



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00426/2019

THE IMMIGRATION ACTS

Heard at Field House
On 17 September 2019

Decision & Reasons Promulgated
On 23 September 2019

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A A

(ANONYMITY DIRECTION CONTINUED)

Respondent

Representation:

For the Appellant: Mr. I Palmer, Counsel, of Barnes Harrild & Dyer Solicitors

For the Respondent: Mr. P. Singh, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is the respondent's appeal against the decision of First-tier Tribunal Judge Ian Howard ('the Judge') issued on 3 April 2019 by which the appellant's appeal against the decision to refuse to grant him international protection was allowed.

2. For the purposes of this decision the parties will be referred to by their status before the First-tier Tribunal.
3. Upper Tribunal Judge Hanson granted permission to appeal on all grounds.

Anonymity

4. The Judge issued an anonymity direction and there was no application by the parties to set aside this decision. Therefore, unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any formal publication thereof shall directly or indirectly identify the appellant or close members of his family. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I re-affirm the direction so as to avoid the likelihood of serious harm arising to the appellant from the contents of the protection claim being made public.

Background

5. The appellant is a national of Iraq and he is presently aged 30. He states that he cannot return to Iraq on account of his political opinion and by means of his asylum claim he detailed that Daesh had taken control of his hometown of Mosul in June 2014. Daesh attended his home in January 2015 demanding details of the occupant of the ground floor of the house which he rented to a man he believed to be an engineer. He was informed that this man was in fact an army officer. Three days later he received a telephone call from the army officer threatening to kill him for revealing his details.
6. In February 2015 he visited a paternal uncle and whilst talking with his uncles and cousins he expressed anti-Daesh sentiments. It transpired that his family members were pro-Daesh and an argument ensued in which he was attacked and knocked unconscious. When he came around there were five Daesh members surrounding him, but an uncle persuaded them not to kill him and they left. The appellant returned to his home, picked up his passport and some money and then hid at an aunt's house before fleeing Iraq. He details that one of his cousins was subsequently killed by Daesh on 6 June 2016.
7. He claimed asylum in this country and the application was refused by the respondent. He appealed this decision and his appeal was dismissed by Judge of the First-tier Tribunal Raikes by way of a Decision and Reasons issued to the parties on 30 March 2017. The appellant subsequently made further representations and though the Secretary of State refused to grant him status she recognised that the representations constituted a fresh claim for the purposes of paragraph 353 of the Immigration Rules and so the appellant a right of appeal to the First-tier Tribunal.

Hearing before the First-tier Tribunal

8. The appeal came before the Judge sitting at Hatton Cross on 14 February 2019. The respondent relied upon evidence seeking to establish that the situation in Iraq had changed and that the appellant could safely return to Mosul. It was the respondent's case that the Judge was no longer required to rely upon the country guidance decision of *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544. The appellant sought to assert that the Judge was required to rely upon the country guidance decision. The Judge accepted that the appellant could not return to Mosul and further determined that there was a real likelihood that the appellant would be required to live in Baghdad without any support, without possession of a CSID, and with the real risk of having been wrongly identified as having an association with Daesh. In such circumstances he allowed the appeal on both asylum and article 3 grounds.

Grounds of Appeal

9. The respondent's grounds of appeal are very short, in essence challenging the Judge's approach to considering the new evidence relating to the risks or otherwise of the appellant returning to Mosul.

Decision on Error of Law

10. I was greatly aided by Mr Palmer at the hearing before me. I reminded Mr Palmer as to the guidance of the Court of Appeal in *R (on the application of) SG (Iraq) v Secretary of State for the Home Department* [2012] EWCA Civ 940; [2013] 1 WLR 41 in which the Court of Appeal in providing guidance observed that in order to ensure that there were reliable and accurate determinations as well as noting the desirability of consistency, decision makers were required to take country guidance determinations into account and follow them unless very strong grounds supported by cogent evidence were adduced justifying not doing so. The Court of Appeal confirmed at [47]:

'It is for these reasons, as well as the desirability of consistency, that decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so.'

11. Unfortunately, as Mr Palmer accepted with his usual candour, the Judge's consideration of the respondent's evidence, and therefore the heart of the respondent's case, wholly failed to engage with the guidance of the Court of Appeal. The Judge's considerations are set out at [20] of his decision:

'I must therefore envisage the appellant returning to Baghdad and remaining in the 'Baghdad Belts' or travelling north to his home area of Mosul. The latter must be

discounted as for the time being Mosul remains a contested area notwithstanding very recent event (sic). Indeed, in the decision letter the respondent considers the current situation in Iraq at paragraphs 26 onwards and while identifying Mosul as the appellant's home area at paragraph 31, does not address the issue of return to that location. Judge Raikes found that as a contested area the appellant could not return there and on the information before me that remains the position.'

12. It is clear that the Judge has not adequately considered the new evidence presented on behalf of the respondent in light of the Court of Appeal guidance, and whilst it may have been open to him to find that it was not cogent or sufficient, this is not the only reasonable decision that could be made on the evidence presented and so by not examining it in the manner approved by the Court of Appeal it can only be said that his approach materially erred in law. Mr Palmer, though not resiling from the favourable decision reached by the Judge, and observing that care had been taken to argue the inadequacy of the evidence before the Judge, fairly accepted that there was no express consideration of the guidance, nor even could it be argued that there was an implicit consideration.
13. In such circumstances the parties accepted that the rest of the decision would struggle to survive if I were to find that there had been a material error of law in the reasoning at [20.] For the reasons detailed above I find that there was such material error and that the failure to lawfully consider the new evidence relied upon by the respondent and to give adequate reasons for its rejection was such error as to require this decision to be set aside.

Remittal to the First-tier Tribunal

14. Both representatives informed me that if I were to find that there was a material error of law clear findings would have to be made on the evidence presented on behalf of both the appellant and the respondent and so requested that the matter be remitted to the First-tier Tribunal.
15. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal and I observe at paragraph 7.2:-

“The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to

the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal”.

16. I find in the circumstances of this appeal that it is appropriate to remit this matter to the First-tier Tribunal for a fresh decision on all matters. There has been no adequate and fair consideration of the asylum claim to date. In this case I have determined that the case should be remitted because a new fact-finding exercise is required.

Notice of Decision

17. The Judge erred materially for the reasons identified. I set aside the Judge’s decision promulgated on 3 April 2019 pursuant to Section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.
18. I remit the matter to the First-tier Tribunal sitting at Hatton Cross to be heard before any Judge of the First-tier Tribunal other than Judge Ian Howard.
19. No findings of fact are to stand.
20. The anonymity direction continues.

Signed: *D O’Callaghan*

Upper Tribunal Judge O’Callaghan

Date: 20 September 2019