



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/07713/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Birmingham

Decision & Reasons

Promulgated

On 27 February 2018

On 5 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

MKS

(ANONYMITY ORDER CONTINUED)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Naz, Fountains Solicitors, Walsall

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Phull that was promulgated on 23 October 2017. Judge Phull decided the appellant was not a refugee from Iraq or otherwise in need of international protection.
2. Ms Naz informed me that the appellant had recently instructed Fountains Solicitors in place of Freedom Solicitors. I confirmed the record would be updated.
3. Ms Naz relied on the grounds of appeal submitted on 3 November 2017. In summary, the appellant arguments are as follows.

- (i) The appellant has a real risk of serious harm as he comes from one of the contested areas in Iraq (Kirkuk) and therefore benefits from the country guidelines in *AA (Article 15(c)) Iraq CG* [2015] UKUT 544.
 - (ii) The appellant has no family living in the IKR and cannot be expected to relocate to that part of Iraq, for reasons given in the same country guidance.
 - (iii) The appellant cannot be expected to travel to the IKR from Baghdad and therefore there is no realistic prospect of internal relocation, for reasons given in *AA (Iraq)* and supplemented by *BA (Returns to Baghdad) Iraq CG* [2017] UKUT 18.
4. In response, Ms Aboni relied on the rule 24 reply dated 15 December 2017. The respondent conceded Judge Phull had erred in concluding that the appellant had family living in the IKR. It was accepted the appellant had never stated he had family there. The error, however, was not material because it was evident from the envelope in which documents were sent to the appellant that his brother had travelled without difficulty from Kirkuk to Erbil to post the documents.
5. The Home Office retains the original envelop. Ms Naz had not seen it and a full copy was not on the appeal file. Judge Phull records seeing the original at the hearing in the First-tier Tribunal. Ms Naz examined it, as did I. It shows the documents were posted by the appellant's brother on 7 January 2017, who cited a return address in Erbil. I do not record the full address here because of the anonymity order I have made.
6. The respondent also argues that there have been material changes to the situation in Iraq since the country guideline cases. ISIS has fallen and what had been contested areas are no longer such. The appellant had not provided evidence to show that he would still benefit from article 15(c) in Kirkuk.
7. Having considered the competing submissions, I decided that there is no legal error in Judge Phull's decision and reasons statement. I accept the concession that she erred in finding that the appellant had family living in the IKR but do not find that error to be material to the outcome for the following reasons.
8. The appellant has identity documents, which were sent to him by his brother who travelled from Kirkuk to Erbil to post them. The fact the appellant has identity documents means he has not shown there would be significant obstacles to his travel from Baghdad either to his home area in Kirkuk or to the IKR. The fact his brother had been able to enter the IKR without difficulty was evidence that such travel was feasible.
9. The appellant had not shown that Kirkuk remains a contested area. With the fall of ISIS, which was well reported in national and international press, and the retaking of Kirkuk by the Iraqi authorities earlier in October 2017, it was incumbent on the appellant to show that he still required humanitarian protection under article 15(c) of the Qualification Directive

(2004/83/EC). The appellant merely suggests he should benefit from the country guideline cases; but they cannot be regarded as being up to date.

10. In reaching these conclusions I have kept in mind that there is no challenge to Judge Phull's finding that the appellant is not a refugee. The appellant has not pursued that part of his claim and only relies in this onward appeal on whether the judge properly considered issues of internal relocation in Iraq (including to the IKR) and humanitarian protection. I am satisfied she did.
11. Even were I to be wrong, and there is legal error, it would be for me to remake the decision in relation to the issues relating to internal relocation and humanitarian protection as of today's date. Because of the preserved findings, this would not be a case suitable for remitting to the First-tier Tribunal. The findings I have made would be even more applicable in such circumstances, again leading to the conclusion that the outcome would be unchanged. This reinforces my view that any error is not material.
12. But I do not believe I am wrong. I find there is no legal error and Judge Phull's decision is upheld.

Notice of Decision

There is no legal error in the decision and reasons statement of First-tier Tribunal Judge Phull and her decision stands.

Signed _____ Date 1 March 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal

Order regarding anonymity

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as "MKS".

Signed _____ Date 1 March 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal