Upper Tribunal
(Immigration and Asylum Chamber Appeal Number: PA/00843/2018

THE IMMIGRATION ACTS

At: Bradford **Decision & Reasons Promulgated**
On: 11th January 2019 **On: 13th February 2019**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

IAA
(anonymity direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

For the Appellant: Mr C. Holmes, Counsel instructed by Parker Rhodes Hickmott Solicitors
For the Respondent: Mrs R. Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born in 1992. He appeals with permission the decision of the First-tier Tribunal (Judge RS Drake) to dismiss his appeal on protection (humanitarian protection) grounds.

2. The case for the Appellant was as follows. He has lived in this country since 2008 when he arrived here and sought protection as an unaccompanied minor. He is a Kurd from Kirkuk. Although he was refused asylum in September 2014 he made a 'fresh claim' for protection on the

grounds that the security situation in Kirkuk had deteriorated to the extent that as a civilian he would face a real risk of harm simply by virtue of his presence. His application was considerably strengthened by the publication, on the 30th October 2015, of the Upper Tribunal decision in AA (Article 15(c)) Iraq CG [2015] UKUT 00544. In that decision the Tribunal held that as a 'contested area' Kirkuk was not safe for civilians. The Respondent did not make a decision on that claim until the 15th December 2017 when it was refused, *inter alia* on the grounds that the Secretary of State considered the situation in Kirkuk to have improved since AA (Iraq) was promulgated, and that Article 15(c) of the Qualification Directive no longer applied. This was the central matter in issue before the Tribunal. The Appellant provided evidence and submissions in rebuttal of the Respondent's conclusions and invited the Tribunal to apply the extant country guidance.

3. The second issue in the appeal, if the first was resolved in the Appellant's favour, was whether the Appellant could reasonably be expected to avail himself of an 'internal flight alternative' and relocate in order to avoid the fighting in and around Kirkuk. It was the Respondent's position that the Appellant could reasonably be expected to do so, to either Baghdad or the IKR.

Error of Law

4. I find that the First-tier Tribunal has manifestly failed to address the central issue in this appeal, namely whether the Respondent has adduced cogent evidence to demonstrate that the country guidance in AA (Iraq), insofar as it relates to Kirkuk, should no longer be applied. Under the heading 'findings of fact' the determination contains a series of barely comprehensible statements, none of which go to that issue. The Tribunal appears to be focused on the Appellant's original reasons (or claimed reasons) for why he left Iraq in 2008. Very little, if any, of that was relevant to whether he faced a risk of indiscriminate violence as a civilian today. No reasoned finding is reached on that issue.

5. I should add that the grounds correctly identify a number of discrete errors in the determination. These include:

   i) A failure to apply the appropriate standard of proof. At [20.2] and again at [20.5] the formulation "not such as to be more likely than not to have happened" is used, where the correct standard was "it has not been shown to be reasonably likely". At 20.6 the Tribunal finds that the Appellant has failed to show that it would be "impossible" for him to obtain a CSID: again the Appellant was only required to demonstrate that it was "reasonably likely" that he would not be able to acquire documentation. This went to the second issue in the appeal.

   ii) Failure to consider material evidence. At paragraph 20.5 the Tribunal states that "no evidence" was submitted to support the Appellant's case. In fact a whole bundle of evidence was supplied.

iii) Errors of fact. At paragraph 13 the Tribunal indicates that Kirkuk is part of the IKR (or that this was the Appellant's case). That was not the Appellant's case, and Kirkuk is not part of the IKR.

6. For those reasons, the parties before me were in agreement that the determination of the First-tier Tribunal must be set aside in its entirety.

Disposal

7. I am not satisfied that the Appellant has had an effective hearing in the First-tier Tribunal. The two issues in his appeal (identified at my paragraphs 2 and 3 above) are completely ignored in the First-tier Tribunal determination. In those circumstances, and having regard to the extent of judicial fact finding required, I consider it appropriate to remit this matter to the First-tier Tribunal (a judge other than Judge RS Drake) for the decision to be re-made *de novo*.

Anonymity Order

8. The Appellant seeks international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I consider it appropriate to make an order in the following terms:

> "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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Decisions

9. The decision of the First-tier Tribunal contains errors of law such that it is set aside in its entirety.

10. The decision in the appeal is to be remade in the First-tier Tribunal

11. There is an order for anonymity.

Upper Tribunal Judge Bruce
11th January 2019