



IAC-AH-KRL-V1

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

Appeal Number: PA/00021/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 1 February 2016**

**Decision & Reasons Promulgated
On 12 April 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**RN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brown, instructed by Parker Rhodes Hickmotts, Solicitors
For the Respondent: Mrs Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, RN, was born in 1983 and is a citizen of Iraq. The appellant appealed against the decision of the Secretary of State dated 3 March 2015 refusing him leave

to enter and remain in the United Kingdom. The First-tier Tribunal (Judge Dearden) in a decision and reasons promulgated on 3 September 2015 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the decision of the First-tier Tribunal should be set aside and the matter remitted to the First-tier Tribunal (not Judge Dearden) to remake the decision. I have reached that decision for the following reasons.
3. The grounds criticise the judge's findings regarding the appellant's evidence regarding an identification card [51]. I am not persuaded that the grounds succeed in undermining the judge's findings in this regard (that the card had been "easily obtainable and issued rather casually to a proxy of the appellant.") but, given that I am setting aside the decision as a whole, including the findings of fact, these matters may be reconsidered by the new Tribunal.
4. The major difficulty in the judge's decision appears in the findings he made in respect of paragraph 398 and 399 of HC 395 (as amended), and which are set out in particular at [59(14)]. The judge noted that he was "bound to consider whether paragraph 399 or 399A applies and if it does not the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described." The judge observed that "if the appellant left [to live in Iraq] his wife and children would be very upset but their life would continue, especially bearing in mind the age of the children." Apparently, the judge concluded that it would be impossible to conclude that there were "very compelling circumstances" which would result in the appellant being deported. Somewhat strangely, the judge found that it was clear that "the appellant has a genuine and subsisting parental relationship with one child who has been continuously in the United Kingdom for at least seven years but two other children" who were too young to have crossed that threshold. He went on to consider the question of "undue harshness" for the oldest child if he were to be separated from the appellant by reason of the deportation of his father. The judge found that, "as life would continue for the eldest child it is impossible for me to conclude that it would be unduly harsh for that child."
5. The difficulty here is that the children are all British citizens. In those circumstances, it was necessary for the judge to consider the effect of deportation upon all of the children, not simply the child who had been living in the United Kingdom for more than seven years. He has clearly failed to do so. Equally problematic is the reasoning upon which the judge has concluded that the eldest child would not suffer unduly harsh consequences by reason of the appellant's deportation. His only observation is that "life would continue", an observation which he had set out earlier in the paragraph when noting that the appellant's wife and children would be "very upset but their life would continue ...". Nobody is suggesting that the lives of the children would not "continue" if the appellant were deported. However, that is not the test which the judge needs to apply; one's life might "continue" but in circumstances of undue harshness; the mere fact that the children would carry on living with their mother, attending school, etc. and continuing to live in that

quotidian sense fails to address the question of undue harshness. That failure of reasoning, coupled with the fact that the judge appears to have ignored the fact that all the children were British citizens, has led the judge into serious legal error.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 3 September 2015 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Dearden) for that Tribunal to remake the decision on all grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 20 March 2016

Upper Tribunal Judge Clive Lane