



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02518/2015

THE IMMIGRATION ACTS

Heard at Rolls Building
On 13 March 2018

Decision & Reasons Promulgated
On 6 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ALI HAMID AMIN
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer

For the Respondent: Ms N Braganza, Counsel

DECISION AND REASONS ON ERROR OF LAW

1. The appellant's protection appeal was dismissed. His appeal has continued only in respect of his claim that removing him to the Kurdistan Region of Iraq ("KRI") would be unlawful under section 6 of the Human Rights Act 1998 because it would breach his right to enjoy a private life in the UK, as protected by article 8 of the Human Rights Convention.

2. Before me the appellant is the Secretary of State for the Home Department who appeals, with the permission of the First-tier Tribunal, against a decision of Judge of the First-tier Tribunal Juss allowing Mr Amin's appeal on article 8 grounds. It is more convenient to refer to the parties as they were before the First-tier Tribunal. From now on I shall refer to Mr Amin as "the appellant" and the Secretary of State as "the respondent".
3. I was not asked to make an anonymity direction and I saw no reason to make one.
4. The salient background facts are as follows. The appellant is accepted as being Kurdish citizen of Iraq. The respondent believes he comes from Erbil in the KRI but the appellant has always maintained he comes from Mosul. He was born on 25 February 1995 and is now 23 years of age. He arrived in the UK on 23 February 2010 and claimed asylum on 12 March 2010 after being served with notification of his liability to removal as an illegal entrant. Following an age assessment, he was accepted as being 15 years of age. However, his asylum claim was rejected on 22 April 2010. It appears the appellant was granted a period of discretionary leave from 22 April 2010 until 24 August 2012, when he would have reached the age of 17½. He appealed the decision to refuse his protection claim and his appeal was dismissed by Immigration Judge A W Khan in a decision dated 14 June 2010. Judge Khan did not find the appellant credible and found he could return to Iraq to live with his parents and uncle.
5. The appellant also applied to extend his leave before his existing leave expired and it is the refusal of that application which has given rise to this appeal. No decision was made until 28 January 2015. The appellant appealed on the grounds that he was at risk on return to Mosul and he could not safely relocate anywhere else in Iraq. He did not expressly raise article 8 in the notice of appeal. Judge of the First-tier Tribunal Cheales heard the appeal on 23 April 2015 and allowed the appellant to argue article 8 grounds. The appeal was dismissed in a decision promulgated on 13 May 2015. The Judge found the appellant was from Erbil and could return there, where he has family. She found no breach of article 8.
6. Permission to appeal was sought on grounds which challenged the Judge's assessment of the protection claim. Permission was granted by the Upper Tribunal to argue the point about whether the Judge gave adequate reasons for finding the appellant was not from Mosul. Deputy Judge of the Upper Tribunal Harris was persuaded the Judge had failed to give adequate reasons and set aside her decision. He directed the appeal be heard again in the First-tier Tribunal. On 8 July 2016 the appeal was heard again by Judge of the First-tier Tribunal Chohan. In a decision promulgated on 11 October 2016, he dismissed the appeal on all grounds. He also rejected the appellant's claim to be from Mosul, not least because two separate expert reports stated he was not from Mosul. He found the appellant could return safely to the KRI. He also found there would be no breach of article 8 in removing him.
7. The appellant sought and was granted permission to appeal against Judge Chohan's

decision to the extent he had dismissed the appeal on article 8 grounds. In a decision promulgated on 9 January 2017, Upper Tribunal Judge Perkins set aside the decision of Judge Chohan and remitted the appeal to the First-tier Tribunal for a second time. However, Judge Perkins did not find favour with an argument pursued on behalf of the appellant (which was the ground on which permission to appeal had been granted) that he was entitled to an indefinite extension of his leave by virtue of his having accrued six years' discretionary leave, which took account of the fact he had enjoyed section 3C leave since his original grant of leave expired.

8. When the appeal was heard again on 2 June 2017 by Judge of the First-tier Tribunal Juss, the appellant's article 8 claim was argued on the basis that he met the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules and, alternatively, outside the rules. Judge Juss found the appellant succeeded on both grounds. The respondent sought permission to appeal which was granted by Judge of the First-tier Tribunal Mark Davies. He considered it was arguable:
 - Judge Juss's findings were sparse and lacking in structure such that it was difficult to understand the basis on which he had allowed the appeal;
 - He had failed to identify the extent of the appellant's private life; and
 - His consideration of article 8 outside the rules did not identify compelling circumstances.
9. The appellant did not file a rule 24 response opposing the appeal.
10. I heard submissions from the representatives as to whether the decision of the First-tier Tribunal contains a material error of law.
11. Mr Melvin relied on the grounds seeking permission to appeal. He argued the Judge's findings were sparse and lacked structure. He said the respondent's challenge to the decision was based on a material misdirection in law. The Judge, in finding the requirements of paragraph 276ADE(1)(vi) were met, did not consider properly what the significant obstacles to reintegration were. He argued the Judge's reliance on the judgment of the Court of Appeal in *SSHD v Kamara* [2016] EWCA Civ 813 was improper because the passages dealing with the meaning of 'integration' were obiter dicta. The case had been decided on much stronger facts.
12. Mr Melvin argued that the Judge's reference to "war-ridden Iraq" was irrational given the appellant originated from the KRI. The appellant had been found to be untruthful regarding his claim to originate from Mosul. This had been confirmed by the experts. In short, the Judge had failed to give adequate reasons for his decision to allow the appeal under the rules.
13. Mr Melvin argued that, outside the rules, the decision also lacked reasoning. In particular, in paragraph 19, the Judge misdirected himself in treating the fact the appellant's residence in the UK had been lawful as meaning it could not also be precarious. It had been decided that the appellant could return to his parents and

other family members in the KRI. There were no health issues. There were no compelling circumstances such that the appeal should be allowed outside the rules.

14. Ms Braganza argued that there was nothing wrong with the Judge relying on the guidance provided by the Court of Appeal in *Kamara*. The Judge had not ignored the fact the appellant had previously been found not to be credible because he recorded this in paragraph 6 of the decision. The Judge also showed he was aware that the appellant's leave had been extended by section 3C. The Judge had directed himself in terms of the rules and reached a sustainable conclusion. He had then gone on to look at the case outside the rules and, again, there was no misdirection in his approach. He made findings on the evidence which were open to him. Even if there had been an error, this would not have been material.
15. However, in answer to my question, Ms Braganza accepted the Judge did not appear to have factored into his consideration the finding that the appellant has family to return. Mr Melvin, in his reply, suggested it was irrational to fail to consider the fact the appellant had family to return to.
16. I have carefully considered the arguments put forward by the parties. Having done so, I am firmly of the view that the decision of the Judge is vitiated by serious errors of law with the consequence that it must be set aside in accordance with section 12(2) of the Tribunals, Courts and Enforcement Act 2007. My reasons are as follows.
17. As noted, by the time the appeal reached the First-tier Tribunal for the third time, the appellant's appeal was restricted to question of whether there were very significant obstacles to his reintegration in the place he would be returned to and, if not, whether there was any other reason that his removal would breach article 8 on private life grounds.
18. The Judge's reasoning is very difficult to follow. Although the protection appeal was no longer live before him, the Judge dismissed it in paragraph 13 and then purported to set out the reasons for that decision in the following six paragraphs. However, the content of those paragraphs turns to issues arising under article 8. He referred to the decision of Upper Tribunal Judge Perkins and noted his observation that Judge Chohan had dealt with the case on the basis the appellant did not have leave to be in the UK, whereas he did. That in itself is puzzling because, with all due respect to Upper Tribunal Judge Perkins, Judge Chohan was plainly aware that the appellant had held discretionary leave which had been extended under section 3C. As a result, he reasoned, the appellant's leave had been precarious (see paragraph 22 of his decision).
19. Judge Juss returns to this question in paragraph 19 of his decision where he considers whether the appeal should succeed outside the rules and he refers to section 117B of the 2002 Act. He states that the appellant's stay has not been precarious because it has not been unlawful. That is a clear error. The appellant's leave has always been precarious and the Judge was required therefore to give it little weight, albeit the

little weight provisions of section 117B provide for a spectrum of weight (see (*Kaur (children's best interests / public interest interface)* [2017] UKUT 00014 (IAC)).

20. However, there is also a significant error prior to that in the Judge's application of paragraph 276ADE(1)(vi) of the rules. There is nothing erroneous in relying on the guidance provided by Sales LJ in paragraph 14 of his judgment concerning the meaning of the concept of 'integration'. Albeit that case was concerned with the deportation of a foreign criminal, the guidance provided is plainly transferable to consideration of this rule. It is general guidance and it does not matter if it was strictly obiter or if the facts of the particular case were stronger.
21. Judge Juss gave reasons for finding the requirements of the rules were met in paragraph 17 and 18. Apart from the plainly misguided reference to war-ridden Iraq, the Judge's reasons relate entirely to the progress which the appellant has made since the age of 15 in establishing a valuable private life in the UK. He appears to reason that the effect of the appellant having made progress in the UK is to show that it would be difficult for him to reintegrate into Iraqi Kurdish society.
22. With respect to him, that is the wrong test. It has been made clear that the rule presents an elevated threshold (see *Treebhawon and Others (NIAA 2002 Part 5A – compelling circumstances test)* [2017] UKUT 00013 (IAC)). There is no element of reasonableness, as the Judge appears to believe. He refers in paragraph 17 to a "reasonable chance of integration", which is a lower threshold and therefore a misdirection. Moreover, the application of the test must of necessity involve consideration of the circumstances which would await the appellant on return in order to determine whether 'integration', as explained by Sales LJ, can be achieved. The fact the appellant has a family to return to must be at the heart of any such consideration and this is absent from the Judge's consideration in this case.
23. Having established that the decision of the First-tier Tribunal should be set aside, with no findings preserved, the issue arises of how to remake the decision. My preference was very strongly to do this myself. Remission of the case back to the First-tier Tribunal would mean that a fourth attempt would be made to make a sound assessment of article 8. However, Ms Braganza told me the appellant had not attended the hearing and she suggested the reason for that was he was not feeling well enough to attend. No witnesses were in attendance. The bundle had not been updated since the hearing before Judge Juss in June 2017. Ms Braganza told me matters had moved on and that reports would need to be obtained on the appellant's mental health. There were fresh matters to be considered.
24. It was plainly not fair to proceed without up to date information. With great reluctance I am driven to conclude the appropriate course is to remit the case for a fresh hearing on the issues of whether the appellant can show he meets any of the requirements of paragraph 276ADE(1) or, alternatively, whether there would be a breach of article 8 outside the rules in removing him. The starting-point for this further assessment will be that the appellant is from Erbil and he has family members

there.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision allowing the appeal is set aside. The appeal is remitted to the First-tier Tribunal for a fresh hearing.

An anonymity direction has not been made.

Signed

Date 14 March 2018

Deputy Judge of the Upper Tribunal Froom