



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12311/2018

THE IMMIGRATION ACTS

Heard at Birmingham CJC
On 8th August 2019

Decision & Reasons Promulgated
On 12th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MASTER M F
(ANONYMITY DIRECTION GIVEN)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. F. Ell (Counsel)

For the Respondent: Mr C. McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Phull, promulgated on 27th February 2019, following a hearing at Birmingham on 3rd January 2019. In the determination, the judge allowed the appeal of the Appellant on human rights grounds, but dismissed it on asylum grounds. The Appellant appealed against the decision to refuse the appeal on asylum grounds.

The Appellant

2. The Appellant is a male, a citizen of Iraq, and was born on 5th June 2001. He appealed against the decision of the Respondent dated 9th October 2018, refusing his claim for asylum and for humanitarian protection pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim was well set out by the judge below in the following terms. It was recorded that he was of Kurdish ethnicity, came from Suleiman Beg, a sub district of Tuz Khurmatu, and that in 2014 he and his brother were at their maternal uncle's home in Kirkuk, when they heard that ISIS had attacked their home in Suleiman Beg. Following the attack of Suleiman Beg, they continued to live in Kirkuk with their maternal uncle. However, the maternal uncle was involved in a blood feud because he had killed someone. The killing was prior to their moving in with their uncle in Kirkuk. There were several threats made as a result of the blood feud. Fearing for their safety, their uncle arranged for them to flee Iraq (see paragraphs 8 to 9 of the determination).

The Judge's Findings

4. The judge stated that, "I accept the Appellant's evidence as credible that in Kirkuk, his family had a blood feud with another family because he had killed someone and the victim's family were seeking revenge ..." (paragraph 24). The judge went on to refer to the expert report highlighting the risks to the Appellant in terms of the "tribal dika (hit)" (see paragraph 24). The judge also went on to say that, "I find that the Appellant has consistently stated that he cannot return to any part of Iraq because he has a fear of ISIS, has no family to help and support him on return and he does not have a CSID document or a passport" (paragraph 34). Even so, the judge went on to conclude that the appeal would be allowed on Articles 2 and 3 of the European Convention, but refused on asylum grounds.

The Hearing

5. At the hearing before me on 8th August 2019, there was agreement between Mr Ell, appearing on behalf of the Appellant, and Mr McVeety, appearing on behalf of the Respondent Secretary of State, that the judge had erred in dismissing the appeal on asylum grounds. Mr McVeety, in particular, stated that although it would appear that the question about the "blood feud" had not been specifically laboured before the judge, nevertheless, it formed part of the grounds, and figured in the skeleton argument of the Appellant. I would add to that that in addition to this there was extensive discussion of the blood feud by the judge (from paragraph 21 onwards to paragraph 25). The judge had also accepted that the Appellant has consistently stated that he cannot return to any part of Iraq because he has a fear of ISIS. Given that the judge does not actually conclude that internal relocation is open to the Appellant, I accept that the refusal on asylum grounds, as contended for by Mr Ell,

and agreed upon by Mr McVeety, is not sustainable. Accordingly, the judge fell into error in this regard.

Remaking the Decision

6. I have remade the decision on the basis of the findings of the Regional Judge, the evidence before her, and the submissions that I have heard today. Given that there is agreement between both sides, and given what I have set out above, this appeal is allowed on asylum grounds by the Appellant in this case.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision shall be set aside. I remake the decision as follows. This appeal is allowed on asylum grounds as well as on human rights grounds.

An anonymity direction is made.

The appeal is allowed.

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

Date

Deputy Upper Tribunal Judge Juss

10th September 2019