The Upper Tribunal
Immigration and Asylum Chamber) Appeal Number: PA/06745/2016

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 21 November 2017	**On 23 November 2017**
Prepared on 22 November 2017	

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

D. G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Rogers, Immigration Advice Centre
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq who entered the UK illegally. He made an application for protection on 8 January 2016 after arrest, and the Respondent refused that protection application on 23 June 2016. The Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 14 February 2017, and it was dismissed on all grounds, in a decision promulgated on 16 February 2017 by First Tier Tribunal Judge Fox.
2. The Appellant was granted permission to appeal that decision on 30 August 2017 by Upper Tribunal Judge Reeds.

3. The Respondent filed a Rule 24 Notice dated 14 September 2017 in relation to the grant of permission, opposing it. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

Error of Law?

4. Ground one complains that the Judge made findings that were inconsistent. Having found that the interview was conducted at the end of the day, and by telephone, it is asserted that it was not open to the Judge to reject the Appellant's evidence that he had misunderstood the question about past arrest, which had led to the answer being recorded that the respondent had asserted was inconsistent with subsequent evidence. There is no merit in this complaint in my judgement, it is a simple disagreement with the Judge's analysis of the weight that could be given to the evidence. The finding made was open to him, and it was adequately reasoned.
5. The Judge appears in any event to have accepted that the Appellant was at risk from ISIS in his home area. Grounds two, three, four and five are complaints that the Judge failed to properly apply the applicable country guidance to the evidence before him, in relation to both the asylum, Article 3 and humanitarian protection grounds of appeal. Before me it was acknowledged that those three grounds of appeal had been conflated in the decision.
6. After some discussion, it became common ground between the parties that the Judge had either failed to identify whether he accepted the claim as to the location of the Appellant's "home area", and/or whether this was a "contested area", or, his findings in these respects were unsustainable in the light of the current country guidance. The Appellant had in fact identified consistently at interview a village in the province of Kirkuk as his home; which if true led to certain conclusions being drawn pursuant to the country guidance issued by the Upper Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 544, (as amended and confirmed by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944). The decision did not distinguish between Kirkuk city and the province, but concluded simply that return to Kirkuk was feasible, without any adequate analysis of whether the Appellant would be returning to the same position of a risk of harm from which the Judge appears to have accepted he had fled. There was also no adequate analysis of how the Appellant was to be expected to travel from Baghdad airport as the point of return to Iraq to his home in safety. The province of Kirkuk was acknowledged to be a "contested area" for the purposes of humanitarian protection in AA, and the Judge could not go behind that without clear evidence of a durable and significant change in circumstances.
7. Before me it was common ground that the Appellant's case had been that he had in the past been issued lawfully with a legitimate Iraqi passport, but had since lost [Q8]. One might have thought therefore that this was therefore an individual who should be able to approach the Iraqi Embassy in London for a replacement passport, since he ought to be able to supply the fingerprints and other biographical details that would allow

that to occur by reference to the centralised records of the passport office, without the need for recourse to the "family book" in Iraq of which he had denied knowledge. In turn, that begged the question of whether he could gain the issue of a CSID.

8. The analysis of the evidence needed to be undertaken in the light of the guidance to be found in AA and BA (returns to Baghdad) Iraq CG [2017] UKUT 18, and since the Appellant had been found to be a Sunni Kurd, that analysis needed to focus upon his ability to relocate to either Baghdad, or, to the KRG to avoid his risk of persecution or breach of his Article 3 rights. In the event the Judge was required to consider the humanitarian protection appeal argument that the Appellant could avoid the internal armed conflict by relocation to the KRG, then that also required a focus upon the issue identified in AA as confirmed by the Court of Appeal;

> *Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Erbil by air): (b) the likelihood of K's securing employment in the IKR; and, (c) the availability of assistance from family and friends in the IKR.*

9. It is conceded on behalf of the Respondent before me that the decision fails to demonstrate that the evidence was adequately analysed in the light of the guidance to be found in AA and BA. As such it is conceded that the only fair course is to remit the appeal for rehearing with no findings of fact preserved, beyond the acceptance that the Appellant is a Sunni Kurd from the province of Kirkuk who fled that area as a result of a well founded fear of persecution at the hands of ISIS.

10. In the circumstances the decision discloses a material error of law that renders the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered with the parties whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.

11. Having reached that conclusion, with the agreement of the parties I make the following directions;

    i) The decision is set aside, and remitted to the First Tier Tribunal for rehearing.

ii) The findings of fact that the Appellant is a Sunni Kurd from the province of Kirkuk who fled that area as a result of a well founded fear of persecution at the hands of ISIS are preserved.
iii) The remitted appeal is not to be listed before Judge Fox.
iv) A Kurdish Sorani interpreter is required for the hearing of the appeal.
v) There is presently anticipated to be the Appellant and no other witness, and the time estimate is as a result, 3 hours. The Appellant proposes to rely upon expert evidence to address the current position in the province of Kirkuk, and the current ability of ethnic Kurds who did not originate from the KRG to enter and settle in the KRG. Dr George is instructed to prepare such a report which will be available for service by the end of January 2018.
vi) The appeal is to be listed at the North Shields hearing centre on the first available date after 7 February 2018.
vii) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform e Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.
viii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

12. The decision promulgated on 16 February 2017 discloses an error of law that requires it to be set aside, and the appeal is remitted to the First Tier Tribunal for rehearing with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 22 November 2017