



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

Appeal Number: AA/01076/2015
AA/01078/2015

THE IMMIGRATION ACTS

**Heard at Manchester IAC
On 31st March 2016**

**Decision and Reasons Promulgated
On 8th April 2016**

Before

UPPER TRIBUNAL JUDGE COKER

Between

[I A]

[A R]

~~(no anonymity order made)~~

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Nicholson, counsel, instructed by Broudie Jackson Canter
solicitors

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was granted permission to appeal on the grounds that the judge had inadequately dealt with the expert report of Dr George in regard to the adequacy of protection available in Baghdad and the level of indiscriminate violence.

2. There was a cut and paste error by Dr George in one paragraph where he referred to one person with a different name rather than to the two appellants. As a consequence of this the First-tier Tribunal judge concluded that Dr George was not suggesting that the Baghdad authorities would be unable to assist the appellants.
3. Paragraph 37 of the First-tier Tribunal decision considers the country guidance before the Tribunal at that time. The judge makes no significant reference to Dr George's report and how and to what extent it differs or may call for a different conclusion to that in the country guidance cases. There is no assessment of the appellants' particular circumstances; a failure to engage with the particular factual matrix for these appellants.
4. The judge refers to 'anecdotal' evidence. It is difficult to understand on what basis Dr George's expert report can be dismissed, with no attendant reasons, as 'anecdotal'. Dr George is an experienced expert who has provided the Tribunal with considerable recognised expert assistance in country guidance cases in the past. Save for one typographical error the report called for legitimate and significant consideration, a consideration that the judge has failed to employ.
5. Mr Harrison did not seek to persuade me that the First-tier Tribunal judge had engaged with material evidence and as a consequence the findings were not fundamentally flawed.
6. For these reasons I am satisfied that the First-tier Tribunal judge erred in law and I set aside the decision to be remade.
7. In the light of the error of law found, there has been no legitimate hearing of the substance of the appeal at all and no preserved findings of any kind. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. In these circumstances s.12(2) of the TCEA 2007 requires me to remit the case to the First tier with directions.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the hearing to the First-tier Tribunal for hearing before a First-tier Tribunal judge other than Judge Smith.



Date 31st March 2016

Upper Tribunal Judge Coker