IAC-AH-DN/DP-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02518/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th November 2015	**On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR ALI HAMID AMIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss N Braganza, Counsel
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant states he is a citizen of Iraq born on 25th February 1995. The Secretary of State doubts the Appellant's nationality. The Appellant originally applied for asylum on 12th March 2010 having arrived in the United Kingdom as an illegal entrant in February 2010. It was noted that the Appellant had been fingerprinted in France on two separate occasions providing two different names on each occasion initially on 16th December 2009 and then again on 5th January 2010.

2. On 22nd April 2010 the Appellant's asylum application was refused by the Secretary of State but he was granted discretionary leave to remain in the United Kingdom until 24th August 2012 when he reached 17½ exclusively in accordance with the Secretary of State's published policy on handling of asylum applications from unaccompanied asylum-seeking children. The Appellant had lodged an appeal against the decision on 7th May 2010 which was dismissed by Immigration Judge Khan in a determination dated 14th June 2010. On 16th August 2012 an application for further leave to remain was received. On 28th January 2015 a decision was made to refuse to grant further leave and to remove the Appellant from the United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999.

3. The basis of the Appellant's claim was that he feared if returned to Iraq he would face mistreatment due to his imputed political opinion namely that his father was accused of being a terrorist by the government and was killed when the police stormed his house. The Appellant appealed the Notice of Refusal of the Secretary of State and the appeal came before Judge of the First-tier Tribunal Cheales sitting at Birmingham on 23rd April 2015. In a decision and reasons dated 13th May 2015 the Appellant's appeal was dismissed on all counts (the First-tier Tribunal Judge's wording) which I take to mean that it was dismissed on asylum and human rights grounds and that the Appellant was found not to be in need of humanitarian protection.

4. On 22nd May 2015 Grounds of Appeal were lodged to the Upper Tribunal. On 8th June 2015 First-tier Tribunal Judge Lambert refused permission to appeal. Renewed grounds were lodged on 23rd June 2015. Those renewed grounds were considered by Upper Tribunal Judge Goldstein on 3rd August 2015. Judge Goldstein noted that this was an appeal where a central issue centred upon whether the Appellant hailed from Mosul or was from Erbil as a finding in that regard would in light of the background material impact upon whether or not the Appellant would be at real risk on return to Iraq. Judge Goldstein indicated that he was just persuaded that the ground raised an arguable issue as to whether in light of the evidence before the First-tier Tribunal Judge in its totality the judge had given adequate reasons for concluding that the Appellant hailed from Erbil and as to whether the judge was thus entitled in law to reach that conclusion.

5. On 1st September 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24 stating that the judge had made findings of fact on the basis of the evidence and provided adequately clear reasons at paragraphs 18 to 20 for finding the Appellant was from Erbil.

6. It is on that basis that this matter comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Ms Braganza. The Secretary of State appears by her Home Office Presenting Officer Mr Duffy.

Submissions/Discussions

7. Ms Braganza advises that the central issue to this appeal is a finding as from where the Appellant comes from. She takes me to paragraph 17 of Judge Cheales' determination where she recites that it was accepted by both parties that if the judge finds that the Appellant is from Mosul he could not be returned there as this is a contested area. That remains the agreed stance of both parties. Ms Braganza submits that the judge had the Home Office bundle, the Appellant's bundle and a skeleton argument and was effectively spoon fed as to what evidence was available and was invited to find that the Appellant came from Mosul. She submits the materiality of the error is due to the information provided by the Appellant as shown within the documentation. By way of example she submits that the Appellant was able to provide details of the name of the mosque in Mosul and of schools in the area but none of these findings are to be found within the determination. She takes me to extensive paragraphs to be found within the Home Office bundle. She points out therein that it is recorded in the Appellant's initial age assessment document that he states he left Mosul in Iraq two days after his mother died in February 2010, that he has had no formal education (paragraph A19), and refers me to specific extracts from his 2010 interview where he states clearly therein that his last permanent address was in Mosul and that when he set out to come to the UK he left from Mosul. She emphasises that throughout the interviews provided by the Appellant he has referred to himself as coming from Mosul. She submits that there are answers within the Appellant's interview record that the Appellant is unlikely to know unless he came from Mosul. She submits that the Appellant's evidence ties in with his stance that he comes from Mosul and that there is clear factual evidence that he would not know had he come from Erbil rather than Mosul. She points out that the judge was provided with a skeleton argument and that in her decision the judge has failed to take into account any of these factors and that there is a requirement at least to deal with the evidence and consequently the failure to do so constitutes a material error of law and that the outcome to this appeal would she submits have been different had the judge addressed the evidence.

8. Mr Duffy points out that the issues in this appeal were initially predicated as far back as 2010 and that the Appellant was well aware that there would be no workable claim if he states he came from Erbil and consequently it would be to his advantage to state that he came from Mosul. He submits the judge was open to make the findings that she did and that the arguments put forward may well be construed as disagreement or indeed even a perverse challenge and he asked me to find that there is no error of law. He points out that the judge had looked at the expert's report and found that the Appellant was from Erbil and he submits that mosques and schools can be found on the internet. He submits that the evidence provided is neither strong one way or the other as to where the Appellant originates from but that his language is. He submits that the submissions amount to a disagreement with the decision of the judge and asked me to find that there is no material error of law.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

11. I start by reminding myself that it is the role of the Upper Tribunal solely to determine at this instance as to whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I am not re-trying the issues. This appeal has one straightforward and central theme namely did the judge err in law in finding that the Appellant came from Erbil and not from Mosul. I emphasise within this determination that I am making no findings one way or the other. It would undoubtedly be open to the Secretary of State to maintain quite reasonably a stance that all that the submissions being made amount to a mere disagreement with the judge's findings had the judge examined the evidence fully and had the judge made appropriate findings on all that evidence. Ms Braganza adduces a very thorough analysis of evidence which she submits support the Appellant's contention that he came from Mosul and not Erbil. She further acknowledges that the Appellant's parents were from Erbil originally and that all the factors which support the Appellant's contentions and which were brought to the judge's attention appear to have been ignored by the judge when writing her determination. Had the judge recited those factors and given reasons as to why she did not agree with them then she acknowledges that she would be in some difficulty in maintaining her submissions that the judge has erred in law.

12. The fact however remains that the judge is silent on many crucial factors. Whether they ultimately are ones that are believed by a judge is not a matter today for this

Tribunal. What I am satisfied is that they are factors that are material and that they have not been addressed. In such circumstances the correct decision is to find that there is a material error of law in the decision of the First-tier Tribunal Judge and to set aside that decision and to remit the appeal back to the First-tier Tribunal for rehearing.

Decision and Directions

13. The decision of the First-tier Tribunal contains a material error of law and is set aside. The matter is remitted back to the First-tier Tribunal for rehearing before any judge other than Immigration Judge Cheales. It is noted that the Appellant has moved addresses and in such circumstances the following directions will apply:

    (1) The matter be remitted for rehearing at Hatton Cross on the first available date 42 days hence with an ELH of three hours.

    (2) It is recorded that a finding on whether the Appellant comes from Mosul or Erbil and consequently could be returned to his home town will be determinative of this appeal.

    (3) That there be leave to either party to file and serve an up-to-date bundle of evidence and any skeleton arguments upon which they intend to rely at least fourteen days prior to the restored hearing date.

    (4) That the Appellant do attend for the purpose of cross-examination.

    (5) That the restored hearing be given an estimated length of hearing of three hours.

    (6) That a Kurdish (Sorani) interpreter do attend the restored hearing.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris