Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03400/2019**

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 20 August 2019	**On 09 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

MR H H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aziz instructed by Lei Dat & Baig Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Iraq born on 21 March 1994. He left Iraq on 25 September 2014 he claimed because he had been working for a man named M at his garage in Kirkuk. M began repairing cars for ISIS and used a second garage in a different place in order to plant explosives in vehicles, as a result of which he was arrested on 16 September 2014 and subsequently sentenced to ten years in prison. Fearing repercussions, the Appellant's uncle took him to his friend's house for nine days, following which he went into hiding having learnt the authorities searched his home and he then left Iraq with the help of an agent.

2. The Appellant arrived in the UK unlawfully on 1 December 2014 and claimed asylum the same day. This application was refused in a decision dated 22 March 2019. The Appellant appealed against that decision and his appeal came before Judge of the First-tier Tribunal Devlin for hearing on 15 May 2019. There was no appearance by or on behalf of the Respondent. In a decision and reasons dated 31 May 2019 the judge dismissed the appeal on the basis that the Appellant's account was not credible and that he would not be at risk on return to Iraq.

3. Permission to appeal was sought, in time, on the basis that the judge's findings as to the Appellant's credibility were inconsistent, in that the judge accepted some aspects of the Appellant's claim but rejected other aspects and failed to take into account that he was vulnerable due to his illiteracy.

4. Permission to appeal was granted by Judge of the First-tier Tribunal Bird in a decision dated 3 July 2019, in relation to the fact it was arguable that the judge made an arguable error of law in making findings which, on the face of them, appear inconsistent and that he had failed to apply anxious scrutiny to the appeal referring to the Appellant as coming from Iran on two occasions at [222] and [229].

Hearing

5. At the hearing before the Upper Tribunal, Mr Aziz sought to rely on the grounds of appeal. He also sought to raise a new issue, that of procedural fairness, in that at page 33 of the decision at [260] the judge raised a number of points which had not been put to the Appellant in order to give him the opportunity to comment, those points being, for example:

> *"The Appellant did not name (i) his uncle; (ii) the village to which he accompanied M to pick up the two vehicles; or (iii) the friend who warned him that the security forces were looking for him. It is true he was not asked to do so in the asylum interview. However, he had the opportunity to add further detail in his statement. He failed to do so. I do not think it can be argued that he was afraid to incriminate the said individuals since (a) he was told at the commencement of the asylum screening interview that 'the information you give us will be held in confidence'; (b) he was told at the commencement of the asylum interview that 'The information you provide about your reasons for seeking asylum will not be shared with the authorities in your own country'; and (c) by the date of his asylum interview he had been living in the UK for three years and by his own admission he realised he was in a safe place".*

6. However, in light of the fact that a procedural fairness ground had neither been raised in the grounds of appeal thus permission had not been granted on that point, nor had any formal application been made to amend the grounds in advance of the hearing in order to give Mr McVeety the opportunity to consider the point, I declined to admit it as a further ground, not least on the basis that I did not consider it would make any

material difference to the outcome of the proceedings, as the judge did not make any adverse finding specifically on that particular issue, apart from what is contained at [260].

7. Mr Aziz also took issue with the judge's finding at [276] that he was not satisfied the Appellant is illiterate and adopting a point I had raised at the outset of the hearing, he submitted that the judge had erred in preferring the evidence set out at [2.3.27] to [2.3.35] of the CPIN, version 5 dated November 2018, rather than the position taken in the country guidance cases of AA (Iraq) and AAH (Iraqi Kurds – internal relocation) CG [2018] UKUT 212 and that he had erred in finding at [309] that he was not satisfied conditions in Kirkuk are such that there were substantial grounds for believing that any civilian returned there solely on account of his presence faced a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the QD. Mr Aziz submitted this was a material error of law which was sufficient for the appeal to be remitted back to the First-tier.

8. In his submissions, Mr McVeety stated that in fact the judge's position was that he did not accept the Appellant's credibility, that what appeared to be findings in respect of the Appellant's favour was the judge simply setting out in some detail the Respondent's position which had been also set out in the refusal decision. Mr McVeety submitted that what the judge had done at [259] to [269] was consider the Appellant's credibility overall and reject it. He submitted that the judge's decision was extremely detailed and long, the judge had been perhaps overly forensic and cautious but had been extremely careful, perhaps because the Respondent was not represented and had set out the Respondent's case in full, considered the Appellant's account in its entirety, found it lacking in detail and dismissed the appeal on the basis of credibility.

9. In relation to the Article 15(c) point, Mr McVeety submitted it was open to the judge to depart from the country guidance, however it was not in any event a material error because the judge had gone on in the alternative to make a finding that the Appellant could internally relocate to the IKR and had given detailed reasons and made detailed findings in light of the country guidance decision of AAH (op cit). In light of the clear findings on credibility the Appellant would not be able to succeed.

10. In reply Mr Aziz sought to reiterate that the manner in which the judge had dealt with Article 15(c) in Kirkuk was erroneous and that this was material.

Findings and Reasons

11. I find no material errors of law in the decision of First-tier Tribunal Judge Devlin. The decision and reasons is conspicuously detailed and runs to 43 pages and 331 paragraphs. It cannot be said that the judge did not give detailed and careful consideration to each aspect of the appeal. I prefer the submissions of Mr McVeety in respect of the judge's approach and I find there is no inconsistency in relation to his findings on credibility. It is quite clear from page 8 onwards that what the judge is there doing is set

out by way of a subheading *"Points raised in the Reasons for Refusal Letter"*. The judge then sets out each point made by the Respondent and whether or not he accepts it. Whilst it is the case that a number of points raised by the Respondent were not accepted by the judge, e.g. at [46] and [47] *viz* whether the Appellant had failed to satisfactorily explain how he knew that the vehicles brought to M's garage were connected to ISIS and gave detailed reasons for his findings, ultimately there are a number of material points in respect of which the judge did not find in the Appellant's favour. The analysis of the refusal decision goes to page 28 at [219].

12. The judge then turned to his own observations on the case and found that the Appellant's evidence in respect of his identity documentation was inconsistent and gave detailed reasons for so finding and also his evidence with regard to his home address, which in part provided the explanation for his failure to contact his family since he left Iraq. The judge at [267] to [268] noted that there are real questions as to:

    (1) why the Appellant waited at home if he knew that he was wanted by the security forces in connection with terrorist activity;

    (2) why he initially claimed he was not aware of the security forces having come to his house, or perhaps more accurately, how he could have forgotten that his uncle told him that they did go to his house and were looking for him; and

    (3) how the Appellant could have been unaware that there was a postal service in Iraq if, as he claimed, he had lived in Kirkuk for the first twenty years of his life. These remain unanswered despite having been raised in the Reasons for Refusal Letter.

13. The judge went on to find although there was broad consistency in the Appellant's account, he noted a number of significant discrepancies at [271] of the decision, none of which were satisfactorily explained, although all the points were raised in oral evidence. In light of the judge's findings no material issue of procedural fairness arises. The judge at [274] to [280] relied upon the absence of supporting documentary evidence. Whilst at [276] he referred to the Appellant being illiterate, the main point he is making at this paragraph is that the Appellant, regardless of being illiterate, is legally represented, has been able to communicate his position to his representatives and the Tribunal and therefore, even if he was unable to provide evidence, his legal representatives might have sought evidence to support his case: see [279] where reference is made to the production of expert evidence or country background evidence, e.g. to show that M might have been sentenced to ten years or that there was no functioning postal system in Kirkuk.

14. The judge considered plausibility at [281] to [286] and section 8 of the 2004 Act at [287] to [288] and also addressed the Appellant's behaviour as a witness at [289]. He then reached his conclusions on credibility at [292] through to [298]. The Judge made clear and sustainable findings that he could not be satisfied, even to the lower standard, that there was a

reasonable likelihood or real risk that the Appellant's account of his events that led to his departure from Iraq were worthy of credence. The judge accepted the Appellant was an Iraqi national of Kurdish ethnicity and that he had been arrested and fingerprinted in Austria and Hungary. The judge gave nine reasons at [298] for rejecting the Appellant's account, none of which have, in fact, been challenged in the grounds of appeal. Therefore, I find there is no material error in the judge's assessment of the Appellant's credibility.

15. In relation to risk on return, whilst Mr McVeety is correct in theory that it is open to a judge to depart from a country guidance decision, it is only in certain circumstances that that is justifiable. I find that preferring evidence in the form of a CPIN is not sufficient reason to depart from the country guidance given by both the Court of Appeal and the Upper Tribunal. Thus, the judge erred in law in that respect. However, I have concluded that that error is not material because the judge then went on to consider in the alternative that if the Appellant could not return to Kirkuk whether he could internally relocate to Baghdad or the IKR. Those findings have not been challenged in the grounds of appeal, they are predicated on the judge's previous findings in relation to the Appellant's credibility and I find they are sustainable. Therefore, I uphold the decision of the First-tier Tribunal Judge and dismiss the appeal.

16. An anonymity direction is made.

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.

Signed Rebecca Chapman Date 8 September 2019

Deputy Upper Tribunal Judge Chapman

No fee is paid or payable and therefore there can be no fee award.