



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05450/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 21 December 2017**

**Decision & Reasons
Promulgated
On 03 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

SS (IRAQ)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Iain Palmer, Counsel instructed by Barnes Harrild & Dyer Solicitors

For the Respondent: Mr C. Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Lal sitting at Taylor House on 6 July 2017) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee on account of him being an Iraqi Kurd whose former home area is Kirkuk. The First-tier Tribunal made an anonymity direction, and I consider that the appellant should continue to be accorded anonymity for these proceedings in the Upper Tribunal.

2. In his decision promulgated on 18 July 2017, Judge Lal found that Kirkuk was a contested area, and hence that it was unsafe. However, he dismissed the appeal because he held that the appellant could reasonably relocate internally to the Iraqi Kurdish Region (“IKR”) which is under the control of the Kurdistan Regional Government.
3. Mr Palmer, who appeared below, settled the application for permission to appeal to the Upper Tribunal. He submitted that the Judge had erred in law in finding that the appellant could internally relocate because: (a) he had made no findings on the crucial issue of whether the appellant would be able to obtain a CSID within a reasonable period of time after being returned to Baghdad – which would be the point of return as he had never lived in the IKR; (b) he had not addressed the question of whether the point of return would be safe for the appellant; and (c) he had not given any reasons why none of the background material or expert evidence assisted the appellant in establishing the unviability of him relocating to the IKR when he did not originate from IKR.
4. On 9 October 2017 First-tier Tribunal Judge Shimmin granted the appellant permission to appeal for the following reasons:
 2. It is arguable that the judge has made a material error of law in failing to make findings in relation to documentation and internal relocation and to properly apply the country guidance in regard thereto.
 3. It is also arguable that the judge has erred by failing to give reasons why none of the background material or expert evidence assists the appellant.
5. In a Rule 24 Response dated 8 November 2017, Hilary Aboni of the Specialist Appeals Team said that the application for permission to appeal was not opposed, and she invited the Tribunal to determine at a fresh (oral) continuance hearing whether the appellant could be safely returned to Iraq. She added that the respondent maintained the position set out in the Reasons for Refusal letter that the appellant could be safely returned to Kirkuk “which is no longer a contested area” or he could relocate to IKR.

Discussion

6. At the hearing before me, Mr Avery confirmed that the position of the respondent was that the decision of Judge Lal was vitiated by a material error of law such that it should be set aside in its entirety and remade. I was satisfied that the concession was rightly made. As I ruled orally at the hearing, the decision of Judge Lal is erroneous in law for the reasons given in the application for permission to appeal - as summarised by me in paragraph 3 above.
7. So the only issue to be resolved was the forum in which the decision should be remade. Mr Palmer suggested that one option was for the appeal to be retained by the Upper Tribunal with a view to converting it into a country guidance case on the question of whether Kirkuk should or should not continue to be regarded as a contested area. However Mr Avery was opposed to this. He submitted that this was a simple question of fact which the First-tier Tribunal was equipped to determine. The

situation on the ground continued to improve since the assessment made by the Upper Tribunal in **BA (Returns to Baghdad) Iraq CG UKUT 18 (IAC) (23 January 2017)**: as of the date of the decision letter - 17 May 2017 - Daesh no longer occupied Kirkuk (except Hawijia and surrounding areas) according to the decision letter at page 5.

8. Having heard from both representatives, I was satisfied that this was not an appropriate case for retention by the Upper Tribunal, but that it should be remitted to The First-tier Tribunal for a fresh hearing on all issues. This was for two reasons: (a) the extent of judicial fact-finding that was going to be required to remake the decision; and (b) the fact that both parties had been deprived of a fair hearing in the First-tier Tribunal, as the Judge had not adequately engaged with the principal important controversial issues in the appeal, including whether by the date of the hearing the situation in Kirkuk had improved to a point where a returnee would no longer be at risk of indiscriminate violence in a situation of internal armed conflict; and whether he accepted as credible and probative the evidence of two supporting witnesses on the topic of the appellant's alleged attempts to obtain documentation from the Iraqi Consular office in London.

Conclusion

9. The decision of the First-tier Tribunal contained a material error of law, such that it shall be set aside.

Directions

10. **The appeal is remitted to the First-tier Tribunal at Taylor House for a de novo hearing before any judge apart from Judge Lal. None of the findings of fact made by the previous Tribunal shall be preserved.**

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 their 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

Deputy Upper Tribunal Judge Monson