



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/07419/2018

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 16 January 2020**

**Decision & Reasons
Promulgated
On 31 January 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M A A O
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L King instructed by Fountain Solicitors
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with the direction could lead to Contempt of Court proceedings.

Background

2. The appellant is a citizen of Iraq who was born on 3 July 1997. He comes from Mosul and is of Kurdish ethnicity.
3. The appellant left Iraq in August 2014 together with other members of his family. He remained in Turkey until travelling to the UK where he arrived, clandestinely, on 8 December 2016.
4. On 10 December 2016, the appellant claimed asylum.
5. On 5 December 2017, the Secretary of State refused the appellant's claim for asylum, humanitarian protection and on human rights grounds.

The Appeal

6. The appellant appealed to the First-tier Tribunal. That appeal was dismissed by Judge Wilson in a determination dated 31 August 2018. On 3 February 2019, the Upper Tribunal (DUTJ Lever) allowed the appellant's appeal and remitted the appeal to the First-tier Tribunal for a *de novo* rehearing.
7. The appeal was again heard in the First-tier Tribunal. In a determination sent on 21 August 2019, Judge Mathews dismissed the appellant's appeal. The judge rejected the appellant's claim to be at risk because of his (or his family's association) with the American forces in Iraq. As regards the appellant's claim under Art 15(c) of the Qualification Directive, the appeal proceeded on the assumption that the appellant was at risk in his home area following the relevant country guidance decision of AA (Iraq) v SSHD [2017] EWCA Civ 944. The judge, however, concluded that the appellant could safely and reasonably be expected to relocate to the IKR. In reaching that conclusion, he found that the appellant would be able to obtain a passport from the Iraqi Embassy in the UK and, on arrival in Iraq, would within a reasonable period of time be able to obtain a CSID.
8. The appellant appealed to the Upper Tribunal on three grounds. First, in finding that the appellant would be able to obtain a CSID the judge had failed properly to apply the relevant country guidance decision in AAH (Iraqi Kurds) Iraq CG [2018] UKUT 00212 (IAC) (Ground 1). Secondly, the judge had failed to apply AAH in finding that the appellant could reasonably be expected to live in the IKR (Ground 2). Thirdly, the judge had been wrong to find that the appellant would not be at risk on his onward journey to the IKR as a perceived collaborator (Ground 3).
9. On 1 October 2019, the First-tier Tribunal (Judge Kelly) granted the appellant permission to appeal to the Upper Tribunal.

Discussion

10. Ms King, who represented the appellant, relied upon a detailed skeleton argument which she expanded upon in her oral submissions. In particular,

she relied upon grounds 1 and 2. She candidly accepted that she was in some difficulty in relying upon Ground 3 as the judge had found that the appellant would not be at risk as a perceived collaborator and as such, that finding was, in effect, determinative of any risk whilst travelling to the IKR.

11. Having heard Ms King's submissions, Mr Howells, who represented the Secretary of State, conceded that Grounds 1 and 2 were made out. He accepted that the judge's decision could not stand and should be set aside. He accepted that, given the judge's factual findings, the judge had erred in law in concluding that the appellant could obtain within a reasonable period of time a CSID when returned to Baghdad. He further conceded that the judge had failed to consider all the relevant circumstances in determining whether it was reasonable for the appellant to relocate to the IKR.
12. I agree with Mr Howells' concessions. The judge made factual findings that the appellant had no family in Iraq and the judge proceeded on the basis that the appellant's home area, namely Mosul, was an area in which there was an Art 15(c) risk. The judge, as a result, failed properly to apply AAH in finding that the appellant would be able to obtain a CSID in Iraq on return. Likewise, the option of internal relocation required a holistic assessment of all the circumstances, including whether the appellant would have a CSID. The judge failed properly to carry out that assessment.
13. For these reasons, the judge materially erred in law in dismissing the appellant's appeal and is set aside.
14. Having accepted that the judge's decision should be set aside, the representatives agreed that certain of the judge's findings should be preserved. Those are the findings in paras 24 - 31 and 37 - 38.
15. Both representatives agreed that the judge had made no finding in relation to Art 15(c) applying in the appellant's home area of Mosul. Judge Lever, in remitting the appeal to the First-tier Tribunal, had not preserved any of the findings of Judge Wilson. The appeal before Judge Mathews had, therefore, proceeded on the assumption that, in the light of the country guidance in AA, Mosul was a 'contested area' where an Art 15(c) risk existed. Both representatives acknowledged that at the remitted appeal, it would be for the judge to determine in the light of the more recent country guidance in SM, KSP & IM (Article 15(c); identity documents) Iraq (CG) [2019] UKUT 00400 (IAC) all remaining issues, in particular whether there was a 15(c) risk to the appellant in his home area, and if there were, whether he could safely and reasonably internally relocate to the IKR. The issues of whether he could obtain any relevant documents, including a passport and CSID (or its more recent equivalent), whilst in the UK or on return to Iraq, should also be decided in the light of the guidance in SM, KSP & IM.

Decision

16. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision is set aside.
17. In the light of the fact-finding required and para 7.2 of the Senior President's Practice Direction, and in the light of the most recent country guidance decision, the proper disposal of the appeal is to remit it for rehearing by the First-tier Tribunal.
18. As indicated above, the judge's findings in paras 24 - 31 and 37 - 38 are preserved. The decision is to be remade in respect of Art 15(c) of the Qualification Directive and Art 3 of the ECHR.

Signed



A Grubb
Judge of the Upper Tribunal
29, January 2020