



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
AA/03522/2007**

APPEAL NUMBER:

THE IMMIGRATION ACTS

Heard at: Field House

On 1 December 2014

**Decision and Reasons
Promulgated**

On 22 December 2014

Before

**UPPER TRIBUNAL JUDGE K ESHUN
DEPUTY UPPER TRIBUNAL JUDGE MAILER**

Between

**MR OMAR AMIN AHMAD
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

**For the Appellant: Mr A Jafar, counsel, instructed by Morgan Has
Solicitors**

**For the Respondent: Ms A Holmes, Senior Home Office Presenting
Officer**

DECISION AND REASONS

1. The appellant is a national of Iraq, born on 5 July 1987. He left Iraq when he was 16 years old and arrived in the UK on 11 August 2003. He claimed asylum the next day.
2. On 15 March 2004 he was granted discretionary leave to remain as a minor. In a subsequent decision the respondent refused his asylum application and his application to extend his leave. He appealed against that decision which came before Immigration Judge Jhirad on 19 April 2007 who dismissed his appeal.
3. On 4 June 2007 Immigration Judge Southern ordered reconsideration of that decision.
4. His appeal subsequently came before Senior Immigration Judge Martin on 14 May 2008. She found that the determination of Judge Jhirad contained a material error of law. She found that it was clear from her reading of the determination that the Judge did not address the question of humanitarian protection, namely that he would still be at risk of serious harm on account of the deteriorating security situation in Iraq.
5. Judge Martin considered the background evidence and relevant decisions but considered that there was a total absence of evidence to support the appellant's claim that he would be entitled to succeed on that basis. Accordingly, the Judge's failure to consider the question was not material to the outcome as it could not possibly succeed. She dismissed his appeal.
6. The appellant was then granted permission to appeal. The Court of Appeal ordered by consent that the appeal be allowed to the extent that it be remitted to the Asylum and Immigration Tribunal (now the Upper Tribunal) for a fresh consideration.
7. On 29 March 2010, following a case management hearing, directions were given. The case was to be heard before 15 September 2010 as a result of anticipated country guidance.
8. Thereafter it appeared for reasons which remain unclear that nothing further happened within the appeal. It was not listed before any judge. No representations were received on behalf of either party for the appeal to be listed.
9. The matter came before Upper Tribunal Judge Craig on 22 April 2014. He directed that the appeal was to be listed for hearing on the first available date after 1 June 2014. The appeal was to be limited to consideration of the Qualification Directive as well as the Article 8 claim, taking into account the considerable delay in the hearing of the appeal.
10. On 18 June 2014, Mr Justice McCloskey noted that the case had been listed for 18 June 2014. However, the "serial and grave misdemeanours" with regard to the failure to comply with directions was deprecated. In the circumstances, he adjourned the hearing to the first available date after 1 August 2014.

11. On 15 October 2014, the appellant raised additional grounds of appeal under Article 8, based on the authority of the House of Lords in EB (Kosovo) [2008] UKHL 41.
12. In the additional grounds, it was contended that the appellant has “very significant private life in the UK” which included mental health treatment as well as the fact that he is in the middle of a degree. This was all important to his mental health and well being. Such relationships in respect of his treatment would not be available to be continued in Iraq.
13. It was contended that the appellant had been granted leave to remain in the UK on 16 March 2004 until 5 July 2005. Before the expiry of his leave, he applied for further leave which was refused on 20 February 2007. It is that refusal which remains the subject of the current appeal. The appellant was issued a “one stop” warning to adduce additional grounds against the refusal.
14. It is contended that his leave has thus been extended by s.3C of the 1971 Immigration Act. In the circumstances, he has accumulated more than ten years' lawful residence here.
15. The grounds referred to the decision in MU (“Statement of additional grounds” - long residence - discretion) Bangladesh [2010] UKUT 442 (IAC). There, the Tribunal had regard to the decisions in AS (Afghanistan) v SSHD [2009] EWCA Civ 1076 and NB (Sri Lanka) [2010] EWCA Civ 1076, that there was no time limit on serving a statement of additional grounds in response to a s.120 notice. Accordingly, an appellant may accrue ten years' lawful leave (including leave extended by s.3C of the 1971 Act) while his appeal is pending. The Tribunal may then be asked to decide whether the appellant qualifies for indefinite leave under the Long Residence Rule.
16. It is further provided in MU that an application cannot be made under the Long Residence Rule for only limited leave to remain. Two years' leave may be granted under paragraphs 276A1-4, but only to people who have applied for indefinite leave, and who are eligible for it solely because their knowledge of English or of life in the UK is not good enough.
17. It was accepted before us that the appellant was unable to succeed under the paragraph 15(c) of the Qualification Directive. Accordingly, the appeal was no longer being advanced on that basis.
18. It was submitted that the appellant satisfied the requirements under paragraph 276B(i) as he had had ten years' lawful residence. It is also a requirement under paragraph 276B(iv) that the applicant must have sufficient knowledge of the English language and sufficient knowledge about life in the UK, unless he is under 18 or aged 65 or over at the time he makes his application.

19. We were referred to Appendix KoLL under the Immigration Rules. It is noted that sufficient knowledge of the English language and about life in the UK is a requirement under the rules.
20. The appendix also sets out general exemptions to the requirements on grounds of age, and enabling the decision maker to waive the requirement in the light of special circumstances in any particular case. Reference was made to Part 3, which deals with "exceptions". It is provided that notwithstanding any requirement to the contrary in these rules, for the purpose of this appendix, an applicant will not be required to demonstrate sufficient knowledge of the English language and about life in the UK where in all the circumstances of the case, the decision maker considers that, because of the applicant's mental or physical condition, it would be unreasonable to expect such applicant to fulfil that requirement.
21. It was contended on behalf of the appellant that having regard to his mental or physical condition, he qualified for an exemption.
22. Ms Holmes accepted that even at this stage the appellant was entitled to raise this ground of appeal pursuant to the s.120 notice.
23. She also accepted that the appellant had satisfied the requirement under the Rule that he must have had at least ten years' continuous lawful residence in the UK. She did not make any submission as to whether he is also entitled to an exemption under paragraph 267B(iv) of the rules.
24. She noted however that the public interest concerns set out at paragraph 276B(ii) have not been assessed by the Home Office. She submitted that in the circumstances, the matter should be remitted to the respondent for the necessary public interest assessment to be made.

Assessment

25. We find that the appellant has shown that he satisfies the requirements under paragraph 276B(i) of the Immigration Rules. He also qualifies for an exemption under paragraph 267B(iv) of the rules.
26. We also find that it is appropriate for the case to be remitted to the respondent in order to carry out an assessment with regard to paragraph 276B(ii) of the Immigration Rules. To that extent, the appeal is allowed.

Notice of Decision

The appeal is allowed to the extent referred to in paragraph 26. The matter is remitted to the respondent for a decision to be made regarding the public interest as set out in paragraph 276B(ii) of the Immigration Rules.

No anonymity direction is made.

Signed: Deputy Upper Tribunal Judge Mailer

Dated: 15/12/2014