Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11969/2019 (P)

THE IMMIGRATION ACTS

Decided without a hearing under Rule 34	**Decision & Reasons Promulgated**
On 24 November 2020	**On 01 December 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

H H A
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Freedom Solicitors (written submissions only)
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer (written submissions only)

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Iraq, of Kurdish ethnicity, who was born on 28 February 1992.

3. He arrived in the United Kingdom on 2 June 2015 and claimed asylum. Following an interview, on 26 November 2019 the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.

4. The appellant appealed to the First-tier Tribunal. In a determination sent on 7 February 2020, Judge Meyler dismissed the appellant's appeal on all grounds. The judge did not accept the appellant's claim that he was at real risk of persecution from ISIS whom he had not claimed had targeted him personally. However, the judge found that the appellant would be at real risk of indiscriminate violence contrary to Art 15(c) of the Qualification Directive (Council Directive 2004/83/EC) in his home area, namely in the Jalawla District in the Diyala governorate. The judge found, however, that the appellant could reasonably be expected to internally relocate to the IKR where, inter alia, his uncle lived in Zakho. The judge also found that the appellant could obtain a replacement CSID from the Iraqi Embassy or via a proxy. He could, therefore, safely travel from Baghdad to the IKR and live in the IKR where he had family including his uncle, whom he found had been joined by his brother and aunt in 2017.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal to the Upper Tribunal on four grounds. First, the judge made a mistake of fact since there was no evidence before the judge that the appellant's uncle lived in Zakho in the IKR. The evidence was, rather, that the appellant's uncle had taken him to Zakho where they had remained for one night before the appellant made his onward journey to the UK. Secondly, the judge wrongly concluded that the appellant was able to contact his family in Iraq consisting of his uncle, his maternal aunt and his younger brother. Thirdly, the judge failed properly to apply the relevant country guidance decisions in finding that the appellant would be able to obtain a replacement CSID with the Iraqi Embassy in the UK or via a proxy. Fourthly, because of the mistake of fact identified in ground 1, namely that the appellant's uncle lived in the IKR, the judge had applied the wrong factual matrix in concluding that the appellant would have family members in the IKR in finding that he could reasonably be expected to internally relocate to the IKR.

6. The First-tier Tribunal refused permission to appeal on all grounds. The appellant renewed the four grounds of appeal to the Upper Tribunal. In a decision dated 13 July 2020, UTJ Blundell granted the appellant permission to appeal on grounds 1 and 4 but refused permission on grounds 2 and 3. His reasons were as follows:-

> "Having concluded that the appellant will be at risk in his home area, Judge Meyler concluded that the appellant could safely and reasonably

> relocate to Zako (or Zakho), where he could count on the support of his maternal uncle. It is submitted in grounds 1 and 4 that the judge proceeded on a misapprehension of the facts in reaching this conclusion, as it had never been said that the appellant's uncle lived in Zako; he and the appellant merely stayed there as he was leaving the country. I have considered the interviews, the statement and the judge's reasonably legible Record of Proceedings. I can find nothing to support the finding that the appellant's uncle lived in Zako. As a result, I consider these grounds to be arguable. If established, that complaint is likely to be material, since the prospects of relocation to the IKR without meaningful support are negligible at best.
>
> Grounds 2 and 3 are unarguable, however. Judge Meyler was entitled to find that the appellant was able to contact family members, for the detailed reasons that she gave. She was also entitled to conclude, based upon SMO (Iraq) CG [2019] UKUT 400 (IAC), that the appellant would be able to redocument himself in the UK with the assistance of those family members."

7. In the light of the COVID-19 crisis, on 24 August 2020 UTJ Rintoul issued directions expressing the provisional view that it will be appropriate to determine the issues of whether the First-tier Tribunal's decision involved an error of law and, if so, whether to set it aside, without a hearing. The parties were invited to make submissions on the merits of the appeal and also on the issue of whether the error of law issue could be determined without a hearing.

8. On 16 September 2020, the appellant's legal representatives made submissions in response to Judge Rintoul's directions. Those submissions sought to sustain the error of law argument based upon grounds 1 and 4 upon which Judge Blundell had granted permission. He also invited the Tribunal to allow the appeal but, if the Tribunal was unable to remake the decision, invited the Tribunal to remit the appeal to the First-tier Tribunal for a rehearing on the issue of relocation. The submissions did not raise any objection to the error of law issue being determined without a hearing.

9. On 22 September 2020, the respondent replied to the submissions in the form of a rule 24 notice. In those submissions, the respondent accepted there was an error of law based upon the grant of permission. At paragraph 6 there is the following:

> "The respondent does not oppose the appellant's application for permission to appeal in line with the grant of permission. The grant of permission highlights the evidence concerning the location of the uncle".

The submissions go on to state that the respondent does not accept, given the now sustained findings of the judge, that the appeal was bound to succeed despite the error of law. The respondent indicates that it may be appropriate for a rehearing on the internal relocation issue. The submissions raise no objection to the error of law issue being determined without a hearing.

10. In the light of the parties' submissions summarised above at paras 8 and 9, and in the absence of any objection, and having regard to the overriding objective of determining the appeal justly and fairly, I am satisfied that it is in the interests of justice to determine the error of law issue in this appeal without a hearing under rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698 as amended) and para 4 of the *Amended General Pilot Practice Directions: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal* (14 September 2020) issued by (then) Vice Senior President and (now) Senior President of Tribunals, the Rt. Hon. Sir Keith Lindblom. In reaching this decision I have borne in mind the judgment of Fordham J in R(JCWI) v The President of UTIAC [2202] EWHC 3103 (Admin).

Discussion

11. In the light of the appellant's grounds 1 and 2, the terms of the grant of permission and the respondent's concession in her rule 24 reply, I am satisfied that the judge made a mistake of fact, amounting to an error of law, in finding that the appellant's uncle lived in Zakho (see para 14 of the determination). The evidence before the judge was not that the appellant's uncle lived in Zakho in the IKR, but that he took him there for one night before the appellant made his onward journey to the UK (see para 16 of the determination). That mistake of fact also infected the judge's finding in para 26 of his determination that the appellant's brother and aunt moved to the IKR to live with his uncle in 2017 and that the appellant's uncle now remains in the IKR.

12. That error undermines the judge's assessment of whether the appellant can reasonably be expected to internally relocate to the IKR. To that extent, as is conceded by the respondent, the judge's decision to dismiss the appeal on the basis that internal relocation to the IKR is an option to the appellant is unsustainable in law and cannot stand.

13. The remainder of the judge's primary findings, however, are unaffected by the error of law. In particular, given that Judge Blundell did not grant permission on grounds 2 and 3, the judge's findings that the appellant can contact his family in Iraq and that he would be able to obtain a replacement CSID prior to returning to Iraq stand unchallenged. The respondent did not challenge in her rule 24 reply or otherwise the judge's finding that, in his home area, the appellant would be exposed to a real risk of serious harm arising from indiscriminate violence contrary to Art 15(c) of the Qualification Directive. That finding, therefore, also stands.

Decision

14. For the above reasons, the judge's decision to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and is set aside.

15. The sole ground upon which the appellant's appeal remains to be determined is whether his return to Iraq would breach Art 15(c). The finding that he is at risk in his home area is preserved as are the other findings unaffected by the error of law arising from the judge's mistake of fact. The decision is to be remade on the issue of internal relocation to the IKR.

16. On the basis of the judge's findings in relation to an absence of personal targeting or claim that ISIS has identified him, his asylum claim also stands as dismissed.

17. The appeal is remitted to the First-tier Tribunal to remake at an oral hearing (whether remotely or otherwise) the decision in respect of Art 15(c) to the extent indicated above and, although the appellant does not appear to have relied upon Art 8 of the ECHR before the judge, Art 8 if relied upon at the remittal hearing.

Signed

Andrew Grubb
Judge of the Upper Tribunal
24 November 2020