Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/11051/2017

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 24 April 2018	**On 26 April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

K. U.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Soltani, Solicitor, Iris Law Firm
For the Respondent: Ms Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq who entered the UK unlawfully, and who claimed asylum on 24 May 2017. That application was refused on 16 October 2017, and his appeal against that refusal came before the First-tier Tribunal at North Shields on 28 November 2017, when it was heard by First-tier Tribunal Judge Hindson. The appeal was dismissed on asylum grounds, but allowed on humanitarian protection and Article 3 grounds in a decision promulgated on 18 December 2017.

2. The Respondent's application for permission to appeal the decision was granted by First tier Tribunal Judge Alis on 14 January 2018. There has

been no cross appeal by the Appellant, and the grounds of the Respondent's challenge refer only to the decision to allow the Article 3 appeal, being silent on the decision to allow the humanitarian protection appeal. Thus the matter comes before me.

3. Both parties are agreed before me that the Judge's decision is extremely brief. There is no reference to any relevant current country guidance, beyond the cursory reference necessary to conclude that the Appellant's home lies within Diyala province, and that this is one of the "contested areas" referred to. This was not however an issue that was disputed before him. Given the failure to provide the proper citations for the decisions referred to (they are cited simply as AA and BA), the reader is left to infer that the Judge referred himself to AA (Article 15(c)) Iraq CG [2015] UKUT 544 (as opposed to any of the other innumerable decisions entitled AA), and to BA (Returns to Baghdad) Iraq CG [2017] UKUT 18. The Judge may, or may not, have intended in addition to make reference to the Court of Appeal decision of AA (Iraq) [2017 EWCA Civ 944, promulgated on 11 July 2017; it is impossible to tell.

4. It is common ground before me that the Judge made no reference to the Appellant's admission at interview that the Appellant had been issued by the Iraqi authorities with a legitimate passport [A2 Q1.8] and a legitimate CSID [B4 Q15]. Thus he never considered whether the Appellant did in truth continue to enjoy possession of those documents. Nor did he consider whether, by reference to the current country guidance, if he had genuinely lost them, he would be able to secure the issue of replacements either before leaving the UK for Iraq, or upon arrival in Iraq. He also made no reference to the question of whether the Appellant's return to Iraq was feasible. The Judge appears to have accepted however that the Appellant could travel in safety to the KRG – although without expressly looking at whether he would be able to do so from the point of return of Baghdad airport. He concluded that the Appellant would be granted admission to the KRG for up to 40 days – but that he would be destitute within the KRG and thus it would not be reasonable to expect him as a fit able bodied Kurd to relocate to the KRG [23]. It is clear that this approach was not consistent with the step by step required by the current country guidance, and that the findings of both primary and secondary fact were made in ignorance of relevant admissions made by the Appellant. Armed with a valid CSID, and, with the relocation allowances available to those who return voluntarily (and the Appellant is not entitled to advance a cased based upon a denial that he would accept such assistance) there was no obvious reason for the Appellant to be destitute within the KRG at any stage.

5. Before me both parties were agreed that the approach to internal relocation was materially flawed – whether that was looked at in the context of the Article 3 appeal or the humanitarian protection appeal. I agree. Upon due reflection they were also agreed that the entirety of the Judge's consideration and dismissal of the asylum appeal is to be found

within three sentences, and that this was an inadequate assessment of the evidence and the issues involved [21]. Again I agree.

6. After time for reflection, and to take instructions, ultimately both parties invited me to take a pragmatic approach to the appeal, namely to set aside the decision of the Judge on all grounds, and remit the appeal for a de novo rehearing with no findings of fact preserved. In so doing both parties accepted (a) that the Respondent's challenge could and should have raised the complaints that were identified today, (b) the complaints that were raised could and should have been raised in relation to the humanitarian protection appeal, and not merely in relation to the Article 3 appeal, and, (c) that there could and should have been a cross appeal on behalf of the Appellant in relation to the dismissal of the asylum appeal. The adoption of such a pragmatic course by both parties is to be commended, and where possible facilitated; particularly where, as here, it is obvious that the decision needs to be set aside and remade. Accordingly I agree to the course requested.

7. In circumstances such as this, where by reason of the brevity of the decision 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 parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required 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 13 November 2014.

8. To that end I remit the appeal for a fresh hearing by a judge other than Judge Hindson at the North Shields Hearing Centre. A Kurdish Sorani interpreter is required. The Appellant wishes to lodge a further witness statement, and so the appeal may be listed as a short notice filler after 29 May 2018.

Notice of decision

9. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

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 her or any member of her 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.

Signed Date 24 April 2018

Deputy Upper Tribunal Judge J M Holmes