



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05619/2019**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Manchester

On 27 January 2020

**Decision & Reasons
Promulgated**

On 04 February 2020

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**KQ
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K J Wood of Immigration Advice Service

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, because this is a protection claim.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge AJ Parker promulgated on 26 September 2019, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 04/04/1987 and is an Iraqi Kurd from Kirkuk. On 26/05/2019 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge AJ Parker ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 19 December 2019 Upper Tribunal Judge McWilliams granted permission to appeal stating inter alia

"It is arguable that the Judge has conflated the appellant's home area and areas to which he could relocate. It is arguable that the appellant is from Kirkuk, and that the issue was whether he could safely and reasonably relocate to Baghdad or IKR. The Judge found that he could reasonably relocate to IKR: however, he also says that he is a Kurdish national and is most likely from Kurdistan region.

The grounds are arguable."

The Hearing

5. Mr Tan, for the respondent, told me that this appeal is no longer resisted. He told me that the Judge's consideration of what was then the country guidance caselaw was muddled and unclear. He described the decision as "jumbled". He agreed that since this decision was promulgated Country guidance has changed. He asked me to set the decision aside and remit this appeal to the First-tier Tribunal to be determined of new.

6. Mr Wood, for the appellant, agreed with Mr Tan and joined in his motion to have the decision set aside and to remit this case to the First-tier Tribunal to be determined of new.

Analysis

7. The accepted facts in this case are set out by the Judge at [9] of the decision. The accepted facts are that the appellant is an Iraqi Kurd from Kirkuk, and that the appellant is a Sunni Muslim.

8. The Judge's findings and reasons bear to be set out between [16] and [46] of the decision. Between those paragraphs of the decision the Judge does not make many findings of fact. Instead, the Judge expresses surprise at certain aspects of the evidence, and summarises the submissions made. At [34] of the decision the Judge appears to accept the appellant does not have a CSID card.

9. At [55] the Judge takes guidance from AA (article 15 (c)) Iraq CG [2015] UKUT 544 (IAC). The country guidance that was relevant when the Judge was writing the decision was AA (Iraq) CG [2017] EWCA Civ 944 and AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212.

10. The decision is tainted by material errors of law. The Judge took guidance from the wrong country guidance case. The Judge appears to become confused about the location of Kirkuk. The Judge confused the place the appellant would be returned to. The appellant will be returned to Baghdad. The Judge did not consider how the appellant would make his way from Baghdad to his hometown.

11. Because the decision contains material errors of law, I set it aside. The appellant's case will now have to be considered in light of the guidance given in the case of SMO, KSP & IM (Article 15 (c); identity documents) Iraq [2019] UKUT 400 which replaces all earlier country guidance. None of the findings of fact can stand. I cannot substitute my own decision because a further fact-finding exercise is necessary.

Remittal to First-Tier Tribunal

12. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if 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.

13. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re hearing is necessary.

14. I remit the matter to the First-tier Tribunal sitting at Manchester to be heard before any First-tier Judge other than Judge AJ Parker.

Decision

15. The decision of the First-tier Tribunal is tainted by a material error of law.

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**ulgated on 26 September
First-tier Tribunal to be**

Signed
January 2020
Deputy Upper Tribunal Judge Doyle

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