Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02033/2019

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 18 December 2019	**On 31 December 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

REKAWT [O]
(anonymity direction not made)

Respondent

Representation:
For the Appellant: Mr A McVeety Senior Home Office Presenting Officer.
For the Respondent: Mr D Jones instructed by Sutovic & Hartigan Solicitors.

ERROR OF LAW FINDING AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge O'Hanlon who in a determination promulgated on 17 September 2019 allowed Mr [O]'s appeal on asylum grounds and dismissed the appeal on humanitarian protection and human rights grounds.

Background

2. Mr [O] is a citizen of Iraq born on 19 January 1989. He is of Kurdish ethnicity and a Sunni Muslim.
3. The Judge clearly considered the evidence with the required degree of anxious scrutiny. The Judge correctly noted there was an earlier determination and that applying the Devaseelan principles the earlier decision formed the starting point for the subsequent assessment. Submissions made by the respective advocates are recorded. The Judge sets out findings of fact from [33]. Mr [O]'s identity, nationality and date of birth were not in dispute and the Judge records that the Presenting Officer confirmed it was accepted that Mr [O] originated from Kirkuk.
4. The Judge clearly considered the current applicable country guidance case law relating to Iraq. At [41] the Judge specifically refers to AAH [2018] UKUT 212 and concludes that having considered all the evidence he did not find that Mr [O] will be able to access a replacement CSID card in a reasonable time.
5. The Judge notes at [47] that Kirkuk remains a contested area and that Mr [O] will be at risk there and that in the absence of a CSID card and without a reasonable prospect of obtaining one within a reasonable time Mr [O] will not be able to travel to Kirkuk.
6. The Judge clearly considered return to Baghdad and relocation to the KRI before concluding that in light of Mr [O]'s profile he had demonstrated a well-founded fear of persecution sufficient to warrant his asylum appeal being allowed.
7. The Judge found Mr [O] was not entitled to a grant of Humanitarian Protection as the appeal was allowed on asylum grounds but it is clear that if the appeal had been refused on asylum grounds the Judge would, for the reasons given, have allowed the appeal on Humanitarian Protection grounds.
8. The Secretary of State sought permission to appeal asserting the Judge failed to provide a satisfactory explanation for why matters had materially changed to permit the Judge to depart from the decision of the earlier tribunal which dismissed Mr [O]'s protection claim. The grounds assert insufficient reasons have been given for findings concerning Mr [O]'s overall credibility and that the Judge erred in allowing the asylum appeal in the absence of such findings. The author the grounds asserts with no fresh findings on Mr [O]'s credibility the Judge's later findings in relation to his claim not to possess a CSID and to have lost touch with his family were thrown into question rendering the entire decision unsafe.

Error of law

9. The Judge noted at [12] that Mr [O] was deported to Iraq on 13 August 2017 before an Administrative Court granted his application for permission to bring a judicial review claim on 5 September 2017. The Administrative Court ordered the Secretary of State to secure Mr [O]'s

return to the United Kingdom which was affected on 7 October 2017 as a result of which Mr [O] was issued a grant of entry clearance as a visitor outside the Immigration Rules valid until 12 October 2017.

10. At [26] the Judge writes:

> "26. Prior to the commencement of the evidence at the hearing I established with the Appellant's Representative the basis upon which the Appellant's claim was being made. Mr Jones on behalf of the Appellant confirmed that the basis of the Appellants claim was that the Appellant was at risk due to his particular personal profile and the situation in Iraq."

11. As noted by Mr Jones in his Rule 24 Response, the reference by the Judge to Mr [O]'s 'particular profile 'is language that replicates that used by the Secretary of State in the refusal letter in which the author of the letter observes that the claim is based upon a fear of mistreatment because of his particular profile. It is not made out the Judge was not aware of the evidence regarding those aspects that constitute Mr [O]'s profile which are said to found a protection claim and create a real risk on return; which include his ethnicity is a Kurd, his faith, being undocumented, having been outside Iraq for 8 years with no links by way of family or community in Baghdad, and the prevailing country conditions within Iraq and Baghdad.
12. There is merit in Mr Jones' submission that the Secretary of State took no issue with the fact Mr [O] presented those aspects that constitute his personal characteristics or their capacity to found a Convention ground in the refusal letter or before the Judge. The reason for the same is that there is merit in the submission that independently or in combination those issues can found a Convention reason based on either race, religion or particular social group.
13. Whilst the Secretary of State disagrees with the Judge's findings and may consider the same generous, this is a decision in which the Judge clearly considered the evidence with the required degree of anxious scrutiny and has given adequate reasons in support of the findings made by reference to both the evidence presented, country guidance case law, and relevant facts.
14. Mr McVeety was asked how he intended to argue that the decision was outside the range of those reasonably available to the Judge on the evidence. Despite his best efforts he failed to make out the case in a manner sufficient to establish legal error material to the decision.
15. As noted above even if the Refugee Convention claim was set aside no material error would have been identified on the basis on the findings made by the Judge Mr [O] would be entitled to succeed on Humanitarian Protection grounds in any event.
16. The Judge was entitled to find as he did in relation to the credibility aspects especially in light of the fact that it was not found that Mr [O] was wholly incredible in the earlier decision, a fact acknowledged by the Judge at [37] of the decision under challenge.
17. It is not made out the Judge has erred in law in a manner material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

18. Whilst it is known the forthcoming country guidance case relating to Iraq is imminent that is not relevant to assessing whether the Judge erred in law on the basis of the evidence and case law applicable at the date of the handing down of the decision. It will be a matter for the Secretary of State to consider whether the forthcoming country guidance case makes any difference to Mr [O]'s position sufficient to warrant a fresh decision.

Decision

19. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

20. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 19 December 2019