Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA054962016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 6 June 2017	**On 7 June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SMA
(ANONYMITY ORDER MADE)

Appellant

And
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Schwenk of Counsel
For the Respondent: Mrs Pettersen a Home Office Presenting Officer

DECISION AND REASONS

1. The brevity of the decision is due to the commendable focus displayed by both representatives, and the lack of clarity of the Judge's decision.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify SMA or any of his family members. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to Contempt of Court proceedings. I do so in order to preserve the anonymity of SMA whose protection claim, for reasons that will become clear, remains outstanding.

Background

3. The Respondent refused SMA's application for asylum or ancillary protection on 17 May 2016. His appeal was dismissed by First-tier Tribunal Judge Fox ("the Judge") following a hearing on 29 September 2016.

The grant of permission

4. Upper Tribunal Judge Smith granted permission to appeal (19 December 2016) on the basis that it is arguable that the Judge materially erred regarding SMA's ability to obtain documentation that would permit internal relocation.

The Respondent's position

5. Reliance was placed on the rule 24 notice (5 January 2017) which noted that a decision had not been made by the Upper Tribunal allowing SMA to appeal out of time. It was noted that the Judge had found that SMA had family and friends who could assist him obtaining relevant documentation and/or provide accommodation and assistance.

Discussion

6. I grant permission to appeal out of time as the decision was so poor that it would be unjust not allow it to be considered, and this plainly what Judge Smith had in mind when granting permission to appeal.

7. At [6] the decision makes no sense where it states "the burden lies on the Appellant to show that by returning him on foot of any subsequently issued directions to Iraq…". The confused test SMA was required to establish was probably a result of poor proofreading, this by chance being the second decision from this Judge I had in my list today which had exactly the same incomprehensible phrase. Of itself I would not have been satisfied that it was a material error of law.

8. At [13 and 14] the Judge extensively considered section 117 of the Nationality Immigration and Asylum Act 2002 and make findings upon that prior to considering the asylum claim. The consideration out of turn of section 117 shows a structural misunderstanding of the thought processes involved in determining such appeals and is a material error of law.

9. It was perverse that the Judge should state at [22] that "Isis therefore cannot be construed as actors of persecution". It is inconceivable that anyone would think that Isis are not agents of persecution. That is a material error of law.

10. The Judge had recorded at [40] “that there are substantial grounds for believing that he faced a real risk of suffering serious harm on return to Iraq and he does qualify for humanitarian protection”. He then goes on to dismiss the appeal. The confused findings as to whether SMA was or was not at a real risk of suffering serious harm on return to Iraq is a material error of law.

11. It was accepted that SMA was from Diyala. It was conceded this is in a contested area. The Judge found that he could rely on family and friends from there to assist in obtaining relevant documentation. This is out of step with AA (article 15 (c)) (Iraq) CG [2015] UKUT 00554 (IAC) and the Judge did not quote from AA the relevant extract regarding the difficulty in obtaining the required documentation from a contested area to make internal relocation a reasonable option. This amounts to a material error of law.

12. Both representatives agreed that if I found that there was a material error of law, which I have, I should remit the matter to be reheard de novo as the errors go beyond those contained within the Presidential Guidance for retention in the Upper Tribunal.

Decision:

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.

I remit the matter to the First-tier Tribunal for a de novo hearing, not before Judge Fox.

Deputy Upper Tribunal Judge Saffer
6 June 2017