**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: IA/02660/2012

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Determination Promulgated** |
|---|---|
| **On 6 December 2013** | **On 7 January 2014** |

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**HAWKER HUSSEIN MAHMOUD**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss B Poynor, instructed by Sutovic & Hartigan Solicitors
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Hawker Hussein Mahmud, was born on 19 June 1989 and is a male citizen of Iraq. By a determination dated 28 August 2012, the First-

tier Tribunal (Judge T R P Hollingworth; Mr M E Olszewski JP) dismissed an appeal of the appellant against the decision of the respondent dated 2 February 2012 to refuse to revoke a deportation order. The appellant was granted permission to appeal to the Upper Tribunal by Judge Chalkley in October 2012. The initial hearing took place at Field House on 6 December 2013.

2. I was assisted by the helpful submissions made by Miss Poynor and also Mr Deller. Mr Deller did not seek to persuade me that the determination of the First-tier Tribunal should be upheld. I told the representatives that I intended to set aside the First-tier Tribunal determination and remit the appeal to the First-tier Tribunal for that Tribunal to remake the decision. The appeal will be reheard at **Taylor House** on **31 March 2014**.

3. I found that there are errors in the determination of the First-tier Tribunal which are not only sufficiently serious to justify setting it aside. These errors, taken cumulatively, constitute a failure to provide the appellant with a fair hearing of his appeal. I identified the errors as follows.

4. It is clear from the papers on the Tribunal file that the appellant's solicitors had assembled a substantial volume of evidence regarding the levels of indiscriminate violence in Iraq; the appeal before the First-tier Tribunal occurred at a time when there was a hiatus in country guidance available to the Tribunal. Whilst the First-tier Tribunal may not have had the resources to embark upon a detailed examination of Article 15(c) issues, it should at least have made some attempt to engage with the appeal on the basis upon which it was advanced by the appellant. The Tribunal purported to deal with the Qualification Directive at [48] *et seq*. At [49] the Tribunal made the observation that the appellant's "overall account continues to lack credibility". The Tribunal did not clarify that remark nor did it seek to explain how the matter of the appellant's credibility might be relevant to assessing levels of indiscriminate violence in Iraq capable of engaging Article 15(c). At [50] the Tribunal wrote, "We do not accept any contention that what [the appellant] says amounts to a fresh refugee claim." Again, the relevance of this comment to the issues in the appeal is not immediately apparent. At [51] the Tribunal concluded its brief examination of the Qualification Directive by saying that, "We [do not] accept that if returned [the appellant] will face serious harm entitling him to protection...." I consider that conclusion and the preceding analysis (if it can be so described) as wholly inadequate. The Tribunal's postscript at [52] ("*even had the appellant qualified for humanitarian protection we would still have withheld it, as a result of his committing serious offences of violence in the United Kingdom*") only served to make matters worse; the respondent had not submitted either in the refusal letter or at the hearing that the appellant should be excluded from humanitarian protection on that basis.

5. At [66], the Tribunal wrote that "It is clear that [the appellant] originates from the KRA". Elsewhere (for example, at [63]) the Tribunal accurately recorded that the appellant came from Kirkuk and had family members

who still lived there. Kirkuk is not in the KRA (or KRG). I find that this is another example of the lack of care which the Tribunal has taken in determining the appellant's appeal. It is arguable that these errors, taken singly, might not have undermined the determination as a whole but I find that their cumulative effect is to distort the reasoning of the determination to the extent that I am not persuaded that the arguments advanced by Miss Poynor on behalf of the appellant were adequately addressed. To that extent, the appellant has not been given a fair hearing of his appeal.

6. There was some discussion at the Upper Tribunal regarding the comments of the First-tier Tribunal at [79] as regards Section 55 of the Borders, Citizenship and Immigration Act 2009. *Prima facie*, the findings of the Tribunal as regards the best interests of the child (with whom the appellant does not live) do not appear to have been vitiated by the errors made elsewhere in the determination. However, considering the importance of making a proper assessment at any given time of the best interests of any children involved in an appeal and given also the lapse of time, I do not propose to preserve the Tribunal's findings at [79] or elsewhere in this determination which I direct should be set aside in its entirety.

## DECISION

7. The determination of the First-tier Tribunal which was promulgated on 28 August 2012 is set aside. None of the findings of fact are preserved. This appeal will be remitted for the decision to be remade by the First-tier Tribunal sitting at **Taylor House on 31 March 2014 at 10 a.m.**

Signed Date 6 December 2013

Upper Tribunal Judge Clive Lane