Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA089872016

THE IMMIGRATION ACTS

Heard at Newport	**Decision and Reasons Promulgated**
On 31st July, 2017	**On 07th August, 2017**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

A R R
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Stefan Kotas, a Senior Home Office Presenting Officer
For the Respondent: Mr Owain James of Counsel, instructed by Qualified Legal Solicitors

REASONS FOR FINDING AN ERROR OF LAW

1. In this appeal the Secretary of State for the Home Department is the appellant and to avoid confusion I therefore refer to him as being, "the claimant".

2. The respondent was born on [ ] 1981, and is a citizen of Iraq.

3. The respondent gained entry to the United Kingdom clandestinely. He was arrested on 26th May 2002, and on 10th June 2002, wrote claiming asylum, which was refused by the appellant on 19th July 2002. The respondent was granted exceptional leave to remain until 19th July 2006.

4. On 19th August 2004, the respondent was convicted of violent disorder at Nottingham Crown Court and sentenced to 27 months' imprisonment.

5. On 21st June 2005, the respondent applied for a Home Office certificate of identity in order to travel to Iran. This application was refused on 15th December 2005 and on 6th July, 2006 the respondent applied for indefinite leave to remain.

6. On 7th November 2007, the respondent was convicted at Mansfield Magistrates' Court of driving whilst disqualified and using a vehicle whilst being uninsured. He was fined and disqualified for driving for six months and ordered to pay costs. Because of the delay in processing his application, the respondent sought judicial review, for which permission was refused. He withdrew his application for indefinite leave whilst seeking an oral permission hearing.

7. On 6th December 2012, the claimant wrote to the respondent seeking reasons why he should not be deported. He responded on 19th December 2012.

8. On 10th July 2013, the claimant refused to grant asylum and decided to make a deportation order by virtue of Section 5(1) Immigration Act 1971, which included refusal of the 6th July 2006, ILR application. The respondent appealed this decision and his appeal was dismissed by the First-tier Tribunal on 23rd September 2013. Permission to appeal to the Upper Tribunal was refused and a deportation order was signed on 19th September 2004.

9. Representations were made on his behalf seeking a revocation of the deportation order on 24th October 2014. The claimant decided to refuse to grant him leave or revoke the deportation order on 8th August 2016 and the respondent appealed to the First-tier Tribunal. The hearing came before First-tier Tribunal Judge Eames at Newport on 27th October 2016.

10. Having examined the objective evidence, including an expert report, the judge found that he was not satisfied that the respondent would face a real risk of suffering serious harm in terms envisaged by Article 15(c). However, on the basis of all the evidence he heard, he found that the respondent could not reasonably be expected to stay safe in Baghdad or in the Iranian Kurdish Region.

11. The claimant sought and was granted leave to appeal the judge's determination and relied on three grounds.

12. At the hearing before me, Mr Kotas very properly accepted that grounds 1 and 2 failed to identify any material errors of law on the part of the judge. Mr Kotas suggested, however, that there was a material conflict in the judge's findings at paragraphs 94 and 95 of the determination, because at paragraph 94 the judge found that the respondent could not relocate in the Iraqi Kurdish Region, having earlier in the determination found that the respondent could not relocate to Baghdad. In paragraph 95 the judge said this:-

> "95. Overall, given the evidence, I am not satisfied that the [respondent] would face a real risk of suffering serious harm in the terms envisaged by Article 15(c). However, on the basis of the evidence I have reviewed above, I do find that the [respondent] cannot reasonably be expected to stay in the parts of the country specified by the [claimant] as, in effect, safe – Baghdad or IKR. In both cases, conditions would plainly be highly adverse to him for different reasons, even whilst not reaching the threshold of serious harm. All the hardships, difficulties and obstacles which are enumerated by Dr Fatah in both destinations do amount, in my view, to an unreasonable level of adversity. The [respondent] cannot reasonably be expected to stay in either area. The effect of that is that the [claimant] is not relieved of her duty to grant humanitarian protection on the basis of her paragraph 339O(i)(b) reasoning. Put another way, the grant of humanitarian protection under paragraph 339C is appropriate, and my decision is to that effect. It means that the deportation order is to be revoked."

13. Counsel accepted that there were difficulties with paragraphs 94 and 95 of the determination and he told me that he had no objection to the matter being remitted to the First-tier Tribunal in the event that I were to set aside the determination.

14. For the claimant, Mr Kotas pointed out that the judge had failed to properly engage with the decision of the Tribunal in *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544 (IAC). He submitted that the judge's reasoning and consideration was wholly inadequate.

15. I reserved my decision.

16. I have concluded that having stated that there was no risk of harm in either Baghdad or IKR, the judge erred and contradicted himself by suggesting that the respondent could not be expected to stay in either area as he did in Paragraph 95. The judge gave reasons why relocation to IKR may cause difficulties for the respondent, but no such explanation was given in respect of Baghdad.

17. I have concluded that the determination cannot stand. I am grateful to both representatives for agreeing that in the event that I find an error of law the matter needs to be remitted to the First-tier Tribunal for a hearing afresh.

18. I set aside the decision of Judge Eames. Given the delays and difficulties that are likely to ensue in the event that I were to retain this file for

hearing before me in the Upper Tribunal, I remit the appeal to be heard afresh by the First-tier Tribunal by a judge other than First-tier Tribunal Judge Eames. Two and a half hours should be allowed for the hearing of the appeal and a Kurdish (Sorani) interpreter be made available at the hearing.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Richard Chalkley

Upper Tribunal Judge Chalkley Date 04/08/2017