The Upper Tribunal
Immigration and Asylum Chamber) Appeal Number: PA/04802/2016

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 20 June 2017	**On 21 June 2017**
Prepared on 20 June 2017	

Before

DEPUTY UPPER TRIBUNAL JUDGE HOLMES

Between

R. H.
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Cleghorn, Counsel, for Halliday Reeves Law Firm
For the Respondent: Ms Petterson, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iraq who entered the UK illegally. He made an application for protection on 10 December 2015, and the Respondent refused that protection application on 29 April 2016. The Appellant's appeal to the First tier Tribunal ["FtT"] against that decision was heard on 28 November 2016. It was dismissed on all grounds, in a decision promulgated on 4 January 2017 by First Tier Tribunal Judge Bircher.
2. The Respondent was granted permission to appeal that decision on 20 April 2017 by First tier Tribunal Judge Landes on the basis that it was

arguable the Judge had either failed to follow current country guidance, or, failed to provide reasons for choosing not to do so, and, had arguably erred in her approach to credibility to the extent that her decision was unsafe.

3. The Respondent has filed a Rule 24 Notice dated 4 May 2017 in relation to the grant of permission, opposing it. Neither party has made formal application to adduce further evidence. Thus the matter comes before me.

Error of Law?

4. The first and second grounds to the challenge are a complaint about the Judge's approach to the humanitarian protection appeal. They are a complaint about a failure to properly engage with and/or apply the current country guidance decision in relation to Iraq; AA (Article 15(c)) Iraq CG [2015] UKUT 544, and, a complaint that inadequate or inconsistent findings of primary fact were made about where he originated from and whether he could physically travel there in safety. The third ground is more general, and a complaint under a number of headings as to the manner in which the Judge approached the task of assessing the weight to be given to the Appellant's evidence, asserting that viewed holistically the Judge's approach was such as to render the decision unsafe.
5. The Appellant claimed that his home area was Kirkuk, and that he was an ethnic Kurd; which the Judge appears to have accepted [30]. The Judge then appears however to have either directed herself, wrongly, that Kirkuk lay within the KRG, describing this as his "home area" [35], or to have made an inconsistent finding that his "home area" was in an unspecified location within the KRG. Both parties are agreed that this was a material error of fact, and that it may explain why there was no analysis of the evidence relating to the issue of whether this individual might travel from Baghdad airport to Kirkuk in safety.
6. In any event, it is agreed, that the decision does not disclose an analysis of whether the Appellant's "home area" was the city of Kirkuk, or some rural village in the vicinity within the areas still subject to armed conflict.
7. The Judge went on to conclude that Kirkuk did not satisfy the threshold for Article 15 (c), referring simply to the "*respondent's country guidance*" to justify that finding. Both parties before me accept that it is unclear what she intended by that.
8. Both parties were also agreed that the Judge's assumption [35] that the Appellant would be allowed to settle in the KRG, or had family who were settled there, was itself unexplained. Neither were able to identify any evidence before her that would have led her to that conclusion, although Ms Petterson understandably felt unable to concede that there was none.
9. The Judge went on to find that the Appellant could relocate to the KRG [34]. In so doing she made no finding that the Appellant had ever lived in the KRG previously, and appeared to accept that the members of his immediate family he had identified were living in Kirkuk. She then went on to find "*he has family ties who will be in a position to provide accommodation and act as a sponsor or guarantor*". Both parties before

me accept that there is no obvious evidential basis for such a finding, if it is meant to relate to individuals living in the KRG. Ms Cleghorn suggests that this is an indication the Judge mistakenly believed Kirkuk to lie within the KRG, and there is support for this in the following paragraph when the Judge finds *"I am satisfied that he can return to his home area in the KRI…"* [35]. Such a finding is otherwise obviously inconsistent with the earlier finding that his home area was Kirkuk [30].

10. Finally both parties were agreed that there were real grounds for concern as to the Judge's approach to the assessment of the Appellant's credibility. I agree. There is in my judgement nothing obviously incredible about a young man living in a rural area taking his first employment in agriculture with a relative, and then moving on to another job, particularly when that second employment is with the armed forces. It is not an obviously available first employment if all the family lived in acity, but that was not the Judge's point. Moreover in her analysis of the evidence concerning his military service the Judge concluded that all personnel would have a rank, whatever their job description. That is a finding that leaves me with considerable unease. That might be a conclusion that could properly be reached in the light of relevant evidence, but it is far from clear that there was any evidence on the armed forces in Iraq before her that would permit it. Tackling the issue of rank through an interpreter who may have no knowledge of military life is also in my experience fraught with difficulty, and something that needs very careful handling to ensure that there is no misunderstanding. "Rank" can mean different things in context even in English, and these conclusions strike me as particularly weak foundations for a conclusion that the Appellant's evidence about his experiences in Iraq was entirely untrue.

11. In the circumstances the decision discloses a material error of law that renders the dismissal of the appeal unsafe, and the decision must in the circumstances be set aside and remade. I have in these circumstances considered whether or not to remit the appeal to the First Tier Tribunal for it to be reheard, or whether to proceed to remake it in the Upper Tribunal. In circumstances where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the Appellant of the opportunity for his case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 25 September 2012. Moreover the extent of the judicial fact finding exercise is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 25 September 2012.

12. Having reached that conclusion, with the agreement of the parties I make the following directions;

    i) The decision is set aside, and the appeal is remitted to the First Tier Tribunal for rehearing. The appeal is not to be listed before Judge Bircher.

    ii) A Kurdish Sorani interpreter is required for the hearing of the appeal.

iii) There is presently anticipated to be the Appellant and no other witness, and the time estimate is as a result, 3 hours.
iv) It is not anticipated by the Respondent that she has any further evidence to be filed. The Appellant anticipates that a review of the evidence is required and that a short further witness statement may be filed. The Appellant is therefore to file and serve any further evidence to be relied upon at his appeal by 5pm 11 July 2017
v) The appeal may be listed at short notice as a filler on the first available date at the North Shields hearing centre after 18 July 2017.
vi) No further Directions hearing is presently anticipated to be necessary. Should either party anticipate this position will change, they must inform the Tribunal immediately, providing full details of what (if any) further evidence they seek to rely upon.
vii) The Anonymity Direction previously made by the First Tier Tribunal is preserved.

Decision

13. The decision promulgated on 4 January 2017 did involve the making of an error of law sufficient to require the decision to be set aside and reheard. Accordingly the appeal is remitted to the First Tier Tribunal with the directions set out above.

Deputy Judge of the Upper Tribunal JM Holmes
Dated 20 June 2017