



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/09392/2017

THE IMMIGRATION ACTS

Heard at Newport

**Decision and Reasons
Promulgated**

On 26th October 2018

On 9 November 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**Mr AAM
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Yeo instructed by the Migrant Legal Project
(Camden)

For the Respondent: Mrs H Aboni, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq born on 22nd January 2000. He was granted permission to appeal against a decision of First-tier Tribunal Judge Lever, promulgated on 3rd January 2018, allowing the appeal against the decision of the Secretary of State dated 15th September 2017 under Article 3, but refusing the claim for asylum and humanitarian protection. That decision refused the appellant's asylum, humanitarian and human rights claim.

2. It was the appellant's case that he had been sexually assaulted whilst in Iraq (the IKR) and was at risk from his family (who were wealthy and influential) on return. He was at the date of the hearing a minor which the judge took into account.

3. The judge made the findings that:

(i) the appellant was at risk on return to Iraq from his father or brother who would seek to either kill him or seriously injure him, as the judge stated, because

'They would regard the Appellant's behaviour in terms of drunkenness and his vulnerability to an actual sexual assault as being a stain on their family name and character. I also bear in mind that on the appellant's evidence which I accept, he does not have a good track record with his father and family' [19].

And

'Given the concessions made by the respondent as to those core features and given all the other factors that I have referred to above I find that there is to the appropriate standard of proof a risk that on return the appellant would be seriously injured or killed by his father and or eldest brother. That does not in my view place the appellant within the terms of the Geneva Convention but it does mean I find that there is a risk of a breach of his protected rights under the ECHR. Given the nature of the IKR and the level of influence that I accept his father has [,] I do not find it reasonable to accept that internal relocation with in the IKR is possible'. [20]

(iii) the appellant was a Sunni Kurd and had no contact with Baghdad, or with the rest of Iraq outside of the IKR. There was no evidence of any family or family connections in Baghdad or in the immediate vicinity. As the judge decided

*'He presents as a vulnerable individual in terms of his mental health and background as described by the psychiatrist. There is no evidence that he would be able to obtain a CSID either before or shortly after arrival within Baghdad and when looking at all of the factors referred to with in in [sic] **AA [(Article 15(c) (Rev1) Iraq CG [2015] UKUT 544 (IAC))]**, I do not find that relocation to Baghdad is an option in this case'.*

The judge dismissed the appeal on asylum grounds and humanitarian protection grounds but allow the appeal under Article 3 of the ECHR.

Application for Permission to Appeal

4. The application for permission to appeal initially requested a review but in the alternative, submitted simply that the First-tier Tribunal having found that the appellant was at risk of being killed or seriously injured by

his father and/or brother should he return to Iraq, was wrong in law to fail to grant him humanitarian protection. The findings met all four paragraphs of 339C of the Immigration Rules as well as paragraphs 2 and 3 of 339CA.

5. Permission to appeal was initially refused by First-tier Tribunal Davies by subsequently granted by UT Judge Blum.

The Hearing

6. Mrs Aboni accepted that the appeal should have been allowed on the basis of Humanitarian Protection because of the findings of the judge. She queried the skeleton argument which was provided.
7. Mr Yeo made an application for costs on the basis that the Secretary of State should have conceded the appeal much earlier. He accepted that he had made an application on the day of the hearing and had produced no schedule of costs.
8. Mrs Aboni objected to any order for costs against the Secretary of State. A letter had been forwarded to the Tribunal on 4th May 2017 and this indicated the reasonable position of the Secretary of State. She stated that the person drafting the grounds for permission did not have access to the file and thus the skeleton argument.

Conclusions

9. As conceded by Mrs Aboni there was an error of law in the decision of the First-tier Tribunal and on inspection of the file it is apparent that the matter was raised in the grounds of appeal to the First-tier Tribunal and the issue of humanitarian protection should have been addressed in the decision. The findings of the judge, and as I have set out above, fall squarely into paragraphs of 339C of the Immigration Rules as well as paragraphs 2 and 3 of 339CA.
10. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) **only** in so far as it relates to the refusal on humanitarian protection grounds and in that regard only remake the decision under section 12(2) (b) (ii) of the TCE 2007 and allow the appeal for the reasons given above.

ORDER

The appeal of Mr AAM is allowed on humanitarian protection grounds.

Signed Helen Rimington

Date 31st October 2018

Upper Tribunal Judge Rimington

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 his 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.

DECISION ON APPLICATION FOR A COSTS/EXPENSES ORDER UNDER RULE 10(3)(d) under The Tribunal Procedure (Upper Tribunal) Rules 2008

1. Mr Yeo contended that the SSHD acted unreasonably in proceeding to resist the application and requested for the approach of the Tribunal to be explained.
2. Mrs Aboni clearly rejected the assertion that there should be any costs order against the Secretary of State.
3. In assessing whether the SSHD acted unreasonably in challenging the First-tier Tribunal decision in the proceedings in the Upper Tribunal I have considered the decisions of **Ridehalgh v Horsefield** [1994] Ch 205, **Cancino (costs - First-tier Tribunal - new powers)** [2015] UKFTT 00059 (IAC), and **Thapa & Ors (costs: general principles; s 9 review)** [2018] UKUT 00054 (IAC). I have additionally had regard to the Presidential Guidance Note No 2 of 2018 (First-tier Tribunal) on wasted costs and unreasonable costs. I note that the basic test is whether there is a reasonable explanation for the conduct under scrutiny; the facts must be considered.
4. The award of costs is always discretionary, even in cases where the qualifying conditions are satisfied, that orders for costs will be very much the exception rather than the rule and will be reserved to the clearest cases, and that any application for wasted costs will be governed in the main by the principles of fairness, expedition and proportionality.
5. I do not make a costs order in favour of the appellant against the Secretary of State for these reasons. The First-tier Tribunal was promulgated on 3rd January 2018. The application for permission to appeal (or review) was provided on 13th February 2018 and refused by the First-tier Tribunal on 26th January 2018. There was no challenge to the First-tier Tribunal's lack of review by the appellant. The matter was simply appealed, as of right of course, to the Upper Tribunal. UTJ Blum granted permission to appeal on 21st March 2018.
6. Crucially, the Secretary of State wrote to the Tribunal on 4th May 2018 indicating that

'the respondent does not oppose the appellant's application for permission to appeal if it can be shown that it was argued at the First-tier Tribunal hearing, that the appellant was entitled to HP in the alternative should his asylum claim be rejected. Reasons were not given by the judge regarding this issue'.

7. It was the appellant's application for permission to appeal, as was his right, but there was no indication that this was not referred to the appellant's representatives or that they responded. The skeleton argument of Mr McWatters, counsel attending, before the First-tier Tribunal did contain at paragraph 18 a submission that humanitarian protection should be granted in the alternative to asylum. There was a reasonable explanation for the Secretary of State's position in relation to the litigation, namely, he was awaiting a response with regard the litigation. There was no indication of significant delay on the part of the Secretary of State.
8. I do not find the conduct of the Secretary of State to be unreasonable or without explanation and thus should be responsible for the costs incurred by the appellant. Even if that were not the case, a costs order is discretionary, and the costs application was made at the hearing on 26th October 2018 and without notice to the Tribunal or the Secretary of State. There was no indication that such a request was to be made and no costs schedule produced.

Signed Helen Rimington
Upper Tribunal Judge Rimington

Date 31st October 2018