Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06400/2018

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 11 December 2018	**On 19 December 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

A R A
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Ms Sarah Rogers, Counsel instructed by IAS (Middlesbrough)
For the respondent: Mr Myroslav Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order
The Upper Tribunal has made an anonymity order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or

indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's refusal to grant him international protection on asylum or humanitarian protection grounds, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Iraq and is a Kurd from Kirkuk.

Background

2. The appellant has never held an Iraqi passport. The appellant has in Iraq his CSID, his Iraqi National Identity Cert and an Iraqi Driving licence. The appellant is young and healthy and able to work, once he has his documents. He spent most of his life in Iraq, coming to the United Kingdom only in November 2017 when he was 26 years old.

3. The appellant is not in contact with his parents, since he left, nor with three of his uncles, but he is in regular and supportive contact with one paternal uncle living in Kirkuk. That uncle has recently been helpful in sending over from Iraq additional documents for the First-tier Tribunal hearing. The uncle has a CSID and may be able to find the appellant's CSID or help him apply for a replacement.

4. The appellant came to the United Kingdom seeking international protection on 7 November 2017. He claimed to have trained with the Peshmerga and worked with them as a driver, putting him at risk from ISIS because the British Army would have uploaded photographs of him with soldiers in army uniform.

First-tier Tribunal decision

5. The First-tier Judge analysed the evidence produced and found that the appellant's core account was vague and lacking in credibility. He then went on to consider the Article 15(c) risk to the appellant, with reference to all available country guidance and the respondent's CPIN of September 2017 entitled *Iraq: Return/internal relocation.*

6. The Judge found that the respondent had accepted, at least implicitly, that the appellant came from an area of the Kirkuk Governorate in or near Hawija. He found, applying the Upper Tribunal and Court of Appeal's country guidance and the respondent's CPIN that the appellant had established a risk in his home area, but that the appellant could use his own, or a newly issued, CSID card to travel to the IKR, where he would be safe.

7. The First-tier Judge also found that the appellant would not be at Article 3 ECHR or Article 15(c) risk on return and would be able to reach the IKR and enter it without difficulty. The First-tier Judge dismissed the appeal.

8. The appellant appealed to the Upper Tribunal.

Permission to appeal

9. Permission to appeal was granted on the basis that it was not open to the First-tier Judge to dismiss the appeal with reference to newer country guidance than that available at the hearing, without giving the appellant's representatives an opportunity to make submissions thereon. The Upper Tribunal had issued updated country guidance in *AAH* (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 (IAC), which was handed down on 26 June 2018, just over a week after the hearing but 1 day before the promulgation of the present decision.

10. The permission grant states that:

> "Relevant to the Judge's decision was her finding that the internal relocation was available to the appellant. …The Judge did not afford the appellant by his representatives an opportunity to consider the [AAH] decision and moreover to consider whether to adduce further evidence or make further submissions, and the Judge's failure to do so arguably amounted to a procedural irregularity capable of making a material difference to the outcome or the fairness of the proceedings."

Rule 24 Reply

11. The respondent in his Rule 24 Reply, after the ux standard submission, said this:

> "3. Given the findings of the First-tier Judge it is hard to see what difference, if any, the new CG case would have had on the Judge's conclusion, even if the parties had been recalled to make submissions on this point.
>
> 4. The First-tier Tribunal clearly found the appellant's uncle could either post the CSID card or obtain a replacement for him. It is submitted the fact this issue was not put to the appellant is immaterial, given the contact with the uncle very near the hearing date of the appeal, and that the uncle had already sent the appellant other documents – the Judge was entitled to make the inference she did. …"

12. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

13. At the error of law hearing today, Ms Rogers said that further documents had been obtained to meet the criticisms of lack of corroboration by the First-tier Tribunal in its decision. I observed that new documents could not render the decision made in their absence even arguably wrong in law.

14. Ms Rogers had written to the respondent (the respondent received a letter on 4 December 2018) and accepted that the arguments she wished to pursue amounted to an assertion of a fresh claim on which the respondent had not yet been invited to make a decision. She undertook to make a paragraph 353 fresh claim following the hearing.

Analysis

15. The First-tier Judge was unarguably entitled, indeed rqid, to have regard to the country guidance in *AAH (Iraq)* on internal relocation. In the light of the guidance there given, this appeal in its present form was hopeless. Ms Rogers was not able to identify any manner in which, had the appellant been invited to make submissions after the handing down of *AAH,* the outcome of the appeal on the facts, evidence and arguments before the First-tier Tribunal, would have been different.

16. Obviously it would have been better to give the parties an opportunity to comment on *AAH,* but applying *AAH* was not an error of law and even if it were, on this factual matrix, such error would have been immaterial.

17. The appeal is dismissed and the decision of the First-tier Tribunal stands.

DECISION

18. For the foregoing reasons, my decision is as follows:

    The making of the previous decision involved the making of no error on a point of law

    I do not set aside the decision but order that it shall stand.

Date: 11 December 2018 Signed Judith AJC Gleeson Upper Tribunal Judge Gleeson