



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/00411/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 28 February 2020**

**Decision & Reasons Promulgated
On 5 March 2020**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

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(ANONYMITY ORDER MAINTAINED)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. M. Kelleher, Barnes Harrild & Dyer Solicitors

For the Respondent: Mr. E. Turfan, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is Kurdish and an Iraqi national. He was born and brought up in Kirkuk and has no connection with the IKR. It is the Appellant's case that he is not in possession of an

Iraqi passport and that the Iraqi Embassy declined to provide him with a new one as he was not able to prove his identity. It is also his case that he lost contact with his family in Iraq in 2015.

2. The Appellant arrived in the United Kingdom and applied for asylum on 15 June 2006. His application was refused and he did not appeal against this decision. Further representations were submitted on his behalf on 13 July 2009 and his further protection and human rights claim was refused on 23 July 2016. He then lodged further submissions on 27 June 2017 and 25 October 2018 and his protection and human rights claims were refused on 12 December 2018. He appealed and his appeal was dismissed on asylum grounds by First-tier Tribunal Judge Talbot in a decision promulgated on 11 March 2019. His appeal was allowed on Article 8 grounds.
3. The Appellant appealed against the decision to dismiss his asylum appeal and First-tier Tribunal Judge Chohan granted him permission to appeal on 6 January 2020. The Secretary of State did not cross-appeal in relation to the human rights decision.

ERROR OF LAW HEARING

4. Ms Kelleher provided the Tribunal with a useful skeleton argument, which she had also given to the Home Office Presenting Officer. Later in the hearing, the Home Office Presenting Officer withdrew paragraph 4 of the Respondent's Rule 24 Response. Both representatives also made oral submissions and I have taken these into account when reaching my decision below.

ERROR OF LAW DECISION

5. As a general rule, country guidance cases remain authoritative as to the objective conditions in a particular state until overturned by higher authority or superseded by new country guidance (See Jackson LJ in *AB (Sudan) v Secretary of State for the Home Department* [2013] EWCA Civ 921).

6. At the time of the decision under challenge the relevant country guidance was to be found in *AAH (Iraqi Kurds – internal relocation) Iraq CG* [2018] UKUT 00212 (IAC), which characterised Kirkuk Governorate as a “contested area” for the purposes of any entitlement to subsidiary protection. In *R (Iran) v Secretary of State for the Home Department* [2005] EWCA Civ 982 Brooke LJ found that the core findings of a country guidance case must be followed absent “...good reasons, explicitly stated, for not doing so”.
7. The Home Office Presenting Officer submitted that further country guidance in the *SMO, KSP & IM (Article 15(c); identity documents) CG Iraq* [2019] UKUT 400 indicates that First-tier Tribunal Judge Talbot was correct to find that Kirkuk was no longer a “contested area”. However, I must consider whether at the time of the hearing on 14 February 2019, the Judge had followed appropriate country guidance. The Judge should also have taken into account that in *SG (Iraq) v Secretary of State for the Home Department* [2012] EWCA Civ 940 the Court of Appeal found that decision makers must take country guidance into account and follow it unless “very strong grounds supported by cogent evidence” indicates that they should not.
8. In paragraph 20 of his decision, First-tier Tribunal Judge Talbot relied on unspecified “widely available country information (including the most recent CPIN reports)” to find that the security situation in Kirkuk has changed. The only detail he provided of this evidence was in paragraph 22 of his decision, which in fact stated that “security conditions have improved since the Islamic State’s control of territory was disrupted but IS fighters are active in some areas of the country and security conditions are fluid”. In paragraph 23 he also accepted evidence relied on by the Appellant which indicated that there continued to be “violent conflict and terrorist attacks in the Kirkuk area” and that there were “active security concerns which pose some risk to civilians and not only to members of the armed forces”. This evidence would not appear to meet the test of “very strong grounds supported by cogent evidence” to show that the country guidance which was current at the date of the appeal should not be followed.
9. First-tier Tribunal Judge Talbot also relied on the decision in *The Queen on the application of Qaraman Mohamed Amin v Secretary of State for the Home Department* [2017] EWHC 2417 (Admin). However, this judicial review decision was not capable on its own of overturning a country guidance decision and was at best persuasive. In addition, it had been handed down

on 15 September 2017 which was prior to the decision in *AAH (Iraq) CG* [2018] UKUT 0021 and had not impacted on that country guidance to the extent to change the Upper Tribunal's mind about its country guidance.

10. In addition, when considering whether the Appellant had lost contact with his relatives in Iraq in 2015, First-tier Tribunal Judge Talbot may have taken into account the oral evidence given before him but he had failed to take into account the objective evidence relating to the violence and disruption which occurred in Kirkuk in 2015 and the years which followed and which led to the mass displacement of those living in that area. In addition, First-tier Tribunal Judge Talbot had also relied on *HK & Others (minors – indiscriminate violence – forced recruitment by Taliban – contact with family members) Afghanistan CG* [2010] UKUT 378. However, this was country guidance relating to the factual situation in Afghanistan for unaccompanied children and was not binding in relation to the situation in Iraq.
11. As a consequence, I find that there were errors of law in First-tier Tribunal Judge Talbot's decision.
12. I also agree with the parties that, as the Judge's credibility findings were not sustainable the appeal should be remitted to the First-tier Tribunal.

DECISION

- (1) The Appellant's appeal is allowed on the asylum grounds.
- (2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* on international protection grounds by a First-tier Tribunal Judge other than First-tier Tribunal Judges Talbot or Chohan.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 28 February 2020