



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06302/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre
On 22nd June 2017

Decision & Reasons Promulgated
On 4th July 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR RAWAND STAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Harleen Masih (Counsel)
For the Respondent: Mr David Mills (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Chohan, promulgated on 19th December 2016, following the hearing at Birmingham Sheldon Court on 9th December 2016. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Upper Tribunal Hearing

2. Mr Mills conceded on behalf of the Respondent that, as indicated in the Rule 24 response dated 14th March 2017, the Respondent Home Office did not oppose the Appellant's application for permission to appeal. However, the Rule 24 response was to the effect that the Respondent now invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing to solely consider whether the Appellant can relocate to Baghdad taking into account, for example, that he is of Kurdish ethnicity, cannot speak Arabic, and has converted to Christianity.
3. Mr Mills, on the other hand, now proposed that the background evidence about the safety of Christians in Baghdad was such that it was reasonable to assume that if he were to be returned there, that given his lack of support, he will be targeted and be at risk of ill-treatment as a Christian. The issue, therefore, is whether, if returned to Baghdad, he can then make his way from there to the IKR, which is the autonomous Kurdish governed area of Iraq, which does provide essentially for many minorities, including Christians, where it was arguable that the Appellant may be safe.
4. In addition, argued Mr Mills, it was also conceivable that the Appellant may well be able to return to his home area in the Mosul Province, which was jointly administered both by the IKR and with the Iraqi government, so that the Makhmour District, from where the Appellant came, may well also additionally be safe for him, although there was an issue here of his being in difficulty on account of his father's activities.
5. What was clear, however, was that the issue could not just be determined on the basis of whether the Appellant could be returned to Baghdad, because even the seminal case of **AA (Article 15(c)) Iraq CG [2015] UKUT 544** makes it clear that, provided one can be returned to Baghdad, it is a relatively straightforward matter, to then take an internal flight at a cost of some 100 dollars directly from Baghdad to the IKR (see paragraph 80 of **AA**). Given that part of the relocation package offered by the British government is that a returnee would be given £1,500, the Appellant would have the financial means to make that journey from Baghdad to the IKR.
6. For her part, Ms Masih submitted that the Rule 24 response had conceded that the Appellant's appeal was not being opposed and that the Tribunal was being invited to determine the appeal with a fresh oral (continuance) hearing. The sole purpose of this was to decide whether the Appellant could be relocated to Baghdad. What Mr Mills was now asking for was much more extensive than that, submitted Ms Masih. In order to go into those matters, it may well be necessary for the Appellant to call expert evidence to show whether it was feasible for him to relocate to the IKR as a Christian Iraqi.
7. As for the issue regarding whether the Appellant could return to his own home area in the Makhmour District of the province of Mosul, the judge below had made no findings of fact as to whether this was a matter that would pose a risk to the Appellant given his father's activities there because it was the Appellant's case that he would be subject to attacks if he were to return to his own area.

8. The effect of the Rule 24 response being now departed from was to put Ms Masih in an invidious position because this was not the case that she had come to argue. If one were to go with the Rule 24 response alone, then, given that Mr Mills had conceded that the background evidence was compelling that Christians would be at risk in Baghdad, then the Appellant would succeed in this continuance hearing. An added complication, however, was that there was no interpreter present at the hearing, so that the Appellant could not give evidence in relation to these wider issues that Mr Mills was bringing to bear upon the Tribunal today.

Conclusions and Reasons

9. I accept that the effect of Mr Mills' submissions today is to depart from the Rule 24 response of the Respondent Secretary of State, and that this puts Ms Masih in an untenable position, with regards to proceeding with the hearing today. It is clear, on the other hand, that Mr Mills concedes that there is an error of law in the determination below, and I make such a finding myself because there was no specific decision reached in the Tribunal below as to whether the Appellant would be at risk in his home town on account of the activities of his father. There is also an error in the finding that the Appellant was able to relocate to Baghdad because such a conclusion gave insufficient regard to the objective evidence as to risks faced by Christians in Baghdad. The Appellant is in a doubly difficult position in this respect also if he cannot speak Arabic, has no family there, and has no documentation. The issue then is whether, as Mr Mills contends, the Appellant can go to the IKR on a short internal flight, and for this evidence must be heard and Ms Masih must be given adequate notice to be able to prepare the appeal from this perspective.
10. Accordingly, I give the following directions. First, that this matter not be listed before the First-tier Tribunal for at least six weeks to enable consideration to be given to whether or not an expert report is to be commissioned in relation to relocation to the IKR of the Appellant. Second, a Kurdish Sorani interpreter is to be provided. Third, the normal skeleton arguments are to be furnished in a timeous manner. Finally, the hearing is to be set aside for two hours.

Notice of Decision

11. The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.
12. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

2nd July 2017