



**The Upper Tribunal
(Immigration and Asylum Chamber)
AA/05116/2015**

Appeal number:

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision & Reasons
Promulgated**

On March 9, 2016

On March 29, 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

**MR A Y M
(ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
Appellant
RB

Miss Rutherford, Counsel, instructed by Braitch

Respondent

Solicitors
Mr Diwnycz (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Iraq. The appellant entered the United Kingdom on November 4, 2003 and claimed asylum on November 6,

2003. The respondent refused his asylum claim on December 23, 2003. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Adjudicator Prickett and in a decision promulgated on March 18, 2004 he refused the appellant's appeal. The appellant was refused permission to appeal that decision and his appeal rights were deemed exhausted on August 10, 2004. Between December 2005 and March 2007 two applications for a certificate of marriage approval were refused.

2. On June 9, 2007 he voluntarily departed and went to Jordan. On August 6, 2009 he applied for settlement as a spouse but was refused. He renewed this application on August 6, 2009 but this was refused on August 23, 2009. He re-applied on September 10, 2009 and was given limited leave to enter until April 10, 2012.
3. On May 5, 2012 he applied for further leave to remain as a spouse but this was refused on October 22, 2012. He thereafter applied for asylum on July 23, 2013 but this was refused on March 10, 2015 under paragraph 336 HC 395 and a decision was taken to remove him by way of directions under paragraph 10A of Schedule 2 to the Immigration Act 1971.
4. The appellant appealed that decision under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on March 24, 2015.
5. The appeal came before Judge of the First-tier Tribunal Hubball on June 19, 2015 and in a decision promulgated on July 6, 2015 he refused the appellant's appeal on all grounds.
6. The appellant lodged grounds of appeal on July 20, 2015 submitting the First-tier Judge had erred in his approach to the appellant's claim and the assessment of risk generally.
7. Judge of the First-tier Tribunal Fisher gave permission to appeal on basis the Judge may have erred.
8. In a Rule 24 letter dated August 11, 2015 the respondent opposed the appeal. She argued the Judge reached findings open to him based on the earlier findings of Adjudicator Prickett and given the country material the Judge was entitled to conclude he could safely return.
9. The matter came before me on the above date and I heard submissions from both representatives.
10. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order.

SUBMISSIONS

11. Miss Rutherford submitted the grounds were connected because findings on family issues were relevant to risk on return. She accepted that both today and at the earlier hearing she accepted the facts of his asylum claim had not changed between the decision from March 2004 and the current day save he maintained he was of Arab ethnicity and the Judge had failed to address this in his decision. Adjudicator Prickett had not addressed this issue in the earlier decision and the Judge's failure to do so amounted to an error in law. She further submitted that the appellant stated he had no contact with his family and he was being asked to provide evidence to prove a negative. This was wrong in law. These errors contributed to the third error namely that the judge should have departed from the country guidance decision of MK (documents-relocation) Iraq [2012] UKUT 00126 (IAC) in light of the recent evidence contained in the respondent's own reports. The Judge had also not engaged with the expert report of Ms Guest and had failed to properly assess risk.
12. Mr Diwnycz relied on the rule 24 response and submitted the facts of the appellant's claim remained unchanged and there was no new evidence to support his claimed ethnicity. These were matters that were placed before the original Adjudicator and he rejected his claims. There was no error either on this issue or his findings about the appellant's family. The Judge had considered his evidence and given sufficient reasons to explain his conclusions. They were open to him and the fact the appellant did not like them did not amount to an error in law. As for the third ground of appeal the Judge noted the expert report was prepared on the basis the appellant's account was accepted and accepting everything the appellant claimed but his claim had been rejected. Her findings would have carried limited weight in those circumstances and the Judge had properly considered the more recent evidence from paragraph [95] onwards and concluded the appellant would not be at risk. There was no error in law.

DISCUSSION AND FINDINGS

13. Three areas were raised by Miss Rutherford. Two were factual issues and one related to risk on return.
14. Miss Rutherford acknowledged both before me and at the hearing before the First-tier Tribunal that the facts of the appellant's claim remained unchanged. She accepted Adjudicator Prickett found the appellant not to be a credible witness and had completely rejected

his account of events. He had identified numerous discrepancies and he concluded, based on the appellant's own evidence, the appellant was a Kurd who went to school in Mosul before going to live with his uncles in Duhok.

15. The Judge found he was a Kurd and that he was a Sunni Muslim and gave reason for this in paragraph [90] of his decision. He also found the appellant was determined to remain here and changed his evidence to enable him to try and remain and this finding, based on his own conclusions and those of Adjudicator Prickett, were clearly open to him.
16. Nothing had changed, by Miss Rutherford's own admission, from when the Adjudicator last heard his appeal. Everything he told him was repeated to the Judge and there is nothing in the Judge's decision that raised a factual error.
17. Those findings were then formed part of the Judge's consideration of risk on return. The Judge referred not only to the expert report but also referred to the country evidence at paragraph [99]. The Judge also had regard to security issues in paragraph [97]. He then considered the position if he were returned to the KRG and at paragraphs [100] and [101] he gave reasons for finding he could be returned safely. The Judge reminded himself of the decision of HM and others (Article 15(c)) Iraq CG [2012] UKUT 00409 (IAC) which was the country guidance case at the time. His findings were clearly open to him and nothing contained in the respondent's refusal letter places him at risk.
18. I therefore find there has been no error in law.

DECISION

19. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the First-tier decision.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I make no fee award as I have dismissed the appeal.

Signed:

Dated:

A handwritten signature in black ink, appearing to read "SPAL" with a flourish underneath.

Deputy Upper Tribunal Judge Alis