Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00672/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On March 16, 2018	**On March 26, 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

RAMI [A]
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ti, Solicitor
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I do not make an anonymity order.

2. The appellant is an Iraqi national. He claimed to have entered the United Kingdom on January 12, 2012 and he claimed asylum the same day. The respondent refused his claim on February 10, 2012. His appeal against this decision was rejected by the Tribunal on April 18, 2012. His appeal rights were deemed exhausted on July 25, 2012.

3. On May 12, 2015 he lodged further submissions but these were refused by the respondent on May 16, 2015. That decision was reconsidered but further refused on January 21 and November 30, 2016.

4. The appellant's most recent submissions were considered by the respondent on January 6, 2017 when she refused to grant asylum under paragraphs 336 and 339M HC 395.

5. The appellant lodged grounds of appeal on January 20, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Coll (hereinafter called "the Judge") on July 18, 2017 and in a decision promulgated on August 29, 2017 the Judge refused the appeal on all grounds.

6. The appellant appealed this decision on September 6, 2017. Permission to appeal was refused by Judge of the First-tier Tribunal Davidge on November 10, 2017 but when those grounds were renewed Upper Tribunal Judge Rintoul granted permission on December 18, 2017. He found it arguable the Judge may have misdirected herself as to Devaseelan (Second Appeals-ECHR-Extraterritorial Effect) Sri Lanka [2002] UKIAT 007092.

7. In a Rule 24 response dated January 17, 2017 the respondent opposed the permission arguing the Tribunal had properly directed itself and made findings open to it.

8. This matter came before me on the above date.

SUBMISSIONS ON ERROR IN LAW

9. Mr Ti submitted the Judge had erred in her approach to the new arguments presented by the appellant.

10. He argued that the appellant would be perceived, in Iraq, as a Christian in the social or cultural sense and whilst this was not raised before the original Judge who heard his appeal in 2012 it did not change the fact that no decision had been taken about his social or cultural identity and how he would be perceived in Iraq.

11. The Judge's approach to Devaseelan was flawed. At paragraph 50 of her decision the Judge concluded that as the issue of the appellant being a Christian in the social or cultural sense could have been argued previously she was unable to consider it under the principles of Devaseelan. This was a flawed approach and what the Judge should have done was to consider the new evidence with the "greatest circumspection". By refusing to consider this evidence the Judge had erred.

12. The Judge failed to give sufficient weight to the expert report of Dr George who dealt with the implications of being born as a Christian or raised in a Christian family without been practising. This was a matter which should similarly have been considered in more detail by the Judge.

13. The Judge also erred by revisiting the authenticity of certain documents that had been adduced by the appellant. Those documents had not previously been questioned and following the principles of Devaseelan the

Judge should not have revisited that evidence based on the approach she adopted to the appellant's claim that he would be perceived as a Christian in the social or cultural sense.

14. Mr Ti submitted that if the Tribunal was able to revisit this evidence then it should have also considered the issue of the appellant being a Christian in the social or cultural sense.

15. Mr Ti further submitted that the Judge failed to consider those documents in light of the Landinfo report that had been included in the bundle. Concerns were raised in this report over the reliability of such documents but in deciding whether the appellant had submitted fraudulent documents the Judge ignored this evidence.

16. The final issue is that the latest country guidance decisions identified Kirkuk as a contested area and was therefore unsafe. Whilst the respondent submitted evidence to support an argument that the city was now safe Mr Ti argued that the evidence was not significant enough to depart from the country guidance decision. In short, he submitted the Judge applied an incorrect test.

17. Mr Melvin relied on the Rule 24 response. He submitted that the original asylum decision made by Judge of the First-tier Tribunal Cope was extremely detailed and that Judge had considered all religious issues raised by the appellant. The Judge had rejected in its entirety the appellant's claim to be a Christian and those findings had never been challenged.

18. At the second appeal hearing the appellant raised two further issues namely the perception of being a Christian and evidence provided by a family friend which was in document form.

19. Mr Melvin submitted that the family friend had not attended the hearing or signed a witness statement. The document that had been produced to the court was merely a picture of what was said to be his statement. The Judge was entitled to deal with that evidence as she did.

20. In any event, the parties had already agreed that the findings in paragraphs 82 and 83 of the original Tribunal decision would stand and these paragraphs confirmed that the Judge did not accept the appellant had not been in contact with his family.

21. As regards the perception of being a Christian Mr Melvin submitted that the Judge did deal with this evidence. In particular, the Judge considered the appellant's Christian social identity at paragraph 47 of her decision and at paragraph 51 the Judge considered, contrary to Mr Ti's submission, the evidence of Dr George. At paragraph 60 of her decision the Judge reaffirmed earlier findings that the appellant was not a Christian in any sense.

22. Mr Melvin submitted the Judge considered all the available evidence and made findings on his Christianity and the findings on whether he had family in Iraq were open to her.

23. With regard to the fraudulent document Mr Melvin submitted the Judge was entitled to consider the respondent's report that the documents were fraudulent. He did not need to consider the Landinfo report because the appellant had obtained their own expert evidence. This expert had examined the documents but due to the "unhelpful conclusions" the report had never been submitted to the Tribunal. The document that Mr Ti now sought to rely on was background evidence but an expert report which examined the actual documents is more reliable and the Judge was entitled to follow the conclusions of the respondent's report when the appellant decided not to submit into evidence his own expert report.

24. With regard to the departure from findings in a country guidance case the Judge had ample evidence that Kirkuk was no longer a contested area. She was entitled to make the findings she did.

25. Mr Ti re-emphasised the following points:

    (a) the evidence to depart from a country guidance finding had to be strong and in this case the evidence was not strong.

    (b) Culturally the appellant would be known as a Christian.

    (c) The Judge failed to consider Dr George's report.

    (d) Whilst the Judge was entitled to draw an inference on the documents she should only have done so after considering all the evidence.

26. Having heard these submissions I reserved my decision.

FINDINGS ON ERROR IN LAW

27. The original Judge's decision from 2012 formed part of the evidence considered both by the respondent and the Tribunal when the appellant renewed his application in 2017.

28. Upper Tribunal Judge Rintoul found it arguable the Judge's approach to Devaseelan was flawed.

29. In considering the Judge's approach on this issue it is important to look at the decision as a whole and not merely to pick out particular sentences.

30. Mr Ti argued that the Judge was obliged to consider the evidence that the appellant would be viewed culturally and sociably as a Christian. In normal circumstances I would agree with this submission with the proviso that such evidence should be viewed with the "greatest circumspection".

31. However, it is abundantly clear from any reading of the two Judges' decisions that neither found the appellant's claim to be a Christian in any

sense credible. There was therefore no necessity placed on the Judge to separately consider this as a risk issue for the appellant.

32. I disagree with Mr Ti's argument that the Judge should have made specific findings for the simple reason that the Judge rejected that the appellant was a Christian "in any sense".

33. With regard to the revisiting of the appellant's documents I accept the respondent could have raised this issue before the original Judge. It is unclear why this was not done but the Judge hearing the appeal in the First-tier Tribunal had before her an expert report that identified the appellant's documents as fraudulent. The case had been adjourned for the appellant to have those documents examined by his own expert.

34. It is clear from any reading of the Judge's decision that such a report was obtained and it is also clear that Mr Ti chose not to rely on that report because it was "unhelpful". Instead Mr Ti sought to argue that the Judge should have considered a general report. He referred me to the Landinfo report that was in the appellant's bundle.

35. Where there are no specific expert reports on documents I would agree with his submission that some weight should have been given to that report but where, as in this case, there was expert evidence on the actual documents themselves and the appellant had chosen not to submit his own report because it was "unhelpful" the Judge was entitled to approach those documents in the manner she did.

36. Mr Ti argued the Judge did not have regard to Dr George's report but I am satisfied the Judge considered this report at paragraph 51 of her decision.

37. The final issue related to the Judge's approach to the issue of whether Kirkuk was a contested area. The country guidance decision of AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) as amended by AA (Iraq) v SSHD and SSHD [2017] EWCA Civ 944 and BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC) do not specifically state that Kirkuk is no longer a contested area but there was evidence before the Judge that Isis had been defeated and that Kirkuk was no longer a contested area although there were areas that continued to be contested.

38. I pointed out to Mr Ti that the Judge concluded at paragraph 57 of her decision that internal relocation was available and that the grounds of appeal had not taken issue with this finding. Whilst Mr Ti referred me to paragraph 53 of the decision it is clear from the Judge's finding at paragraph 57 that Mr Ti's submissions with regard to the other areas of Iraq to which the respondent has stated the appellant could relocate safely to were rejected. It therefore follows that even if the appellant could not return to Kirkuk there had been no challenge to the issue of internal relocation in the current grounds of appeal.

39. In light of the above I find there is no error in law.

DECISION

40. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

41. I uphold the previous decision.

Signed Date 22/03/2018

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as I have dismissed the appeal.

Signed Date 22/03/2018

Deputy Upper Tribunal Judge Alis