Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07266/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 21 December 2015	**on 05 January 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

K A KHWARAHM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Caskie, Advocate, instructed by Maguire Solicitors (Scotland) Ltd
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Iraq, appeals against a determination by First-tier Tribunal Judge Fox, dismissing his appeal on refugee, humanitarian protection and other grounds.

2. The hearing was on 14 July 2015 and the determination was promulgated on 29 September 2015. The grounds of appeal to the Upper Tribunal refer to *AA* (Article 15 (c)) Iraq CG [2015] UKUT 00544 (IAC), acknowledging that

it was issued on 5 October 2015. Paragraph 1 of the grounds seeks to apply factors listed (a) to (g) to the appellant's case. Paragraph 2 says:

> "In failing to assess the evidence on the basis of answering and assessing the appellant's position regarding those matters listed by the UT the judge erred in law. That the error of law only became apparent after the determination was promulgated is immaterial to whether an error in law occurred."

3. First-tier Tribunal Judge E B Grant granted permission on 22 October 2015, on the view that the judge arguably failed to apply *AA*.

4. In a rule 24 response dated 2 November 2015 the respondent says that the judge made an adverse credibility finding for sound reasons, which are unchallenged, and so there was no evidence that he does not have family support and means in Iraq, or that he should be considered to be at any enhanced risk on return.

5. Mr Caskie (who was the author of the grounds) sought to widen them into an attack on the overall quality of the determination, which he said showed a legal error of lack of anxious scrutiny. He said such an argument properly fell within paragraph 2 of the grounds, failing which amendment should be permitted. The determination was so defective that it could not stand. The matters listed in the grounds did not arise only with hindsight after *AA*. They had been canvassed at the hearing and the judge had been bound to resolve them, but failed to do so. The determination should be set aside. On re-examination, the appellant satisfied all but one of the criteria identified in *AA* (d; – he is not female) and so a decision should be substituted to allow his appeal, in light of evidence which had been before the First-tier Tribunal. A fresh claim to the respondent based on *AA* would not be an adequate remedy, because the appellant would have been deprived of a proper hearing. The determination was "just a mess".

6. Mrs O'Brien submitted that it was clear the grounds were based on *AA* and not on any other attack on the determination. Country guidance is factual and not retrospective. The determination was not a manifestly defective one as now alleged, and that line of criticism came much too late. Any remedy the appellant might have in light of the findings in *AA* would be by way of a fresh claim (as to the merits of which no concession was made) and not by artificially finding error of law.

7. I reserved my determination.

8. As Mrs O'Brien rightly put it, judges are not to be faulted for failing to see into a crystal ball. It is now said that relevant matters were before the First-tier Tribunal, but the grounds make no case that an argument was put to the judge which ought to have led him to findings similar to *AA*. The grounds depend on *AA*. Their points (a) to (g) are copied directly from paragraph 15 of its headnote. The authority of country guidance is of a uniquely fact based nature. It is not declaratory of a situation which

tribunals ought to have acknowledged in previous cases, whether a case was specifically made or not. Paragraph 2 of the grounds is wrong about the materiality of when such an "error" becomes identifiable. The grant of permission seems to have overlooked that *AA* post-dates promulgation of the First-tier Tribunal determination.

9. There is no error of failure to apply *AA*.

10. The wider attack on the determination is not to be found hidden in paragraph 2 of the grounds.

11. There are errors in the determination. By way of example only, at paragraph 20 "lesson 20 years" makes no sense. That should plainly read "less than 20 years". In the same paragraph, "content" appears in place of "contend". I do not purport to make a finding on how such errors arose, but I think that representatives agreed that there was a strong suspicion that a computerised system of voice recognition had been used and its results had not been adequately checked. All the errors to which Mr Caskie drew attention were of a similar nature: the determination could be made sense of by obvious deletions and substitutions. That is unsatisfactory, but whether such errors require a determination to be set aside must be a question of fact and degree in each case.

12. The test is whether the determination, notwithstanding its errors of expression, provides a legally adequate set of reasons. As put by LP Emslie in *Wordie Property Co Ltd* v *Secretary of State for Scotland*, 1984 SLT 345, at 348:

> "The decision must, in short, leave the informed reader and the court in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it."

13. The minimum legal requirement is not grammatical perfection but a comprehensible explanation why findings have been made one way rather than another. The challenge that this determination fails to reach even the minimum standard comes surprisingly late, if it really were defective to that extent. I do not think it is a challenge which should now be permitted and in any event it aims too high. The determination answers the questions which were put to the judge, it does not leave the reader in doubt about the considerations taken into account and it gives its reasons for the decision reached.

14. The determination of the First-tier Tribunal shall stand.

15. No anonymity direction has been requested or made.

Upper Tribunal Judge Macleman

21 December 2015