Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/04806/2016**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 21st September 2017	**On 17th October 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR.S.O.
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs M.Cleghorn, Counsel.
For the Respondent: Mr Diwnycz, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. The appellant is a 37-year-old widower who has the care of his seven-year-old son. He is Kurdish and has lived all his life in Kirkuk.

2. He claimed he was at risk on return because he lent his car to someone who then filled it with explosives. The car was discovered and the appellant says the authorities now suspect his involvement. His claim for protection was rejected, with the index event not being believed.

3. His appeal was heard by First-tier Judge Maka and was dismissed in a decision promulgated on 19 December 2016.

4. Permission to appeal was granted on the basis it was arguable the judge made a material factual error at paragraph 59 of the decision in stating that the appellant had lived all his life in the Independent Kurdish Region. The judge also did not apply AA(Article 15 (c) Rv 1) Iraq CG[2015]UKUT 544 regarding the appellant being returned to Kirkuk or of relocating to Baghdad, particularly, as the sole carer of a child.

5. Mrs M.Cleghorn referred me to the grounds upon which leave was granted and Mr Diwnycz to the rule 24 response.

Conclusions

6. The judge does make some basic factual errors which cannot be explained as simple slips. Paragraph 18 correctly records that he is a Sunni Muslim from Kirkuk. However, paragraph 59 refers to him returning to the IKR and that he has lived there all his life. The judge also refers to him as being a `normal Kurdish Muslim ‘without distinguishing which branch of Islam he follows and the difficulty this could cause for him.

7. The paragraph 61 repeats the factual error that he is from the IKR and so can return there without documentation. The judge went on to say the appellant was not at risk in his home area, by which impliedly they meant the IKR.The judge referred to Kirkuk as a place of relocation. The judge alludes to recent changes in the country situation but does not go into detail. In stating he faces no 15 (c) risk in Kirkuk the judge is departing from the country guidance but does not explain, beyond commenting that the situation has moved on.

8. The judge does not give consideration to the viability of the appellant living in Baghdad. Consequently, there is no evaluation of the matters set out in AA(Article 15 (c) Rv 1) Iraq CG[2015]UKUT 544 as guidance for consideration of the reasonableness of relocation.

9. My conclusion from the above is that material errors of law and fact have been established. Consequently, the decision cannot stand. The parties were in agreement that given the factual matters that would have to be determined it was appropriate for the matter to be reheard in the First-tier Tribunal.

10. The account about lending his car was disbelieved. Ms Mrs Cleghorn submitted that this finding should not be preserved. My conclusion was that in the interests of fairness all matters should remain open for the rehearing. Consequently, this finding is not preserved.

Decision

The decision of First-tier Judge Maka materially errs in law and cannot stand. The appeal is remitted to the First-tier Tribunal for a hearing of all issues de novo.

Deputy Judge of the Upper Tribunal Farrelly 13th October 2017