Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06516/2016

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 13th December 2017	**On 22nd January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR MBA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Holmes, Counsel
For the Respondent: Mr Diwnycz

DECISION AND REASONS

1. The Appellant claims to be a citizen of Iraq and to have been born on 17th March 1988. He claims to have left Kirkuk in Iraq in October 2015 arriving in the UK on 15th December 2015 by lorry before being arrested for illegal entry and being served with IS96. He claimed asylum on the basis that he had a fear that if returned to Iraq he would be mistreated or even killed by Daesh due to his assistance to the Americans in Iraq from 2008 to 2010 or by the family of the woman he had had a relationship with in Kurdistan. The Appellant's application for asylum was refused by Notice of Refusal dated 13th June 2016.

2. The Appellant appealed against the decision and the appeal came before First-tier Tribunal Judge Moxon sitting at Manchester on 1st March 2017. In a decision and reasons promulgated on 10th March 2017 the Appellant's appeal was dismissed on all grounds.

3. The Appellant lodged Grounds of Appeal to the Upper Tribunal on 28th March 2017. The grounds contended the First-tier Tribunal Judge had failed to take into account two material factors when assessing the reasonableness of the Appellant's relocation to the Kurdish Autonomous Region. Firstly that the judge had failed to deal with the submissions made in relation to the route of return to the KRI and secondly this was a case where the state of the Appellant's documentation fell to be considered as part of the relocation assessment.

4. On 17th July 2017 Judge of the First-tier Tribunal Bird granted permission to appeal. Judge Bird noted that in accepting that the Appellant could not return to his home area or reasonably relocate to Baghdad the judge made an arguable error of law in finding he could reasonably relocate to the IKR and also an arguable error of law in failing to consider all the factors when assessing the possibility of his relocation to the Kurdish Autonomous Region.

5. On 4th August 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. Specifically within that response the Secretary of State concentrated on the Appellant's complaint that the First-tier Tribunal Judge had failed to have regard to the Appellant's lack of documentation and contended that the judge had failed to take into account that the Appellant would be unable to travel overland to the IKR was in the view of the Secretary of State misconceived.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Mr Holmes. Mr Holmes is very familiar with this matter. He appeared before the First-tier Tribunal and he is the author of the Grounds of Appeal. The Respondent appears by her Home Office Presenting Officer Mr Diwnycz. I note that the First-tier Tribunal Judge granted the Appellant anonymity within these proceedings. No application is made to vary that order and the anonymity direction will remain in place.

Submissions/Discussion

7. Mr Diwnycz starts by pointing out that there are means by which an Appellant can return to the IKR and that flights are about to restart to Irbil from Manchester, that it is also possible to fly to Irbil via Vienna and flights run from Baghdad internally to Sulemanya. He believes that the geography which is conceded by the Appellant's representatives indicates that the Appellant's village is very close to the Iraq/Kurdistan border and that therefore it would not be that difficult for the Appellant to return to his home town.

8. Mr Holmes indicates that as a starting point it is accepted by the Secretary of State as a general rule that it is not reasonable to expect someone from the IKR to relocate to Baghdad. Consequently the only way to return there is either by land and he refers me to authority indicating that this is a fact-sensitive assessment but that there are practical difficulties in travelling and that overland travel is not an option and secondly by air. He admits that is not possible for this particular Appellant because he is without documentation and that the judge has failed to deal with the lack of documentation. He acknowledges that the decision predates the most recent authority from the Court of Appeal and that the judge's finding at paragraph 67 is flawed when concluding that had the Appellant been in possession of requisite identification he would have been able to travel by air as there remained internal flights to the IKR. Mr Holmes submits that the Court of Appeal have indicated and clarified you cannot assess a case on a hypothetical basis. Mr Diwnycz disagrees pointing out that even if there is an error it is not material and that the Appellant would not be removed without appropriate documentation.

The Law

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

11. Upper Tribunal Judges are regularly faced with the problem as to whether there is an error of law by a First-tier Judge's assessment as to whether or not an Appellant can return to the IKR. Reliance is placed on the authority of *AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)* which is accepted as authority or guidance upon the reasonableness of an Appellant's

relocation to the Kurdish Autonomous Region and the guidance given that it is only possible to travel by air for one journey on what is known as a laissez passer.

12. It is consequently the view submitted to me by Mr Holmes the Appellant could not return mainly because overland travel is plainly not a possibility as the contested area forms a complete barrier and because of the guidance given in *AA* that travel by air is not an option.

13. Each case turns on its individual facts. However in this instant case it is submitted to me there is an error of law is that the judge has failed to give due consideration to the state of the Appellant's documentation as part of the assessment of the reasonableness of relocation. That appears to be correct. In such circumstances the correct approach is to find there is a material error of law in the decision of the First-tier Tribunal Judge and to remit the matter back to the First-tier Tribunal for rehearing with none of the findings of fact to stand. However I would express a warning to the Appellant. Whilst the most recent authority has not been given due consideration each case turns on it individual facts and whilst of course there are no enforced returns to Iraq at present it is not to say that on further and fresh consideration of this matter that a judge will not come to exactly the same conclusion reached by the previous First-tier Tribunal Judge.

Decision

The decision of the First-tier Tribunal Judge contains a material error of law and is set aside. Directions are given hereinafter for the rehearing of this matter.

(1) That the matter be remitted to the First-tier Tribunal sitting in Manchester on the first available date 28 days hence with an ELH of three hours. None of the findings of fact are to stand.

(2) That the remitted hearing be before any First-tier Tribunal Judge other than Immigration Judge Moxon.

(3) That there be leave to either party to file and/or serve on the other party and at the Tribunal an up-to-date bundle of documents upon which they intend to rely at least fourteen days prior to the restored hearing.

(4) That if the Appellant requires an interpreter then his instructed solicitors must notify the Tribunal Service within seven days of receipt of these directions.

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 19 January 2018

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date 19 January 2018

Deputy Upper Tribunal Judge D N Harris