



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04330/2017

THE IMMIGRATION ACTS

Heard at Field House
On 27 October 2017

Decision & Reasons Promulgated
On 30 October 2017

Before

UPPER TRIBUNAL JUDGE FINCH

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-and-

M B M

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant
For the Respondent

Ms P. Hastings, Home Office Presenting Officer
Ms K. McCarthy of counsel, instructed by Quality Solicitors (A-Z
Law)

DECISION AND REASONS

History of Appeal

1. The Respondent, who was born on 5 May 1995, is a citizen of Iraq. He was born in Sulaymaniyah but his family moved to Kirkuk shortly after he was born. It is accepted that he is of Kurdish ethnicity.
2. He arrived in the United Kingdom on 9 July 2016 and applied for asylum on 13 July 2016. His application was refused on 4 January 2017 and he appealed

against this decision. His appeal was dismissed on asylum grounds by First-tier Tribunal Judge Carroll in a decision promulgated on 20 July 2017. In paragraph 23 of the decision she also dismissed the appeal on Humanitarian Protection grounds. However, in paragraph 22 the First-tier Tribunal Judge had found that “the security situation in the KRG has, of course, deteriorated significantly since 2013 and I find that the appellant qualifies for humanitarian protection, by virtue of Article 15 (c) of the Qualification Directive on the basis that he is at risk from indiscriminate violence within the KRG”.

3. The Appellant appealed on 7 August 2017 and First-tier Tribunal Judge Chohan granted her permission to appeal on 30 August 2017 on the basis that First-tier Tribunal Judge Carroll had given insufficient reasons for allowing the appeal on this basis after making adverse credibility findings against the Appellant.

Error of Law Hearing

4. At the start of the hearing, counsel for the Appellant handed up a Rule 24 Response and submitted that First-tier Tribunal Judge Carroll also erred in law when dismissing the Appellant’s asylum appeal. I granted her permission to file the Rules 24 Response on the basis that it was in the interests of justice for all issues to be before the Upper Tribunal. I also found that the manner in which the First-tier Tribunal Judge has approached her consideration of the photographs in the Appellant’s Bundle gave rise to a *Robinson obvious* point of law.
5. The Home Office Presenting Officer and counsel for the Appellant then made their oral submissions and I have taken these into account, where relevant, when reaching my findings below.

Findings

6. In the substance of the decision the First-tier Tribunal Judge allowed the Appellant’s appeal on Humanitarian Protection grounds. Her reasons for doing so were very sparse. In paragraph 22 of her decision, she noted the deterioration in the situation in the KRG, which is confirmed in Professor Joffe’s report and she referred to this report in paragraph 9 of her decision. But she did not analyse any other sections of the expert report or any of the objective evidence in the Appellant’s Bundle. She also failed to remind herself that in *AA (Article 15(c) Iraq CG [2015] UKUT 00544 (IAC)* the Upper Tribunal found that the IKR was virtually violence free and there was no Article 15(c) risk to an ordinary civilian in the IKR.
7. As a consequence, her reasoning was clearly insufficient and amounted to an error of law.
8. In relation to the decision to dismiss the asylum appeal, I also find that the reasons given by First-tier Tribunal judge Carroll for finding that the Appellant’s father was not a Peshmerga and that the Appellant was not involved in the conflict, albeit in a supportive role, were insufficient given the wide range of photographic evidence and the objective evidence supporting it.

9. Furthermore, the credibility of the Appellant's account should have been assessed in the light of the totality of the objective, expert and country evidence submitted for the appeal.

Decision

1. The First-tier Tribunal Judge's decision to allow the Appellant's appeal on Humanitarian Protection grounds and to dismiss it on asylum grounds did include material errors of law and I set aside her decision.
2. I remit the appeal to the First-tier Tribunal to be heard *de novo* before a First-tier Tribunal Judge other than First-tier Tribunal Judge Carroll.

Directions

1. The *de novo* hearing be listed before the First-tier Tribunal hearing on the first open date 14 days after the promulgation of the forthcoming country guidance case on the current risk of persecution for a person of Kurdish ethnicity in Iraq, including the IKR. .

Signed

Nadine Finch

Upper Tribunal Judge Finch

27 October 2017