



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10742/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields
On 3 August 2017

**Decision & Reasons
Promulgated
On 11 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**S S O
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Brakaj of Iris Law Firm
For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant, preserving the anonymity order made at the First-tier, because the appellant is a minor.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Cope promulgated on 02/03/2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on [] 2000 and is a national of Iraq. On 20/09/2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Cope ("the Judge") dismissed the appeal against the Respondent's decision.

5. Grounds of appeal were lodged and on 02/05/2017 Upper Tribunal Judge McWilliam gave permission to appeal stating

"The appellant seeks permission to appeal against the decision of JFTT Cope to dismiss his appeal on asylum grounds.

It is arguable that the Judge did not make findings in respect of whether or not the appellant has family in Iraq and risk on return in the context of the circumstances at the date of the hearing."

The Hearing

6. (a) Ms Brakaj, moved the grounds of appeal. She told me that it is accepted that the appellant's father was killed by Isis, and that the appellant is no longer in contact with his mother and sisters, so that the appellant is a minor (his 18th birthday is not until April next year) without support. She told me that the Judge failed to consider the situation facing a minor returning to IKR with no family support, and no accommodation. She told me that the appellant is a member of a particular social group because he is a vulnerable minor. She told me that the respondent's decision forces the appellant to become an internally displaced person, and that is not something that the Judge has either considered or factored into his assessment of risk on return.

(b) Ms Brakaj told me that in this case it was not sufficient to find that, because there is no internal armed conflict in IKR, the comparative peace there was sufficient for the appellant to return safely. She referred me to various pieces of the country information guidance reports which discuss the situation around Mosul and the plight of internally displaced persons. It is common ground that the appellant comes from Makhmur, which was an area of significant conflict. She told me that that is the area of the appellant would be returning to, and emphasised his vulnerability as an

unsupported minor. Ms Brakaj relied on AA (unattended children) Afghanistan CG [2012] UKUT 00016 (IAC)

(c) Ms Brakaj told me that the Judge's consideration of internal relocation was inadequate, and that it is unduly harsh to expect the appellant to return to his home area, which has been ravaged by conflict. She told me that it is not reasonable to expect the appellant to relocate within IKR. She emphasised that the convention reason plead is that the appellant is a member of a particular social group because of his young age. She told me that the appellant's appeal should succeed on article 3 ECHR grounds. She urged me to set the decision aside and substitute my own decision allowing the appeal.

7. (a) Mr Petterson, for the respondent, told me that the appellant will not be at risk on return. She told me that the First-tier Judge correctly acknowledged that the situation in Makhmur has changed since the appellant left. At [54] of the decision the Judge accepts that the appellant is from Makhmur and accepts that the appellant's father was killed by Isis and his mother and sisters have disappeared. However, she reminded me that someone from the village helped the appellant leave for the UK. She told me that the FtT Judge had correctly acknowledged the change of circumstances since the appellant left his home area. She told me that the appellant will return to the IKR as a former resident of IKR.

(b) Ms Petterson noted that it is claimed that the appellant is a member of a particular social group, but told me that the agent of persecution is not identified. She told me that the question of whether or not the appellant still has a village to return to is not argued, so that the appellant is not an internally displaced person. She told me the arguments in relation to the reasonableness of internal relocation are without relevance because the Secretary of State does not argue that the appellant will relocate internally. The Secretary of State's position is that the appellant can return to his home area, where there is not an agent of persecution nor is there a risk of persecution. She reminded me that the Judge summarises the appellant's claim at [20] of the decision.

(c) Mr Petterson conceded that the Judge may have erred in failing to consider what, if any, family members the appellant could rely on on return, but insisted that as the appellant does not succeed under the refugee convention he can safely returned to his home area. She told me that he might be young but he will not be persecuted. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

8. The appellant's home town, Makhmur, is a town in Iraq. It is part of Makhmur District in Erbil Governorate. Makhmur is mainly populated by Kurds and Arabs. During the 2014 ISIL crisis, the town was taken over by ISIL militants before being regained again by combined Kurdish forces, led

by the Kurdistan Workers' Party. A volunteer civilian militia to defend the town in the future was started in response

9. When the appellant lodged a notice of appeal with the First-tier Tribunal, his appeal was made specifically on the basis of his imputed political opinion. No other convention reason was argued. At [20] of the decision the Judge summarises the appellant's case and records the submissions made to him. It is clear that the appellant claimed proceeds on the basis of a fear of Isis, and that the convention reason was his imputed political opinion. Today I am told that the convention reason is membership of a particular social group because of his age.

10. In LQ (Age: immutable characteristic) Afghanistan [2008] UKAIT 00005 the Tribunal found that a person's age is an immutable characteristic. Although it changes constantly, one can oneself do nothing to change what it is at any particular time.

11. In the rule 24 response the respondent says

"The respondent does not oppose the appellant's application for permission to appeal and invites the tribunal to determine the appeal with a fresh oral (continuance) hearing. The Judge did not consider whether the appellant had family to return to at the date of the hearing and whether the appellant at the date of the hearing was at risk on return for a convention reason as he was still a minor."

12. The Judge writes a careful, well-reasoned, decision with sustainable findings of fact. For the clear reasons given, the Judge finds that the appellants appeal cannot succeed on the basis that is placed before him. At [56] the Judge correctly identifies the appellant's home area. He then moves on to consider the background materials and at [65] explains that he will consider the changed circumstances which were apparent at the date of hearing.

13. At [71] the Judge gives clear reasons for rejecting the submission that the appellant comes from a part of Iraq occupied by Isis. Between [72] and [76] the Judge finds that the appellant is less than 18 years of age and has lost his family.

14. What is absent from the consideration between [72] and [76] is an analysis of the circumstances the appellant would face on return to his home area. It is accepted that the appellant is a minor who has lost his family. The background materials indicate that the appellant's home area was a battleground until it was recovered by peshmerga and Iraqi forces. Further fact-finding is required to assess whether the appellant has a home to return to, and if he has not whether it is reasonable for the appellant to relocate to another area of IKR.

15. Permission to appeal was granted on the basis that it is arguable that there are inadequate findings on whether or not the appellant has family

in Iraq, and the quality of the assessment of risk on return. In the rule 24 note the respondent partially concedes the appeal and accepts that a further oral hearing is necessary to consider those issues.

16. I therefore find that the decision is tainted by a material error of law. I must therefore set the decision aside, however there is no justifiable criticism of the Judge's fact-finding exercise. There is no challenge to the Judge's rejection of the appellant's claim to have a well-founded fear of persecution because of his imputed political opinion. I therefore find that the Judge's findings of fact will stand. What is required in this case is a further assessment of risk in relation to the degree of support the appellant might have if returned to IKR, and quality of reception the appellant would have as a minor in IKR. Further consideration must be given to the reasonableness of return and the risk of rendering the appellant a displaced person.

Remittal to First-Tier Tribunal

17. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

18. In this case I have determined that the case should be remitted because the assessment of risk to this appellant on return needs to be completed.

19. I remit the matter to the First-tier Tribunal sitting at North Shields to be heard before any First-tier Judge other than Judge Cope.

Decision

20. The decision of the First-tier Tribunal is tainted by a material error of law.

21. I set aside the Judge's decision promulgated on 2 March 2017. The Judge's findings of fact are preserved. The appellant's appeal is remitted to the First-tier Tribunal so that an assessment of risk on return can be completed.

Signed
2017

Paul Doyle

Date 8 August

Deputy Upper Tribunal Judge Doyle