Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00588/2016**

THE IMMIGRATION ACTS

Heard at Glasgow
On 17 July 2017

Decision Promulgated
On 21 July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

DANA HAMA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Forrest, counsel, instructed by Maguire Solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Blair promulgated on 22 February 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 1 January 1992 and is a national of Iraq. On 8 January 2016, the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Blair ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 7 June 2017, Judge Cruthers gave permission to appeal stating

> 1. This appeal stands dismissed by a decision of First-tier Tribunal Judge Blair. Having assessed the evidence, the Judge concluded that the appeal did not succeed on asylum law/protection law principles; pursuant to the immigration rules, HC 395; or through the application of article 8 of the European Convention on Human Rights (paragraphs 21 to 23 of the decision under consideration).
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> 2. The grounds on which the appellant seeks permission to appeal seem to have abandoned the suggestions that the appellant is entitled to refugee status, that the appellant is entitled to humanitarian protection and/or that the appellant could not return to Iraq without a real risk of serious harm arising (for the purposes of article 3 of the ECHR).
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> 3. However, I do consider it arguable, as per the grounds, that the Judge has not sufficiently explained the reasoning by which he concluded that the appellant could not take advantage of paragraph 276ADE of the immigration rules (as regards any obstacles to return in the light of the appellant's circumstances) (and see paragraph 9 of R(Iran) [2005] EWCA Civ 982, 27 July 2005)
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> 4. The appellant should not take this grant of permission as any indication that the appeal will ultimately be successful.

The Hearing

6.(a) Mr Forrest, counsel for the appellant, moved the grounds of appeal. He took me to [23] of the decision and told me that, there, the Judge falls into a material error of law because he gives no reason why the appellant cannot succeed on article 8 ECHR grounds. He told me that the Judge's rejection of the appellant's asylum and humanitarian protection grounds of appeal is accepted and is not challenged, but argued that the Judge has not dealt with the appellant's private life claim, and that the appellant

should succeed under paragraph 276 ADE(1)(vi) of the immigration rules, because there are insurmountable obstacles to his reintegration into Iraq.

(b) Mr Forrest referred me to the expert report prepared by Dr George, contained in the inventory of productions for the appellant presented to the First-tier. He told me that Dr George's report indicates that there are insurmountable obstacles to reintegration. He told me that Dr George's conclusion is that internal flight to IKR is not a viable option for this appellant.

(c) Mr Forrest referred me to AA(Iraq)[2017] EWCA Civ 944. He told me that at [21] of his decision the Judge made no findings about the availability of documentation to the appellant. He conceded that AA(Iraq) [2017] EWCA Civ 944 post-dates the Judge's decision by almost 5 months, but told me that because the country guidance relied on by the Judge has been amended the lack of findings about the availability of documentation is a fatal flaw in the Judge's decision. He told me that, overall. the Judge's decision lacks adequate reasoning. He urged me to allow the appeal and to remit the case to the First-tier Tribunal to be determined of new.

7. (a) Mr Matthews, for the respondent, told me that he would not expressly concede the appeal, but that the decision issued on 11 July 2017 in AA(Iraq)[2017] EWCA Civ 944 created difficulty for him. He reminded me that the Judge had followed the correct country guidance at the date of promulgation of the decision, but conceded that the Court of Appeal's decision indicates that the law has always been as it is set out in the Court of Appeal's decision issued on 11 July 2017.

(b) Mr Matthews reminded me that the grounds of appeal are in narrow focus. The appellant is a Kurd from Iraq who has lived in Baghdad. The Judge found that his account was a fabrication. The Judge rejected the appellant's asylum and humanitarian protection claims. The appellant's appeal was dismissed on article 3 ECHR grounds. He argued that the core aspects of the appellant's appeal are rejected, so that there cannot be insurmountable obstacles to the appellant's return. He said that, because the article 3 argument advanced is advanced on the same basis as the article 8 argument, and because the article 3 appeal has been dismissed, then the article 8 appeal cannot succeed

(c) Mr Matthews referred to section 3 of the annex which gives country guidance in AA(Iraq)[2017] EWCA Civ 944. He agreed that there is a gap in the factual findings contained in the decision. At [21] of the decision, the Judge adopts a neutral position so that there is no finding on whether or not the appellant has, or has access to, a CSID. However, he told me that the Judge clearly finds the appellant can return to his family in Kirkuk. He told me that if I find that the absence of findings in relation to available documentation amount to a material error of law, then he the correct course is to remit this case to First-tier Tribunal Judge Blair to conclude the fact-finding process.

Analysis

8. The grounds of appeal advance an argument on article 8 ECHR grounds, with specific reference to paragraph 276ADE(1)(vi), only. It is argued that there are insurmountable obstacles to the appellant's return to Iraq. The basis of that argument is that the appellant is at risk on return because of his imputed political opinion and his profile in his home area.

9. Paragraph 276ADE (1) of the Immigration Rules says

> The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
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> > (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and
> >
> > (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
> >
> > (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
> >
> > (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or
> >
> > (v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or
> >
> > (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

10. The fundamental problem with the appellant's argument is that it is accepted that the Judge's decision in relation to the appellant's asylum, humanitarian protection, and article 3 ECHR claim is correct. The Judge rejected the appellant's account. No challenge is taken either to the Judge's decision (in relation to the appellant's asylum, humanitarian protection, and article 3 ECHR claim) or his reasons for that decision. There cannot therefore be any foundation for the appellant's claim to have a profile which would create an insurmountable obstacle to the appellant's reintegration into Iraq.

11. That should be an end to the appellant's appeal, but I cannot close my eyes to the decision in AA(Iraq)[2017] EWCA Civ 944. On 11 July 2017, new country guidance was given for Iraq. The final sentence of the case says

> This decision replaces all existing country guidance on Iraq.

12. Paragraphs 9 to 11 of the guidance given in the annexe to AA(Iraq) [2017] EWCA Civ 944 says

> C. The CSID
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> 9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.
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> 10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.
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> 11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

13. The Judge commences [21] of the decision by saying

> If he is undocumented (upon which I make no finding in this appeal)….

14. In OM(AA Wrong in Law) Zimbabwe CG 2006 UKAIT 00077 the Tribunal said that a Country Guidance case stands until it is replaced or found to be wrong in law. It will not be appropriate to grant an adjournment on the grounds that a party is seeking to challenge a relevant Country Guidance case in the higher courts. Where a Country Guidance case is replaced because of a change of country conditions or because further evidence has emerged, that will not mean that it was an error of law to follow it. However, where a Country Guidance case is found to be legally flawed, the reasons for so finding will have existed both before and after its notification. The error is effectively replicated in the decision which followed it and so there would be an error of law in that decision too.

15. Because no finding is made about the availability of documents to the appellant, I have to find that, at today's date, the Judge's decision contains a material error of law. It is not necessary to set the Judge's decision aside. The material error of law can be rectified by remitting this case to First-tier Tribunal Judge Blair to complete the fact-finding exercise. The Judge's findings are preserved. I remit this case to First-tier Tribunal Judge Blair so that the final, solitary, missing piece of this decision can be addressed.

16. I remit the case to First-tier Tribunal Judge Blair for findings to be made addressing paragraphs 9 to 11 of the guidance given in the annex to AA (Iraq) [2017] EWCA Civ 944.

Decision

17. The decision of the First-tier Tribunal is tainted by a material error of law.

18. The existing findings of fact are preserved. The appeal is remitted the First-tier Tribunal for the fact-finding exercise to be completed and for the appeal to be determined afresh in light of that exercise.

Signed Paul Doyle Date 20 July 2017

Deputy Upper Tribunal Judge Doyle