



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/05490/2012

THE IMMIGRATION ACTS

Heard at Glasgow
on 5 November 2013

Determination promulgated
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Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SSR

Respondent

For the Appellant: Mr A Mullen, Senior Home Office Presenting Officer
For the Respondent: Mr S Winter, Advocate, instructed by Maguire, Solicitors

DETERMINATION AND REASONS

- 1) This determination refers to parties as they were in the First-tier Tribunal.
- 2) The appellant is a citizen of Iraq, born in 14 July 1993.

- 3) The SSHD appeals against a determination by First-tier Tribunal Judge Quigley, promulgated on 20 July 2012, dismissing the appellant's appeal on asylum grounds but allowing it in respect of humanitarian protection and under Articles 2, 3 and 8 of the ECHR.
- 4) The SSHD's first ground of appeal to the Upper Tribunal is that the judge materially misdirected herself about the risk of indiscriminate violence as defined in Article 15(c) of the Qualification Directive, about country guidance, and about the country situation as at the date of her decision. Mr Winter accepted that the ground discloses error of law.
- 5) That concession was sensibly made. The determination does not justify its conclusions in respect of humanitarian protection and of Articles 2 and 3 of the ECHR.
- 6) The SSHD's second ground of appeal is this:

Failing to give reasons or adequate reasons for findings on a material matter.

... The judge has failed to consider the 5 step approach ... in *Razgar* [2004] UKHL 27 and, in not doing so, has failed to give adequate reasoning for [her] finding that to remove the appellant would be disproportionate.

- 7) Mr Mullen pointed to the facts of the case, and argued that the reasoning is inadequate to explain why a decision was reached in the appellant's favour.
- 8) I was not persuaded that the SSHD's grounds show error of law as to Article 8.
- 9) The appellant entered the UK, was arrested, and made his claim on 12 January 2009, aged 15½. Thus, as the judge found at paragraph 34, he has spent his "early adult and personal development years" here. He has a girlfriend. It seems that his girlfriend has a child, but the appellant has no relationship with that child. He had significant supporting evidence in respect of his private life. That was not an outstandingly strong Article 8 case, but the SSHD has not argued that it is one which no reasonable judge, properly instructing herself on the law, could have reached. In a case which arrives at the proportionality question, it is immaterial that the five *Razgar* questions were not individually set out and answered. The judge sets out all relevant matters on both sides. She does not say in terms that she balances the public interest in immigration control against the points in the appellant's favour, but she could hardly have thought that she was doing anything else. The SSHD may disagree with the outcome, and it may be a generous one which would not have been reached by many judges, but that is not the same as error of law.
- 10) The determination of the First-tier Tribunal, insofar as it allowed the appeal in respect of humanitarian protection and under Articles 2 and 3 of the ECHR, is set aside. A decision is substituted dismissing the appeal, as originally brought to the First-tier Tribunal, in these respects. Insofar as the determination of the First-tier Tribunal

dismissed the appeal on asylum grounds and allowed it under Article 8 of the ECHR, it shall stand.

- 11) For avoidance of doubt, the overall effect is this: the appeal, as originally brought to the First-tier Tribunal, stands as **allowed on Article 8 grounds only**.
- 12) An anonymity order remains in place.

A handwritten signature in black ink, reading "Hugh Maclean". The signature is written in a cursive style with a large, stylized initial "H".

7 November 2013
Judge of the Upper Tribunal