ms. Hashmi, for the reasons set out above, that the documents served by the Appellant on the Home Office in his 2010 application are genuine. There is no evidence before me that those original documents are not still in the possession of the Home Office. Additionally, there is no evidence before me, given the refusal to disclose all of the evidence in relation to those documents, that the Home Office would not return those documents to the Appellant to enable him to return to Baghdad airport and make the onward journey to the IKR in safety.
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> 56. The recent country guidance shows that Iraqi Nationals of Kurdish ethnicity are not required to provide a Sponsor to be granted leave to enter and remain in the IKR. It is accepted by both

parties to the appeal that the Appellant would not face a risk of persecution and/or ill-treatment for any reason recognised by the Refugee Convention or at all."

7. Under the heading "The European Convention Article 2 and 3 Claims" the judge addressed the standalone claim under Article 3 of the Human Rights Convention and concluded at [58] and [59};

> "58. I have carefully considered the background material and the findings set out above in the country guidance authorities with particular reference to the 70% unemployment rate and the ability of the Appellant to be able to find gainful employment in the IKR to accommodate and maintain himself by local standards thus avoiding being rendered to a state of destitution.
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> 59. The Appellant on his own account possess the skills to operate a hydraulic digger machine and in my judgment, he will be able to use those skills to find employment in the IKR and accommodate and maintain himself. Although the building industry is said to have collapsed in the IKR people who can operate hydraulic digging machines, in my judgment, are always in demand for repairing and maintaining roads and other vital structures in any country. I conclude on the evidence taken as a whole that the Appellant will not face destitution on relocation to the IKR where he can use his CSID card to gain employment and support from the State."

8. The grounds of challenge on which permission was granted argue that the finding as to the ability of the appellant to travel to the IKR via Baghdad was based on *pure speculation*. The judge could not lawfully be satisfied that there was a realistic possibility in all of the circumstances that the appellant would be able to obtain the necessary documentation. Ms Cleghorn accepted before us that the appellant's challenge was focused solely upon the humanitarian protection appeal.

9. In granting permission to appeal First-tier Tribunal Judge Neville observed:

> "3. The grounds are arguably correct that the Judge had no evidential basis on which to find that the documents submitted 8 years previously (and considered forgeries since) were still held by the respondent or even if they were that they would be returned to the appellant. The presenting officer himself doubted this at para 30.
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> 4. The respondent did not rely on the 2010 documents in the refusal letter, and the issue seems to have taken both parties by surprise. Given that enquiries could have been made by the respondent and the position clarified, arguably it was procedurally unfair for the issue to be treated as conclusive of the appeal. I make no directions but it may assist the Upper Tribunal if the respondent has established if the documents are still held and could be used to obtain a CSID."

10. Before us it was confirmed on behalf of the respondent that his current stance was accurately recorded in the letter of 31 January 2019; that the documents submitted for examination December 2009 are forgeries, and, that the appellant would be unable to use them to obtain a CSID (and presumably also a passport or laissez passer).

11. Ms Pettersen accepted that there was no evidence to suggest the appellant had ever been issued with a passport by the Iraqi authorities. Although we note that Judge Hillis recorded the appellant as having told him he had attended the Iraqi Embassy in London to seek a replacement passport [31], this was inconsistent with the evidence given in his witness statement, when he had said that he attended the Embassy in order to try to apply for a passport; he made no suggestion therein that he had previously been issued with a passport. Thus Judge Hillis appears to have misunderstood, or mis-directed himself upon, a material issue of fact.

12. The humanitarian protection appeal begged the question of whether the appellant's return to Iraq was feasible, which in turn raised issues over whether the appellant was in possession of any genuine identity documents, and if not, whether he was genuinely unable to establish contact with any member of his extended family and thus unable to acquire verification of his identity, and in turn, the issue of replacement identity documents.

13. It was confirmed before us that at the hearing before Judge Cope the respondent had declined to disclose all of the evidence in his possession concerning the identity documents that the appellant had produced to the respondent. Thus two document examination reports were disclosed, but a third, which was said to be more detailed was not [Cope 33]. That remains the position, notwithstanding the further opportunity to disclose the relevant evidence offered by the respondent's letter of 31 January 2019. It is not necessary for us to resolve the issue, but we are doubtful that this approach is consistent with the guidance to be found in UB (Sri Lanka) [2017] EWCA Civ 85. What is clear to us is that this approach has denied the appellant the opportunity to engage properly with the evidence relied upon by the respondent in relation to a credibility issue of significance. Moreover, the appellant has consistently maintained that he believes the identity documents which are the subject of these examination reports are genuine. At neither the hearing before Judge Cope, nor Judge Hillis, was there any exploration of the circumstances in which he had acquired these documents, and thus whether his belief was honestly and reasonably held, even if the appearance and content of these documents were such as to indicate that they were indeed forgeries.

14. It is common ground before us that although Judge Hillis recorded the appellant's evidence concerning his family members, he made no findings of fact upon that evidence [29-30]. He simply proceeded on the basis that the documents were genuine, and could be supplied by the respondent to the appellant, and that he could use them to obtain further documents

(presumably to include a CSID), and, to travel to Iraq, and, internally within Iraq.

15. Ms Pettersen conceded that in all the circumstances Judge Hillis had erred in law in his approach to the humanitarian protection appeal, and, that the humanitarian protection appeal should be remitted to the First-tier Tribunal for rehearing. With hindsight she informed us that she also considered the decision under appeal upon the humanitarian protection claim was unsustainable, and that it should be withdrawn so that this element of the protection claim might be reconsidered.

16. To that end, and by consent, we set aside the judge's decision upon the humanitarian protection appeal and remit it to the First-tier Tribunal. In our capacity as Judges of the First-tier Tribunal we treat the humanitarian protection appeal as withdrawn pursuant to Rule 17(2) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

NOTICE OF DECISION

The Decision of the First Tier Tribunal which was promulgated on 22 November 2018 contained a material error of law in the decision to dismiss the Appellant's humanitarian protection appeal which requires that decision to be set aside.

There is no error of law in the decision to dismiss the asylum and human rights appeals and those decisions are confirmed.

The humanitarian protection appeal is remitted to the First-tier Tribunal for rehearing.

The decision upon the humanitarian protection claim of 24 July 2018 is withdrawn by the Respondent. In turn the humanitarian protection appeal is treated as withdrawn pursuant to Rule 17(2) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed 26 April 2019

Upper Tribunal Judge Dawson

Deputy Upper Tribunal Judge JM Holmes