**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/11423/2017

**THE IMMIGRATION ACTS**

| **Heard at Manchester** | **Decision & Reasons Promulgated** |
|---|---|
| **On 30th October 2018** | **On 13th February 2019** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MAG**
**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**
For the Appellant: Mr. A Tan, Home Office Presenting Officer
For the Respondent: Mr. G Brown. Counsel instructed by Citizens Advice Bureau (Bolton)

**DECISION AND REASONS**

1. The First-tier Tribunal ("F*t*T) judge declined to make an anonymity order. Although no application is made before me, the appeal concerns a claim for asylum and international protection and in my judgement, it is appropriate for an anonymity order to be made under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. MAG is granted anonymity throughout these proceedings.

No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. The appellant in the appeal before me is the Secretary of State for the Home Department and the respondent to this appeal is MAG. However for ease of reference, in the course of this determination I shall adopt the parties' status as it was before the F*t*T. I shall in this determination, refer to MAG as the appellant, and the Secretary of State as the respondent.

3. The respondent appeals against the decision of First-tier Tribunal ("F*t*T") Judge Chowdhury promulgated on 27th July 2018, allowing the appellant's appeal on Article 3 grounds.

4. The background to the appellant's claim is set out at paragraphs [3] to [5] of the decision of the F*t*T Judge. The appellant claimed to have lived in Makhmur, Iraq, until the area was invaded by ISIS in or about July / August 2014. The appellant, his mother, two brothers and two sisters then fled the area, and escaped to Erbil. The appellant's mother found a small flat in Erbil that was rented from a private landlord. The appellant claimed that between 2014 and December 2015, he would go to Kirkuk and Sulaymaniyah, where he stayed with strangers who allowed him to stay with them because they understood that the appellant was at risk because of his age and medical condition. The appellant claimed that he left Iraq with his younger brother, at the end of 2015.

5. The Judge's findings of fact and conclusions are set out at paragraphs [21] to [36] of the decision. Having heard the evidence, the F*t*T Judge found the appellant to be a credible witness. The Judge stated, at [24], that "*I accept on the lower standard of proof that the core of the appellant's claim is credible.*".

6. The Judge accepted that the appellant's father was killed by ISIS and that the appellant fled Makhmur, and that his father's body was found in Shahidan "*... which may well be in the*

*Erbil province..*". The Judge found that the appellant and his family fled to Erbil. At paragraph [29], the Judge states:

> "On the lower standard of proof I find that this Appellant is from Makhmur and does not originate from the IKR."

*7.* The Judge refers to the Country Guidance set out in AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC). At paragraph [33] of her decision, the Judge states:

> "... I find that his family who remain in the IKR are likely to be IDPs of Kurdish origin. His account which I find on the lower standard to be credible, lends itself to a finding that this appellant was unable to secure employment whilst he was in IKR and hence he lived a life of moving from one home to another. He openly stated in cross examination that he had a paternal uncle in the IKR who had passed away."

*8.* At paragraph [34], the Judge accepts that the appellant has no CSID or other documentation. She states:

> "... I have accepted the Appellant's place of origin and I find that it is unlikely, on the lower standard of proof, given that it was in a contested area, that there would be a Civil Status Affairs Office in the Appellant's governorate. Further or alternatively, I do not find that there is a reasonable degree of likelihood that his relatives who remain in the IKR would be able to obtain replacements on his behalf and to do so in a reasonable time frame …"

*9.* The Judge found that the appellant has no identity documents and that the appellant would be returned to Baghdad. At paragraph [36], the Judge states:

> "I do not find that this Appellant will be able to make the onward journey to Erbil from Baghdad within a reasonable time frame. He is single, and has mobility issues due to his elephantitis who does not speak Arabic and is of Kurdish ethnicity. I do not find that he is likely to find assistance in Baghdad. I

> find that there is a real risk he will face destitution and as per the respondent concession I have quoted above at paragraph 31 above I find that his return will be in breach of his Article 3 rights. It is on this basis I allow the appeal."

The appeal before me

10. The respondent claims that the Judge has neither given any reasons for dismissing the asylum appeal, nor given any adequate reasons for allowing the appeal under Article 3 of the ECHR. It is said that the Judge has not given any clear reasons for accepting that the appellant is from Makhmur. There were inconsistencies in his evidence, and the appellant got many of the questions wrong at interview. The respondent submits that it is irrational to conclude that the appellant's lack of geographical awareness of the area can be put down to his health, when on his own account, he had freely travelled between the IKR and other areas of Iraq.

11. The respondent also claims that the appellant has not made any reasonable efforts to locate his family, and the Judge fails to make any adequate or rational findings as to the whereabouts of the appellant's family. The respondent submits that this failure is material to the outcome of the appeal because the appellant's ability to obtain the necessary identity documents is relevant to the question of whether the appellant could return to the IKR. Finally, the respondent submits that the F*t*T Judge failed to have any proper regard to s8 Asylum and Immigration (Treatment of Claimants, etc) Act 2004, having noted that the appellant travelled through a number of European countries without explaining why no claim for asylum was made in any of those countries.

12. Permission to appeal was granted by First-tier Tribunal Chamberlain on 28th August 2018. The matter comes before me to consider whether or not the decision of F*t*T Judge Chowdhury involved the making of a material error of law, and if the decision is set aside, to re-make the decision.

Discussion

13. As Brooke LJ observed in the course of his decision in **R (Iran) v The Secretary of State for the Home Department [2005] EWCA Civ 982**, "unjustified complaints" as to an alleged failure to give adequate reasons are all too frequent. The obligation on a Tribunal is to give reasons in sufficient detail to show the principles on which the Tribunal has acted and the reasons that have led to the decision. Such reasons need not be elaborate, and do not need to address every argument or every factor which weighed in the decision. If a Tribunal has not expressly addressed an argument, but if there are grounds on which the argument could properly have been rejected, it should be assumed that the Tribunal acted on such grounds. It is sufficient that the critical reasons to the decision are recorded.

14. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are wholly unsupported by the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really could not understand the original judge's thought process when she was making material findings.

*15.* The Judge found, at [29] and [33], that the appellant is from Makhmur, Iraq, as claimed. Two reasons for reaching that decision are apparent. First, the Judge noted, at [25], that although the respondent found the appellant had provided a number of incorrect responses with regard to his knowledge of Makhmur, nevertheless, "*…there is a not insignificant number of questions wherein no comment is made as to whether he got the answers wrong or right.*". The questions concerned, and the responses given by the appellant are not referred to in the decision. The Judge did not address whether the answers were in fact correct, but appears to have inferred that they were correct because the respondent had not claimed that incorrect answers were given. Second, at paragraph [26], the Judge accepted that

the appellant suffers from congenital elephantiasis. The Judge considered that the appellant's mobility is hindered and that he would not necessarily know in great geographical detail, the features of Makhmur or its surrounding places of interest.

*16.* If that were the only criticism of the decision, I would accept, as Mr Brown submits, that the respondent's challenge is nothing more than a disagreement as to the finding made by the Judge that the appellant is from Makhmur. The Judge however proceeds upon the basis that Makhmur is not in the IKR. Mr Tan submits that, Makhmur is in fact part of the Erbil Governorate and that is important because it impacts upon the appellant's ability to obtain the necessary CSID or other identity documents. Mr Brown did not challenge that submission, and I accept that Makhmur, is within the Erbil Governorate and therefore, is in a Kurdish area.

*17.* The Court of Appeal in AA (Iraq) -v- SSHD [2017] EWCA Civ 944 confirmed that Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. With regard to the IKP, the Country Guidance establishes that the respondent will only return a person to the IKR if that person originates from there, and his identity has been "pre-cleared" with the IKR authorities. The authorities in the IKR do not require the person to have an expired or current passport, or Laissez Passer. The Tribunal had found in AA that the IKR is virtually violence free.

*18.* In AAH, the Upper Tribunal replaced section E of the Country Guidance annexed to the Court of Appeal's decision in AA. The Upper Tribunal confirmed that whilst it remains possible for an Iraqi national returnee to obtain a new CSID whether the individual is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. The Tribunal set out the relevant factors, including *inter alia* whether the individual has any other form of documentation, or information about the location of his entry in the civil register, and the location of the relevant civil registry office and whether it is operational.

*19.* The Country guidance confirms that even a Kurd who does not originate from the IKR may enter the IKR lawfully for up to 10 days, and then extend his stay to settle there, having found employment. There is a need to consider wider issues such as travel between Baghdad and the IKR, the documents that will be available to an individual, whether the individual will be at particular risk of ill treatment during the security screening process, and the options available for accommodation and employment.

*20.* In my judgement, although it was open to the F*t*T Judge to find that the appellant is from Makhmur, the F*t*T Judge has failed to give adequate reasons for finding that the appellant's family, who the Judge appears to find, remain in the IKR, are likely to be IDP's of Kurdish origin, or that the appellant's family would not be able to assist the appellant obtain replacements of the appellant's CSID or other documentation. The Judge appears to proceed upon the premise that Makhmur is in a contested area and it is unlikely that there would be a Civil Status Affairs Office in the appellant's governorate. As I have said, Makhmur, is within the Erbil Governorate and is in a Kurdish area.

*21.* The appellant's own case was that his mother had been able to secure a small flat to rent in Erbil from a private landlord. At paragraph [33], the F*t*T Judge finds that the appellant's family who remain in the IKR are *"likely to be IDP's of Kurdish origin."*. Having found that the appellant's family are in the IKR, the F*t*T Judge fails to give any or any adequate reasons for finding that they are likely to be IDP's, or why they cannot assist the appellant secure the necessary documents.

22. In my judgement, the F*t*T Judge appears to proceed upon a mistake as to where Makhmur is, and in any event, fails to undertake the very careful fact sensitive analysis of relevant factors, that is required to enable a reader of the decision to understand the basis upon which the Judge reached her decision, correctly applying the relevant country guidance.

23. It follows that in my judgment, the decision of the F*t*T Judge is infected by a material error of law and must be set aside. As to the disposal of the appeal, both Mr Tan and Mr Brown submit that the appropriate course is for the matter to be remitted to the F*t*T for hearing afresh. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having taken into account paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

**Notice of Decision**

24. The appeal is allowed and the appeal is remitted the F*t*T for a fresh hearing of the appeal with no findings preserved.

25. I have made an anonymity direction.

Signed Date 28th December 2018

**Deputy Upper Tribunal Judge Mandalia**

**TO THE RESPONDENT**

**FEE AWARD**

I have allowed the appeal and remitted the matter for re-hearing before the F*t*T. In any event, no fee was paid and there can be no fee award.

Signed Date 28th December 2018

**Deputy Upper Tribunal Judge Mandalia**